

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	)	<b>MEMORANDUM OF LAW IN</b>
and on behalf of all other similarly	)	<b>SUPPORT OF CONSENT MOTION TO</b>
situated individuals,	)	<b>CERTIFY COLLECTIVE ACTION,</b>
	)	<b>FOR PRELIMINARY APPROVAL OF</b>
Plaintiffs,	)	<b>SETTLEMENT AGREEMENT, TO</b>
vs.	)	<b>AUTHORIZED NOTICE TO CLASS,</b>
	)	<b>AND TO SCHEDULE FAIRNESS</b>
Darlington County, South Carolina,	)	<b>HEARING FOR FINAL APPROVAL</b>
	)	
Defendant.	)	
_____	)	

**I. Introduction**

Plaintiffs, Anna C. DeWitt, David Hodge, Lena M. Quick, Lynette Hudson, and Jennifer E. Amerson, all individually and on behalf of all other similarly situated individuals, by and through their undersigned attorneys and with the consent of Defendant, Darlington County, South Carolina, hereby submit this Memorandum of Law in Support of Consent Motion to Certify Collective Action, for Preliminary Approval of Settlement Agreement, to Authorize Notice to Class, and to Schedule Fairness Hearing for Final Approval. (The Settlement Agreement executed by the parties is attached hereto as Exhibit A). As set forth in detail below, Plaintiffs respectfully request that the Court review and approve the terms of the proposed settlement of this action as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b), as well as the proposed apportionment of the settlement proceeds, after conducting a hearing about the fairness, reasonableness, and adequacy of the proposed settlement. Attached hereto as Exhibit B, Plaintiffs submit a proposed notice of the settlement to be mailed or delivered to each opt-in Plaintiff under the FLSA collective action,

informing them of the terms of the Settlement Agreement and giving them an opportunity to be heard about the final approval of the settlement.

## **II. Statement of the Case**

This is a lawsuit under the Fair Labor Standards Act and the South Carolina Payment of Wages Act to recover unpaid overtime compensation and to recover compensation for “off the clock” work required by Defendant. Plaintiffs filed the Complaint on March 28, 2011, as a collective action under Section 16(b) of the FLSA and also as a traditional class action under Rule 23 of the Federal Rules of Civil Procedure, for the alleged violations of the South Carolina wage payment statute.<sup>1</sup> Although formal notice of the case has not been sent to potential class members, a total of 23 individuals, including the 5 named Plaintiffs, have filed forms to opt-in to the case.

Plaintiffs and members of the Plaintiff class are paramedics and EMTs currently or formerly employed by the Darlington County EMS Department. Plaintiffs generally work a 24/48 schedule, meaning that they usually work a 24-hour shift (7:30 a.m. until 7:30 a.m. the following day) followed by 48-hours off duty. EMS employees are paid by the County on a two-week pay cycle. Prior to November 22, 2010, Defendant compensated its EMS employees for only 20 hours of each 24-hour shift, automatically deducting four hours of every shift for “down time,” deducting two, 30-minute meal periods as non-compensable, and adding one hour for a shift differential.

Plaintiffs challenge several aspects of the payroll policies and practices of Defendant’s EMS Department that existed prior to November 22, 2010. First, Plaintiffs assert that Defendant’s automatic deduction for “down time” did not meet the requirements of the sleep-time exemption

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<sup>1</sup>Plaintiffs’ counsel has determined that a Rule 23 class is not appropriate under the facts of this case, for a variety of reasons, and hereby withdraws the Rule 23 class allegations.

found in 29 C.F.R. § 785.22. Defendant did not maintain a regularly scheduled, bona fide period for sleep each shift, nor did it monitor whether the employees' "down time" was interrupted by a call to duty. Second, Plaintiffs assert that the deductions for meal-time were improper because the EMS employees were not completely relieved of duty during the meal times.

### **III. Issues in Dispute**

The parties acknowledge that there are a number of unsettled legal and factual issues in this case. The largest dispute in this case centers on the sleep-time exemption. Plaintiffs assert that no sleep-time deduction was appropriate for any shift pursuant to 29 C.F.R. § 785.22 because there was no regularly scheduled sleeping period where each employee could usually enjoy an "uninterrupted night's sleep" of at least five hours, and Defendant never paid employees for actual interruptions to their scheduled down time for emergency calls. Defendant asserts that the sleep-time regulations allow for deductions of up to eight hours per 24-hour shift for sleep, and that the County's practice of only deducting four hours per shift for sleep was permissible. Defendant further argues that Plaintiffs are only entitled to additional pay for nights where their down-time was actually interrupted to such an extent that they could not get at least five hours of sleep, which the sleep-time regulations define as a "reasonable night's sleep."

Plaintiffs also assert that no deductions for meals should be allowed because Plaintiffs were not "completely relieved of duty" for purposes of eating their meals. Defendant asserts that it did not deduct pay for meals.

