

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

GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen)	Civil Action No. 6:12-cv-01405-TMC
Addis, William D. Smith, Jr., and John T.)	
Cox, all individually and on behalf of all)	
other similarly situated individuals,)	ORDER APPROVING NOTICE OF
)	SETTLEMENT TO CLASS
Plaintiffs,)	
)	
vs.)	
)	
Parker Sewer & Fire Subdistrict,)	
)	
Defendant.)	
_____)	

This matter comes before the Court on Plaintiffs’ Consent Motion to Approve Settlement Agreement, to Certify Settlement Class, to Authorize Class Notice, and to Schedule Fairness Hearing, which motion was filed on December 27, 2013, with supporting memorandum of law and attachments.

This is an action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (FLSA), and the South Carolina Wage Payment Act, S.C. Code §§ 41-10-10, *et seq.*, seeking backpay, liquidated damages and attorney’s fees for alleged failure to properly pay overtime and for time allegedly worked “off-the-clock.” The parties have informed the Court that they have reached a settlement, and Plaintiffs seek approval of the settlement and of the proposed allocations to be made under the Settlement Agreement.

The Court makes the following findings of fact:

- (1) The Court finds that this case is appropriate for treatment as a collective action pursuant

to the Fair Labor Standards Act, 29 U.S.C. § 216(b). The Court also finds that the case is appropriate for class certification under Rule 23 of the Federal Rules of Civil Procedure, with regard to Plaintiffs' claims under the South Carolina Payment of Wages Act.

(2) The notice proposed by the parties adequately informs the potential class members of their rights and obligations under the FLSA and the South Carolina Payment of Wages Act, as well as under the terms of the proposed settlement. Specifically, the notice explains that, to participate in the FLSA claim, the individual would be required affirmatively to opt-in to the lawsuit by filing a form for that purpose, and that to opt out of the state-law claim, the individual would be required to file the appropriate form to do so. In addition, the notice describes how and when any interested parties can be heard about the fairness of the proposed settlement.

(3) To date, 33 individuals (including the four named Plaintiffs) have opted in to the case. The potential class members are fire fighters who generally work 24-hour shifts together once every three days, in close proximity with each other. Accordingly, the potential class members have had ample opportunity to speak with each other without management scrutiny and appear to have been well informed about the existence of the lawsuit.

(4) The Settlement Agreement provides that Defendant will pay the gross amount of \$300,000.00 in full settlement of the claims. Plaintiffs submit that, according to their calculations, their estimated potential damages for back pay range between approximately \$265,000.00 and \$3.7 million. Plaintiffs further submit that Defendant strenuously denies any liability for back pay under either the FLSA or the SC Payment of Wages Act. Under the proposed settlement, the class members would receive a substantial percentage of their contested backpay amounts. Accordingly, the Court preliminarily finds, based on the facts presented, that the proposed settlement meets a

threshold showing of reasonableness and that notice should be sent to the class members of the settlement, giving them an opportunity to object or otherwise be heard. The Court reserves a final determination on the reasonableness of the settlement and the proposed allocation of the settlement proceeds until after a fairness hearing to be scheduled for that purpose.

(5) Plaintiffs have submitted along with their motion proposed forms notifying the class of the settlement, a proposed letter explaining to each individual class member what he or she may be entitled to receive (if anything) under the proposed settlement, notifying the class of the members' right to opt-in or opt-out of the case or to submit comments or objections regarding the proposed settlement and providing a form for that purpose, and notifying the class of the date of the fairness hearing. The Court has reviewed the proposed notice, memos and forms and finds them to be appropriate.

Accordingly, it is ORDERED that Plaintiffs' motion for approval is GRANTED in part, that a final determination on the settlement will be made following a hearing; and it is further ORDERED that:

(1) Defendant shall mail notices to class members within ten (10) business days of the filing of this order, or in the alternative, shall provide a mailing list to Plaintiffs' counsel within five (5) business days of the filing of this order and Plaintiffs' counsel will mail the notices to the class members within five (5) business days after receiving the mailing list from Defendant's counsel.

(2) Plaintiffs' counsel shall file a motion seeking approval of attorney's fees and costs from the settlement within ten (10) business days following the filing of this order.

(3) Plaintiffs' counsel shall post the following documents to his law firm's website for access by members of the class within ten (10) business days following the filing of this order:

- (A) the Complaint;
- (B) the Answer;
- (C) this order;
- (D) Plaintiffs' motion to approve the settlement and allocation and the notice and attachments filed with it;
- (E) Plaintiffs' counsel's motion for attorney's fees;
- (F) any updates to this order and the schedule or hearing date, time and location;
- (G) any orders on Plaintiffs' motion to approve the settlement and allocation and Plaintiffs' counsel's motion for attorney's fees; and,
- (H) any other matter ordered by the Court.

(4) Any member of the class desiring to appear and speak at the fairness hearing must submit a written request to do so, either by letter or on the form provided with the notices. Any such letter or form must be received by the Court or postmarked no later than **February 24, 2014**.

(5) Any individual who wishes to join the FLSA claims or who wishes to opt out of the claims under the South Carolina Payment of Wages Act must file the appropriate form with the Court. Such forms must be received by the Court or postmarked no later than **February 24, 2014**.

(6) Plaintiffs shall submit to the Court in camera the spreadsheet containing the apportionment calculations for the settlement proceeds and the proposed payments for each class member no later than **March 4, 2014**.

(7) A fairness hearing on Plaintiffs' motion to approve settlement and allocation, and any motion by Plaintiffs' counsel for approval of attorney's fees, shall be held on **Tuesday, March 11, 2014, at 10:00 a.m.**, in the G. Ross Anderson, Jr. Federal Building and United States Courthouse,

315 South McDuffie Street, Anderson, SC 29624.

IT IS SO ORDERED.

s/Timothy M. Cain
Timothy M. Cain
United States District Judge

Anderson, South Carolina
December 31, 2013