

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BOBBY CAGLE, BRIAN MASSEY, :	
and RALPH “TREY” STEWART III,:	CIVIL ACTION FILE NO.
:	1:19-CV-05408-JPB
Plaintiffs,	:
:	:
v.	:
:	:
NEWTON COUNTY, GEORGIA,	:
:	:
Defendant.	:

JOINT MOTION FOR APPROVAL OF FLSA SETTLEMENT
AGREEMENT AND DISMISSAL OF ACTION WITH PREJUDICE

COME NOW, Plaintiffs Bobby Cagle (“Cagle”), Brian Massey (“Massey”) and Ralph “Trey” Stewart III (“Stewart”), collectively “Plaintiffs” and Defendant Newton County, Georgia (“Defendant”), and hereby jointly move the Court to approve the Settlement Agreement Plaintiffs and Defendant have entered into and to dismiss this action with prejudice. In support of their request, the parties jointly state and agree to the following:

This is an action brought by three current Battalion Chiefs in the Newton County Fire Department, for violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 et seq. (“FLSA”), based upon Defendant’s alleged misclassifying them as exempt from the FLSA’s overtime pay requirements of 29

U.S.C. § 207. By classifying Battalion Chiefs as exempt from the overtime pay requirements of the FLSA, Plaintiffs contend they have not been paid for all overtime hours worked as required by 29 U.S.C. § 207(k)(2), whereby employees engaged in fire protection activities are entitled to overtime pay for all hours worked in excess of 106 hours in any given fourteen (14) day work period. As a result of this alleged improper classification, Defendant did not compensate Plaintiffs at all for hours worked in excess of 106 hours in any given fourteen (14) day work period from July 1, 2018¹ to date. Plaintiffs contend that they are non-exempt “first responders” who are subject to the partial exemption from the FLSA’s overtime requirements pursuant to 29 U.S.C. §§ 207(k) and 203(y) as “engaged in fire protection activities.”

Defendant denies Plaintiffs’ allegations and contends that Plaintiffs are properly classified as exempt pursuant to the “executive” and “administrative” exemptions contained in 29 U.S.C. § 213(a)(1) and denies that Plaintiffs are entitled to any relief under the FLSA.

I. The Terms of the Proposed Settlement

Pursuant to the proposed settlement (Exhibit “A”), each Plaintiff will be paid

¹ Prior to July 1, 2018, Defendant classified Battalion Chiefs as non-exempt and entitled to overtime pay pursuant to 29 U.S.C. § 207(k)(2).

in full the amount of back pay owed from July 1, 2018 to date and reclassifies them as non-exempt retroactively to July 1, 2019. Specifically, each Plaintiff will receive \$3,500, with half classified as wages from which taxes will be deducted and reflected on a W-2 Form, and half will be classified as liquidated damages and reflected on a Form 1099-MISC. In addition, each Plaintiff will or has received overtime pay earned since July 1, 2019 and will be reclassified as non-exempt effective July 1, 2019 for a minimum of three years. (Ex. "A" - Settlement Agreement, ¶¶ 6 and 7). Being reclassified as non-exempt is of obvious value for each Plaintiff, as each remains actively employed. This reclassification as non-exempt will not only result in higher income for each Plaintiff each year, but will also increase the pension of each Plaintiff.

As to attorneys' fees and costs, Plaintiffs' counsel will receive attorneys' fees directly from the Defendants in the amount of \$9,000. In all negotiations and as between Plaintiffs and their counsel, Plaintiffs' portion and counsel's portion were always segregated such that Plaintiffs could make an informed decision as to the proposal. Pursuant to the retainer agreements between counsel and Plaintiffs' counsel will also receive twenty-five percent of the liquidated damages paid to each Plaintiff (\$437.50). for a total attorneys' fees/costs amount of \$10,312.50. When Plaintiffs entered into their identical fee agreements with her counsel, Plaintiffs were

afforded the option of either paying counsel a cost retainer or assigning 25% of eventual liquidated damages in return for counsel's agreement to fund costs without recourse. Plaintiffs opted to not pay a cost retainer. Other courts in both the Middle and Northern District of Georgia have approved such an arrangement.² Defendant is not a party to this contractual arrangement. Plaintiffs' counsel will not receive any payments from the back pay award of overtime from July 1, 2019 to date or going forward. As of the date of the filing of this motion, Plaintiffs' counsel has incurred \$10,344.67 in fees and costs. (See Benjamin Declaration and fee and cost itemization annexed thereto). As shown below, the Settlement Agreement is fair and reasonable and should be approved.