### **IV. Settlement Negotiations**

The proposed Settlement Agreement in this case is the product of extensive, arms-length settlement negotiations, which culminated at the end of a mediation of this case on February 1, 2013,

before attorney Franklin G. Shuler, Jr. Mr. Shuler is a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court and has extensive experience representing both plaintiffs and defendants in employment cases, as well as serving as mediator in scores of employment cases. He presently serves as the Chair of the Specialization Advisory Board for Employment and Labor Law through the South Carolina Commission on CLE and Specialization.

The parties exchanged written interrogatories and requests for production, along with extensive documents of wage and hour data for the potential class members, including over 5,800 pages of documents. The parties recognize that precise calculations of actual damages for each plaintiff would involve detailed review of voluminous records that would not be cost effective.

At the time of the mediation, discovery had largely been concluded (except for depositions of the parties and witnesses), and the disputed legal and factual issues had been sharply defined. Plaintiffs were represented at the mediation by the undersigned attorney for Plaintiffs, David E. Rothstein, and three members of the Plaintiffs' Steering Committee, including the lead named Plaintiff, attended the mediation. The County was represented at the mediation by Defendant's counsel, Christopher W. Johnson and James C. Cox, Jr.; and Darlington County Administrator, Dale Surrentt attended the mediation in person on behalf of Defendant.

At the end of a full day of mediation on February 1, 2013, the parties reached a settlement agreement in principle, subject to approval of the Darlington County Council and the Court. The Darlington County Council has approved the agreement in principle reached at the mediation.

#### **V. Proposed Settlement Terms**

The proposed Settlement Agreement provides that the County will make a gross payment of \$225,000.00 in complete settlement of this action. Plaintiffs have proposed, and Defendant has

agreed not to contest, the following apportionment of the settlement proceeds: (1) \$75,000.00 for attorney's fees; (2) \$1,763.03 for reimbursement of costs; (3) \$7,500.00 as service or incentive payments to the named Plaintiffs and the members of the Plaintiffs' Steering Committee, with individual amounts of \$2,500.00 for the lead Plaintiff, \$1,000.00 each for the other four named Plaintiffs, and \$500.00 each for the remaining two members of the Plaintiffs' Steering Committee; and (4) the remaining settlement proceeds of \$140,736.97 paid to opt-in Plaintiffs based on their pro-rata share of the potential value of the collective group's FLSA back-pay claims. All payments to class members will be apportioned as 50% to back pay, subject to payroll withholdings and retirement contributions, and 50% to liquidated damages. This allocation is reflective of the typical award in an FLSA lawsuit, which provides for liquidated damages in an amount equal to back pay, was reached during arms-length negotiations, and strikes an appropriate balance between the potential for wage-based and non-wage-based compensation available under the FLSA. The service or incentive payments to the named Plaintiffs and members of the Plaintiffs' Steering Committee will not be subject to withholding as back-pay, but will be treated as non-wage compensation.

#### **A. Payments to Individual Class Members**

The \$225,000 dollar proposed, gross settlement amount is a fair, adequate, and reasonable resolution of this claim. Plaintiffs' counsel calculated the potential back-pay awards in this action for the named Plaintiffs and potential members of the Plaintiff class by reviewing the available work records and payroll records for each employee, counting how many full, 24-hour shifts each employee worked on a pay-period by pay-period basis, and multiplying that number times four hours, times 1.5 for the time-and-a-half premium, times each employee's regular hourly pay rate at the time. The back-pay range for the twenty-three opt-in Plaintiffs (including the named Plaintiffs) was

\$192,547.92 for a two-year limitations period and \$319,136.97 for a three-year limitations period.

Defendant's counsel calculated its range of potential liability for back pay between \$18,629.12 and \$67,210.94 for all EMS Department employees for 2 years, and between \$30,373.01 and \$109,581.05 for 3 years. Defendant's calculations were based on a random sampling of months to determine the percentage of shifts were EMS employees were interrupted between the hours of 11:00 p.m. and 7:00 a.m. by a call to duty that lasted at least 3 hours. Defendant's counsel then used that average to project the percentage of interruptions that would occur over a year's time.

The proposed settlement figure of \$225,000.00 is a fair settlement value of this case because it is well within the range of potential outcomes for the Plaintiff class, given the unresolved legal and factual issues in the case. On average, each opt-in Plaintiff will receive a payment equal to approximately 44% of their 3-year back-pay calculation under the best-case scenario as determined by Plaintiffs' counsel. The average payment to each of the 23 opt-in class members is \$6,119.00 pre-tax, after payment of attorney's fees and costs. In the interest of preserving the privacy rights of each class member, Plaintiffs' counsel would be willing to submit a detailed summary of the calculations for each class member to the Court under seal for consideration at or before the fairness hearing. Individualized letters will be sent to each class member explaining whether they are receiving money under the settlement and describing their range of damages and how their proportionate share of the payments was calculated.

#### **B. Attorney's Fees and Costs**

The proposed apportionment of the settlement provides for attorney's fees of one-third of the gross amount of the common settlement fund, or a total of \$75,000 for attorney's fees, plus \$1,763.03 for reimbursement of actual costs in connection with the case. Plaintiffs' counsel will

address the issues relating to attorney's fees and costs in a separate motion, with supporting memorandum of law and attachments.

**C. Service Payments to Named Plaintiffs and Steering Committee Members**

The proposed apportionment of the settlement also provides for the payment of additional amounts to the named Plaintiffs and to the members of the Plaintiffs' Steering Committee in the total amount of \$7,500.00. This amount will be divided as \$2,500.00 to the lead Plaintiff, Anna C. DeWitt; \$1,000.00 each to the other four named Plaintiffs, David Hodge, Lena M. Quick, Lynette Hudson, and Jennifer E. Amerson; and \$500.00 each to the two other members of the Plaintiffs' Steering Committee, Linwood Epps and Gary White.

It is very common in class action cases for service or incentive payments to be paid to named Plaintiffs or class representatives in addition to their proportionate share of the recovery. Such payments compensate Plaintiffs for their additional efforts, risks, and hardships they have undertaken as class representatives on behalf of the group in filing and prosecuting the action. Service or incentive payments are especially appropriate in employment litigation, where "the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class a whole, undertaken the risk of adverse actions by the employer or co-workers." Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005). Courts around the country have approved substantial incentive payments in FLSA collective actions and other employment-related class actions. See, e.g., In re Janney Montgomery Scott LLC Fin. Consultant Litigation, 2009 WL 2137224, \*12 (E.D. Pa. Jul. 16, 2009) (approving incentive payments of \$20,000 each to three named Plaintiffs) (copy of unpublished decision attached); Stevens v. Safeway, Inc., C/A No. 2:05-cv-01988-MMM-SH, pp. 18-20 (C.D. Cal. Feb. 25, 2008) (awarding incentive

payments of \$20,000 and \$10,000 each to named Plaintiffs) (copy of unpublished decision attached); Frank, 228 F.R.D. at 187 (approving incentive award to class representative of \$10,523.37, which represented 8.4% of the total settlement fund); Bredbenner v. Liberty Travel, Inc., 2011 WL 1344745, \*22-23 (D.N.J. Apr. 8, 2011) (approving incentive payments of \$10,000 to eight named plaintiffs; citing 2006 study referenced in 4 Newberg on Class Actions § 11.38, at 11-80, that showed average incentive award to class representatives to be \$16,000) (copy of unpublished decision attached); Wineland v. Casey's General Stores, Inc., 267 F.R.D. 669 (S.D. Iowa 2009) (approving incentive payments of \$10,000 per named plaintiff and \$1,000 for each deponent in FLSA case on behalf of over 11,000 cooks and cashiers employed by convenience store chain); Clark v. Ecolab, Inc., 2010 WL 1948198 (S.D.N.Y. May 11, 2010) (approving \$10,000 service awards to 7 named plaintiffs in hybrid class/collective action involving unpaid overtime) (copy of unpublished decision attached); and Hoffman v. First Student, Inc., 2010 WL 1176641, \*3 (D. Md. Mar. 23, 2010) (affirming \$3,000 service payments to seven lead plaintiffs in FLSA case of over 750 school bus driver and aides, with total gross recovery of \$1.55 million) (copy of unpublished decision attached).

Here, the total of the service payments requested by Plaintiffs of \$7,500.00 represents 3.33% of the gross amount of the settlement in this case. The largest proposed amounts for the lead Plaintiff (\$2,500.00) represents 1.11% of the gross settlement amount. The average proposed service payment among the 7 members of the Plaintiffs' Steering Committee is \$1,071.43 and is approximately 20.22% of the average \$5,299.60 payment that the seven Committee members will receive on their underlying claims, apart from the incentive payments.

The lead Plaintiffs and the members of the Steering Committee have devoted substantial

amounts of time to this case, and all have taken great personal, career risks in serving as the driving force behind this lawsuit against the County. The lead Plaintiff has devoted dozens of hours to the case, including interviewing and selecting counsel, reviewing pleadings, assisting with discovery responses, participating in strategy meetings with the committee, communicating with counsel about all aspects of the case, and participating in the mediation of this case. (See Affidavit of Anna DeWitt attached hereto as Exhibit C). The amounts of the proposed service payments were thoroughly discussed and debated among the Plaintiffs Steering Committee. The proposed amounts of service payments to the two named Plaintiffs and the two committee members were based on their corresponding risks and level of involvement in the case.

## **VI. Discussion**

Settlements of collective actions under the FLSA require court approval. A court's primary concern in evaluating a proposed class action settlement is protecting absent class members whose rights are affected by the proposed settlement, but who were not direct participants in the settlement negotiations. Kovacs v. Ernst & Young (In re Jiffy Lube Securities Litigation), 927 F.2d 155, 158 (4th Cir. 1991). To approve a class action settlement, a court must ensure that the interests of all class members have been protected, and the court must be convinced that the settlement is "fair, reasonable, and adequate." Wineland v. Casey's General Stores, Inc., 267 F.R.D. 669, 676 (S.D. Iowa 2009). Although the Fourth Circuit Court of Appeals has not directly articulated that standard for approving a settlement under the FLSA, district courts within the Fourth Circuit have incorporated the same standard that is generally applied in evaluating settlements of Rule 23 classes. See Lomascolo v. Parsons Brinckerhoff, Inc., 2009 WL 3094955, \*11 (E.D. Va. Sept. 28, 2009) (copy of unpublished decision attached); Hoffman v. First Student, Inc., 2010 WL 1176641, \*2 (D.