II. ARGUMENT AND CITATIONS OF AUTHORITY

In the context of a private lawsuit brought by an employee against an employer under the FLSA, an employee may settle and release FLSA claims against an employer if the parties present the district court with a proposed settlement and

² See *Moore v. Americus Restaurant Group, Inc.*, 1:17-cv-107(WLS), Dkt. 21 (M.D. Ga. October 6, 2017) (Court discussed the 25% arrangement in approving an attorneys' fee award noting that the "[F]ee agreement to advance costs provided that Plaintiff may choose to personally bear the costs of litigation or have the firm hold him harmless in the event of no recovery for a fee of 25% of liquidated damages. Plaintiff chose the latter.") See *Smith, et.al. v. Childfirst 24 Hour Childcare, et.al.* 1:18-cv-03786-WMR, NDGa, Dkt. 56: "the attorney's fees, including the additional percentage of liquidated damages, are reasonable and customary." Accord, *Haddock v. Jasper County, Georgia*, 5:18-cv-00292-MTT (MDGa, Dkt. 14) (Fees and additional percentage).

the district court enters a stipulated judgment approving the fairness of the settlement. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). As the Eleventh Circuit explained in *Lynn's Food Stores*:

Settlements may be permissible in the context of a suit brought by employees under the FLSA for back wages because initiation of the action by the employee provides some assurance of an adversarial context. The employees are likely to be represented by an attorney who can protect their rights under the statute. Thus, when the parties submit a settlement to the court for approval, the settlement is more likely to reflect a reasonable compromise of disputed issues than a mere waiver of statutory rights brought by an employer's overreaching, if a settlement in an employee FLSA suit does reflect a reasonable compromise over issues, such as FLSA coverage or computation of back wages that are actually in dispute, we allow the district court to approve the settlement in order to promote the policy of encouraging settlement of litigation.

Id. at 1354.

In this case, after extensive pre-suit settlement negotiations of several months, the parties reached an amicable resolution of Plaintiffs' claims.³ Prior to reaching settlement, the parties analyzed Plaintiff's job descriptions, time, pay, and activity records, as well as exchanged DOL regulations and interpretive case law. The parties agree that the settlement represents a fair and reasonable compromise of the disputed legal and factual issues in this case and now jointly request that this Court

³ A copy of the Settlement Agreement executed by the parties, as well as the declaration of Plaintiff's Counsel, Mitchell D. Benjamin, is submitted contemporaneously with this Joint Motion.

approve it.

In addition, all parties were counseled and represented by their respective attorneys throughout the litigation and settlement process. The parties' respective counsel are experienced wage and hour litigators and believe this settlement is fair and reasonable in light of the strengths and weaknesses of the parties' claims and defenses and the risks of continued litigation. The parties' proposed settlement is the result of extensive, arm's-length negotiations and is not the result of collusion. Plaintiffs wholeheartedly support this settlement, as do their counsel.

A. The Settlement Agreement Should Be Approved As It Is A Fair And Reasonable Compromise Of Disputed FLSA Claims.

Lynn's Food Stores requires that the Court to review a proposed compromise of FLSA claims for "fairness." However, the criteria the Court are to consider in determining "fairness" is not as clear. As the court in *Dees v. Hydradry, Inc.*, 706 F. Supp. 2d 1227, 1240-1 (M.D. Fla. 2010) noted:

Lynn's Food requires the parties to an FLSA compromise to present proposed agreement to the district court, which "may enter a stipulated judgment after scrutinizing the settlement for fairness." 15 679 F.2d at 1353. Although noting the unfairness of the settlements at issue, *Lynn's Food* specifies no criteria for evaluating the "fairness" of a proposed compromise in a different case. *Bonetti v. Embarq Management Co.*, [715 F. Supp. 2d 1222 (M. D. Fla. 2009)], describes the problem faced by a district court:

Short of a bench trial, the Court is generally not in as good a

position as the parties to determine the reasonableness of an FLSA settlement. Many factors may be in play as the parties negotiate a compromise that is acceptable to both sides. The parties may disagree as to the number of hours worked by the plaintiff, the plaintiff's status as an exempt employee, or the defendant's status as a covered employer. In certain cases, the Defendant may assert (or threaten to assert) a counterclaim arising from the employment relationship. If the parties are represented by competent counsel in an adversary context, the settlement they reach will, almost by definition, be reasonable. Rarely will the Court be in a position to competently declare that such a settlement is "unreasonable."