Md. Mar. 23, 2010) (copy of unpublished decision attached).

The Fourth Circuit has articulated a well-established test to determine whether a proposed class-action settlement should be approved, which includes consideration of the following factors: (1) the extent of discovery conducted, (2) the stage of the proceedings, (3) the absence of bad faith or collusion in the settlement, and (4) the experience of counsel who has represented plaintiffs in the settlement negotiations. Flinn v. FMC Corp., 528 F.2d 1169, 1173 (4th Cir. 1975); In re Jiffy Lube, 927 F.2d at 158-59. Other courts within the Fourth Circuit have applied the factors from the seminal case of City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974), in assessing the substantive fairness of a class-action settlement. See South Carolina Nat'l Bank v. Stone, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (citing Grinnell, 495 F.2d 448). The Grinnell case was actually cited with approval by the Fourth Circuit in Flinn. 528 F.2d at 1172-73. The so-called Grinnell factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. Grinnell, 495 F.2d at 463. Approval of settlements in collective actions under the FLSA generally involves less stringent standards than Rule 23 class settlements. Clark v. Ecolab, Inc. 2010 WL 1948198, \* 7. “Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes.” Id. (citing Lynn’s Food Stores, Inc. v. United States, 679 F.2d 1350, 1353 n.8 (11th Cir. 1982)).

Courts greatly favor the settlements of cases and allowing litigants to achieve their own resolution of disputes. Lomascolo, 2009 WL 3094955, at \*10. Although the district court has broad discretion in approving a settlement of a class action case, there is a “strong presumption in favor of finding a settlement fair.” Id. A settlement fairness hearing is not a trial, and the court should defer to the evaluation and judgment of experienced trial counsel in weighing the relative strengths and weaknesses of the parties’ respective positions and their underlying interests in reaching a compromise. Id.

#### **A. Procedural Fairness**

Approval of a class settlement requires the court to ensure that both procedural and substantive fairness are achieved. Procedural fairness is accomplished by providing court-approved notice of the proposed settlement to those whose rights may be affected by the settlement, and affording them an opportunity to be heard about the settlement. Here, the proposed notice attached hereto as Exhibit B plainly describes the terms of the proposed settlement and informs the members of the Plaintiff class of their rights to be heard at the fairness hearing.

The proposed notice of the settlement will be sent to all opt-in class members and to any current or former employees of Defendant’s EMS Department who are potentially members of the Plaintiff class. The relatively small and well-defined nature of the class makes actual notice of the action relatively easy, as does the fairly tight-knit community of EMS employees in Darlington County. The proposed notice provides adequate, advanced notice of the fairness hearing and it thoroughly discusses the terms of the settlement and how the settlement was reached. Attached to each notice will be an individualized letter explaining the range of potential damages for the class as a whole and how each class member’s proportionate share of the damages was calculated. A copy

of the proposed letter is attached hereto as Exhibit D.

### **B. Substantive Fairness**

The substantive fairness prong of the court's evaluation of the settlement focuses on whether the settlement is "reasonable, adequate and fair." Applying the Flynn factors to this case confirms that the settlement is appropriate and in the best interests of the class as a whole.

First, as discussed in detail above, both sides have conducted extensive discovery in this case. Both parties served and responded to an initial set of interrogatories and requests for production. Defendant produced over 5,800 pages of records, including three years of worth of payroll and attendance records for each employee of the EMS Department during the relevant period. The mediation occurred after sufficient discovery was conducted in this case to make both sides fully aware of the factual issues in the case.

Second, there is no evidence that the settlement was reached through fraud or collusion between counsel or the parties. The mediation was conducted before an attorney who has extensive experience in labor and employment law, both as a practitioner and as a mediator, and the proposed Settlement Agreement was reached after extensive, bona fide, arms-length negotiations. The decisions made on behalf of Plaintiffs were made by a Steering Committee after thorough debate and deliberation. There is no evidence or even suggestion that the settlement was affected by any improper considerations, such as undue influence, duress, intimidation, or coercion. See Rothstein Declaration, ¶¶ 15-17 (attached hereto as Exhibit E).

Next, the settlement agreement was adopted by Plaintiffs at the recommendation of the undersigned Plaintiffs' counsel, who has significant experience in employment and labor law in South Carolina. Plaintiffs' counsel graduated from law school in 1993 from the University of South

Carolina School of Law, where he was at the top of his class and was the Editor in Chief of the South Carolina Law Review. He served as a judicial law clerk to two prominent and well-respected federal judges for the first three years of his legal career and has been in private practice for over 15 years, where his primary practice area has been in employment and labor law. Plaintiffs' counsel has been a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court since February 2006, and was recertified in 2011. He has been involved in several class action or collective action cases, both under Rule 23, Fed. R. Civ. P. and the FLSA. (Rothstein Declaration, ¶¶ 3-12). Plaintiffs' counsel's experience and understanding of the FLSA strongly support the Court's approval of the proposed settlement.

Fourth, the proposed settlement has been approved by all members of the Plaintiffs' Steering Committee. To the extent that any objections to the settlement are raised before or at the fairness hearing, Plaintiffs' counsel is confident that he can fully defend and justify the proposed settlement of this case.

Finally, the settlement amount is adequate when viewed against the risks, expenses, and delays inherent in continued litigation. As noted previously, the most hotly contested issue in the case is the sleep-time issue. Present Fourth Circuit precedent on this issue does not provide clear legal guidance about whether Defendant was entitled to deduct any sleep-time under 29 C.F.R. § 785.22. See Roy v. Lexington County, South Carolina, 141 F.3d 533, 546-47 (4th Cir. 1998). Although it would certainly be possible for Plaintiffs to receive a higher recovery after trial, it would also be possible for Plaintiffs to receive a lower net recovery after trial, especially considering the expense and delay inherent in continued litigation and possible appeals. In light of all of these risks, Plaintiffs made a reasonable decision to settle this case for the terms set forth in the proposed

Settlement Agreement.

**VII. Conclusion**

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement Agreement, authorize the sending of the proposed notice of settlement to all class members, schedule a settlement fairness hearing, and grant final approval of the settlement of this matter, including the proposed apportionment of the settlement proceeds, after providing a reasonable opportunity for any class members to comment on or object to the proposed settlement.

Respectfully submitted,

s/ David E. Rothstein  
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Attorneys for Plaintiffs

July 18, 2013

Greenville, South Carolina.

## **Exhibit A**

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

Anna C. DeWitt, David Hodge, Lena M. Quick, Lynette Hudson, and Jennifer E. Amerson, all individually and on behalf of all other similarly situated individuals

Plaintiffs,

v.

Darlington County, South Carolina,

Defendant.

CASE NO. No. 4:11-cv-00740-RBH

MEDIATION AGREEMENT

The parties to this mediation agree to settle the lawsuit currently pending between them in the United States District Court for the District of South Carolina along the following terms and conditions:

1. Defendant agrees to pay the Plaintiff the total sum of Two Hundred Twenty-Five Thousand and 00/100 (\$225,000.00) Dollars to globally settle this matter. The Parties have agreed to settlement as follows: One check which sum represents attorney's fees shall be made to the Rothstein Law Firm, P.A. and counsel will receive a 1099 for tax year 2013 for the attorney's fee portion, as required by the taxing authorities. The Parties have agreed to allocate the remaining portion of the settlement funds to ½ for back pay, from which normal withholdings for taxes and retirement contributions will be deducted, and ½ to liquidated damages, from which no deductions will be made. If required by taxing authorities, Plaintiffs will receive W-2s for tax year 2013 for the portion allocated to wages and 1099s for tax year 2013 for the portion allocated to liquidated damages. Payment will be tendered within 30 days of approval of the settlement by the court.

2. Settlement is subject to approval initially by the Darlington County Council

and thereafter by Court.

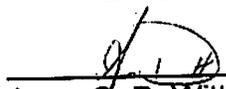
3. The parties agree to dismiss the above-captioned lawsuit with prejudice and authorize their counsel to take all actions necessary to dismiss the lawsuit with prejudice.

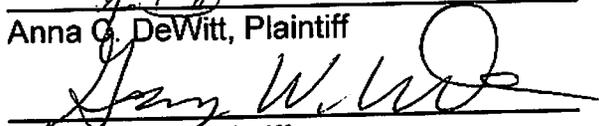
4. The parties agree to submit a joint motion requesting conditional class certification under the FLSA and seek preliminary approval of the settlement agreement by the Court to include, *inter alia*: (a) standard terms of settlement including that the law of South Carolina shall apply to the extent federal law does not apply; (b) non-admission of liability clause; (c) allocation of total settlement funds among Plaintiffs is up to Plaintiffs and their counsel and they will inform Defendant of said allocation prior to seeking court approval of the allocation, and (d) that by Defendant agreeing to allocation, Plaintiff is not relying on any tax advice from Defendant.

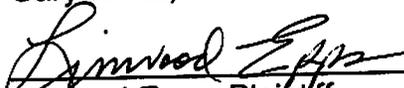
5. Defendant is responsible for the cost of mediation.

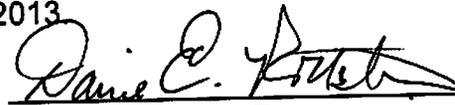
6. The undersigned Plaintiffs represent they have authority to enter into this agreement.

Executed this the 1st day of February, 2013

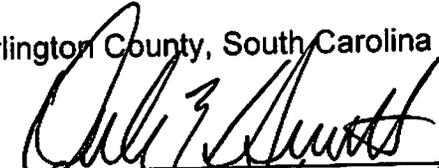
  
\_\_\_\_\_  
Anna G. DeWitt, Plaintiff

  
\_\_\_\_\_  
Gary White, Plaintiff

  
\_\_\_\_\_  
Linwood Epps, Plaintiff

  
\_\_\_\_\_  
David Rothstein, Esquire  
Attorney for Plaintiffs

Darlington County, South Carolina

By:   
\_\_\_\_\_  
Its:   
\_\_\_\_\_  
County Administrator

  
\_\_\_\_\_  
Christopher W. Johnson, Esquire  
Attorney for Defendant

## **Exhibit B**

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

Anna C. DeWitt, David Hodge, )  
Lena M. Quick, Lynette Hudson, and )  
Jennifer E. Amerson, all individually )  
and on behalf of all other similarly )  
situated individuals, )  
 )  
Plaintiffs, )  
vs. )  
 )  
Darlington County, South Carolina, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

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

**NOTICE OF PROPOSED  
SETTLEMENT OF COLLECTIVE  
ACTION LAWSUIT**

**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 \_\_\_\_\_, 2013, at \_\_\_\_\_ 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 \_\_\_\_\_, 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 \_\_\_\_\_ (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 \_\_\_\_\_. The Brief and other 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 8 below.

## **6. Settlement Fairness Hearing**

**The Court has scheduled a hearing for \_\_\_\_\_, 2013, at \_\_\_\_\_ 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 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 \_\_\_\_\_, 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 \_\_\_\_\_, 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 \_\_\_\_\_, 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 \_\_\_\_\_, 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](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.

## 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: \_\_\_\_\_

\_\_\_\_\_  
David E. Rothstein  
ROTHSTEIN LAW FIRM, PA  
514 Pettigru Street  
Greenville, South Carolina 29601  
(864) 232-5870  
(864) 241-1386 (facsimile)  
derothstein@mindspring.com  
[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

Herbert W. Louthian  
LOUTHIAN LAW FIRM, P.A.  
The Marlboro Building, Suite 300  
1116 Blanding Street  
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



## **Exhibit C**

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

Anna C. DeWitt, David Hodge, )  
Lena M. Quick, Lynette Hudson, and )  
Jennifer E. Amerson, all individually )  
and on behalf of all other similarly )  
situated individuals, )  
 )  
Plaintiffs, )  
vs. )  
 )  
Darlington County, South Carolina, )  
 )  
Defendant. )  
\_\_\_\_\_ )

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

**AFFIDAVIT OF ANNA C. DeWITT**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DARLINGTON )

PERSONALLY appeared before me Anna C. DeWitt, who, after being duly sworn, deposes and states the following:

1. My name is Anna DeWitt. I am older than eighteen years of age. The statements in this Affidavit are based upon my own personal knowledge.
2. I am the lead, named Plaintiff in the above-captioned case. I was primarily involved in the decision to file this lawsuit on behalf of the current and former employees of the Darlington County EMS Department. I served on the Plaintiffs' Steering Committee and was present for every meeting of the Committee.
3. I have spent over a hundred hours of my own time in connection with the is case since November 2010, from meeting and interviewing attorneys, organizing meetings of the potential

Plaintiffs, attending meetings of the Plaintiffs' Steering Committee, and coordinating the distribution of consent forms for opt-in Plaintiffs, to reviewing pleadings, assisting with the preparation of discovery responses, and attending the mediation. I have been the main point of contact between our attorneys, Mr. Rothstein and Mr. Louthian, and the group of opt-in Plaintiffs and have done my best to keep the Committee and the opt-in Plaintiffs informed of any and all developments in this case.

4. I undertook the burden of serving as the lead Plaintiff in this action, despite the great risk to my professional career in doing so.

5. I was present for the mediation in this case. I have reviewed the Settlement Agreement in this case, and it accurately reflects the terms of the settlement the Steering Committee voluntarily reached with the County in this case. I voted in favor of the settlement because I believe that it is fair and reasonable and in the best interest of the class of Plaintiffs as a whole.

6. We understand that by agreeing to settle this case, we are giving up our right to proceed to a trial in this matter; however, we are willing to compromise the value of the lawsuit some to avoid the uncertainties of a trial and to avoid the expense and delay of continuing the discovery and litigation of this case.

7. Mr. Rothstein has explained in great detail the legal and factual issues that are in dispute in this case. We understand that there are several unresolved questions of fact and law that could make the outcome of a trial uncertain. There is a very real risk that we could recover less than the amount of the settlement if we went to trial on this case, plus the additional costs of going forward could reduce our net recovery from a trial. Mr. Rothstein explained that the potential for appeals in this case could delay any recovery even further, by up to another 18 months to two years.

8. I am very satisfied with the legal services provided to us by our lawyers in this case,

David Rothstein and Herb Louthian. Both attorneys have kept me and the Steering Committee fully informed about the progress of the case and have always been available to answer my questions throughout the case. I believe that Mr. Rothstein worked diligently throughout case, and his efforts certainly increased the value of this case.

9. The named Plaintiffs and I have agreed to pay Mr. Rothstein's and Mr. Louthian's law firms together a contingency fee of one-third (33.33%) of any recovery they received on behalf of the Plaintiffs in this case, either by way of settlement or verdict, plus reimbursement of actual costs. We probably would not have been able to afford to file this lawsuit if we had to pay an attorney up front, by the hour, and had to advance the litigation costs up front. I believe that Mr. Rothstein's and Mr. Louthian's proposed fees are fair and reasonable. I also believe that the expenses incurred by Mr. Rothstein's law firm appear to be reasonable.

10. I sincerely believe that the proposed settlement is in the best interest of the Plaintiff class in this case.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Anna C. DeWitt

SWORN to and subscribed before me,

this 10 day of June, 2013

 (L.S.)  
Notary Public for South Carolina

My commission expires: 11-16-19.

## **Exhibit D**

[Sample Letter–Opt-in Plaintiff Receiving Payment]

**Anna C. DeWitt et al. v. Darlington County, South Carolina**

Civil Action No. 0:10-cv-00740-RBH  
(Darlington County EMS Overtime Case)

To: [Name]  
From: David E. Rothstein, Attorney for Plaintiffs  
Date: July \_\_\_\_\_, 2013  
Re: Payments Under Proposed Collective Action Settlement

A settlement has been reached in the above-titled lawsuit. The purpose of this letter and the accompanying documents is to notify you of the settlement and your rights under the settlement. You previously submitted a Consent to Join Lawsuit form in this case, whereby you opted to join this action to pursue claims under the Fair Labor Standards Act (“FLSA”).

The FLSA generally requires employers to pay overtime compensation of time-and-a-half to employees who work more than 40 hours in any given workweek. State and Federal laws also require an employer to compensate employees for all hours worked, subject to certain exemptions, such as bona fide sleep and meal periods under certain circumstances. Based on our review of the Darlington County Payroll Records and the schedules and work records of the Darlington County EMS Department, we believe that you were not paid all of the compensation you were entitled to under the FLSA between March 28, 2007 and November 22, 2010.

Based on the County’s records, we have calculated the amount of the alleged underpayments during the relevant period. We have calculated 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’s attorneys have performed their own calculations, and the County asserts that the back-pay amount for all Darlington County EMS (not just those who have opted in to the case) to be between \$18,629.12 and \$109,581.05.

The proposed settlement apportionment is based on the methodology used by Plaintiffs’ counsel. Plaintiffs’ counsel calculated the number of full 24-hour shifts actually worked by each opt-in Plaintiff during the three-year period preceding each person’s filing of the consent form to opt in to this case. Under the proposed settlement, you will receive a pro-rata percentage of the total of all claims based on your relative share of the best-case scenario compared to all opt-in Plaintiffs. According to our calculations, your pro-rata share of the total potential damages claim of the entire group of plaintiffs collectively is [Column 3–percent]. Under the terms of the proposed settlement agreement, your pro-rata portion of the remaining settlement proceeds, after payment of attorney’s fees, costs, service payments to the Plaintiffs’ Steering Committee members is [Column 4--\$ dollar amount]. Your total, gross payment under the proposed settlement is [Column 5–Total]. **Please note that individual payment amounts are subject to change based on any additional opt-in Plaintiff who join the lawsuit after the date of this Notice.**

Under the terms of the proposed settlement agreement, half of your payment amount will be considered back-pay, subject to regular withholdings for income taxes, Social Security, Medicare, and retirement contributions to the South Carolina State Retirement System. If required by IRS rules, you will receive a W-2 form from the County including the amount of the payment and the corresponding deductions. The other half of the payment will be considered liquidated damages and will not be subject to withholdings; **however, such payments are taxable as income**. If required by IRS rules, you will receive a 1099 form from the County for the liquidated damages portion of the payment. **Neither Plaintiffs' counsel, Defendant's counsel, nor any representative of Darlington County is providing you with any advice regarding the tax consequences of these payments. You are strongly encouraged to seek the advice of a competent tax professional to determine how these payments will affect your tax liability for 2013. Each plaintiff is solely responsible for the tax consequences of these payments.**

The proposed settlement will be reviewed by the United States District Court for the District of South Carolina. Please review the Notice accompanying this letter to understand your rights in connection with the proposed settlement and how you can raise any comments or objections to the Court prior to the fairness hearing. Additional information can be found on the Internet at [www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com).

## **Exhibit E**

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

Anna C. DeWitt, David Hodge,  
Lena M. Quick, Lynette Hudson, and  
Jennifer E. Amerson, all individually  
and on behalf of all other similarly  
situated individuals,  
  
Plaintiffs,  
vs.  
  
Darlington County, South Carolina,  
  
Defendant.

---

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

**UNSWORN DECLARATION OF  
PLAINTIFFS' COUNSEL,  
DAVID E. ROTHSTEIN**

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF GREENVILLE )

I, David E. Rothstein, hereby make this Unsworn Declaration pursuant to 28 U.S.C. § 1746, under penalty of perjury.

1. My name is David E. Rothstein. I am older than eighteen years of age. The statements in this Declaration are based upon my own personal knowledge.

2. I am counsel for Plaintiffs in the above-captioned case.

3. I am an attorney in good standing and have been licensed to practice law by the State of South Carolina since November 15, 1993, and by the State of North Carolina since April 11, 2008.

I am also admitted to practice before the United States District Court for the District of South Carolina, the United States District Court for the Western District of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

4. I graduated cum laude from the University of South Carolina School of Law on May 14, 1993, where I was Editor in Chief of the South Carolina Law Review, a member of the Order of the Coif, and a member of the Order of the Wig and Robe.

5. Upon graduation from law school, I served as a judicial law clerk to the Hon. Joseph F. Anderson, Jr., United States District Court Judge for the District of South Carolina, from August 1993 to August 1995. Thereafter, I served as a judicial law clerk to the Hon. Robert F. Chapman, then Senior United States Circuit Court Judge for the Fourth Circuit Court of Appeals, from August 1995 to October 1996.

6. I worked as an associate attorney at the law firm of Nexsen Pruet Jacobs & Pollard, LLP, in Columbia, South Carolina, from October 1996 to January 1999, where the majority of my practice involved employment law. While employed at the Nexsen Pruet firm, I represented both employers and employees in employment litigation and appeals.

7. I worked as an associate attorney at the law firm of Gergel Nickles & Solomon, P.A., in Columbia, South Carolina, from January 1999 to June 30, 2005, where the majority of my practice involved employment law.

8. I was a shareholder in the law firm of Burnette & Rothstein, P.A. from July 1, 2005 until July 31, 2010, when I moved to Greenville and formed Rothstein Law Firm, PA. Almost all of my current practice involves employment law and litigation.

9. I have been a Certified Specialist in Employment and Labor Law since February 2006. I was re-certified in 2011. Although I primarily represent individual employees in employment-related matters, my firm also represents several small employers in employment-related matters.

10. I currently serve as an associate member of the South Carolina Board of Law Examiners, which position I have held since January 2007.

11. I have had extensive experience in employment litigation, both as an attorney and as a judicial law clerk to two federal judges. In addition, I have written several articles and made several CLE presentations on employment law or related topics. I am a member of the Employment Law Sections of the South Carolina Bar, the South Carolina Trial Lawyers Association, and the National Employment Lawyers Association. I am currently the Chair of the Employment and Labor Law Section Council of the South Carolina Bar, and I am a member of the Specialization Advisory Board for Employment and Labor Law through the South Carolina Supreme Court's Commission on CLE and Specialization.

12. Throughout my career, I have been involved in several class actions under Rule 23 of the Federal Rules of Civil Procedure, as well collective actions under the Fair Labor Standards Act. I was involved as trial counsel in the case of Johnson v. Collins, one of the largest class actions in the history of South Carolina, which lead to the demise of the video poker industry in South Carolina. I have also handled numerous individual cases and collective actions under the Fair Labor Standards Act for improperly paid overtime.

13. Plaintiffs have conducted substantial discovery in this case, involving one set of interrogatories and requests for production, and the review of over 5,800 of pages of documents, including information relating to payroll, work schedules, time-keeper records, and summaries of EMS dispatches for the 3-year period covered by the lawsuit.

14. Based on my experience in employment and labor law, both as a judicial law clerk and in private practice, I believe that the Settlement Agreement in this case is a fair and reasonable

settlement of Plaintiffs' claims against Darlington County.

15. There remain a number of unsettled legal and factual issues in this case, including whether the sleep-time deductions were appropriate, whether meal-time deductions were appropriate, whether the County would be required to pay liquidated damages, and whether the Court or the jury would find a willful violation so as to extend the statute of limitations under the FLSA to three years. In addition, further analysis of the Darlington County EMS Department's pay and hour records would involve a tremendous investment of time and resources by expert auditors and economists, which might not be cost effective in terms of the final result.

16. I have carefully explained to the named Plaintiffs and the other members of the Plaintiffs' Steering Committee the legal issues that remain unresolved in this case, as well as the costs, uncertainty, and delay that would be involved in taking this case to trial. In addition we have discussed the possibility of appeals to the Fourth Circuit Court of Appeals. I believe that the Plaintiffs and the Committee members have understood my conversations with them about these issues, and they have been fully engaged and informed at all stages of this case.

17. The Settlement Agreement in this case was the product of good-faith, arms-length negotiations between both sides. I am not aware of any fraud or collusion in the settlement process, nor am I aware of any party being threatened, coerced, or intimidated into voting for the settlement. All terms of the proposed settlement have been thoroughly debated among the Plaintiffs' Steering Committee, and all final decisions were made by at least a majority vote of the Committee.

**I declare under penalty of perjury that the foregoing is true and correct.**

  
\_\_\_\_\_  
David E. Rothstein

July 18, 2013

Greenville, South Carolina.