Nevertheless, the district court must "scrutinize the settlement for fairness." To fully implement the policy embodied by the FLSA, the district should scrutinize the compromise in two steps. First, the court should consider whether the compromise is fair and reasonable to the employee (factors "internal" to the compromise). If the compromise is reasonable to the employee, the court should inquire whether the compromise otherwise impermissibly frustrates implementation of the FLSA (factors "external" to the compromise). The court should approve the compromise only if the compromise is reasonable to the employee and furthers implementation of the FLSA in the workplace.

(Emphasis added.) The "internal factors" to be considered are: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery amounts; and (6) the opinions of the counsel. *Id.* at 1241.

The "external factors" concern whether the compromise frustrates the purposes of the FLSA. Factors to be considered are whether the compromise requires confidentiality, whether there exist other similarly situated employees, the

likelihood that the claimant's circumstance will recur, whether there is a history of FLSA non-compliance by the same employer or others in the same industry or geographic region, "or the requirement for a mature record and a pointed determination of the governing factual or legal issue to further the development of the law either in general or in an industry or in a workplace." *Id.* at 1244. As shown below, the factors strongly favor approving the proposed settlement.

B. The Internal Factors Demonstrate That The Settlement Agreement Is Fair And Reasonable And Should Be Approved.

1. There Is No Collusion Behind The Settlement.

As the Complaint and billing records of Plaintiffs' counsel demonstrate, this was a disputed litigation of a *bona fide* dispute, which was resolved prior to filing the complaint due to the professionalism and reasonableness of the parties and their respective counsel. This settlement is the result of extensive settlement negotiations lasting several months. Plaintiffs agreed to settle on the terms embodied in the Settlement Agreement currently before the Court. Plaintiffs' counsel's fees were also negotiated separately from the settlement proceeds to be paid to Plaintiff. It is therefore clear that there is no collusion between counsel for the Plaintiffs and Defendant. This factor strongly militates in favor of approving the proposed settlement.

2. The Complexity, Expense, And Likely Duration Of The Litigation Favor Approving The Proposed Settlement.

This case was not complex, but did involve highly disputed issues regarding whether Plaintiffs' duties allowed them to be classified as exempt pursuant to the "executive" and/or "administrative" exemptions contained in 29 U.S.C. § 213(a)(1). Defendant contends that Plaintiffs were paid a salary exceeding \$455 per week and performed certain administrative and/or managerial duties which would make them exempt pursuant to the executive and/or administrative exemptions codified in 29 U.S.C. § 213(a)(1). However, as Battalion Chiefs, each "Plaintiff was trained in fire suppression, had the legal authority and responsibility to engage in fire suppression, was employed by a fire department of a County and was engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk." 29 U.S.C. 203(y)(Doc. 1 – Complaint, ¶ 27). As such, Plaintiffs contend that their positions are expressly non-exempt pursuant to 29 C.F.R. § 541.3(b), known as the "First Responder Regulation". See also *Morrison v. County of Fairfax, Va.*, 826 F.3d 758 (4th Cir. 2016). This regulation states in relevant part:

The section 13(a)(1) exemptions and the regulations in this part also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, **fire fighters**, paramedics, emergency medical technicians, ambulance personnel, **rescue**

workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof as required under § 541.100. **Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.**

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under § 541.200.

(Emphasis added.) Based on this regulation, Plaintiffs contend that they are entitled to overtime pay based on their scheduled hours of work and for additional “off the clock” work.

The parties and their counsel prudently attempted to devote their limited resources towards settlement, rather than continued litigation. If settlement were not reached at this time, numerous depositions would have needed to be taken,

dispositive motions would have been filed, and significant delay in resolution of this dispute would ensue. Therefore, many issues remain to be litigated if the settlement is not approved, with no accompanying commensurate benefit to Plaintiffs, as the settlement provides for damages within the range Plaintiffs could have proven at trial, and most importantly, reclassifies them as non-exempt and entitled to overtime pay from July 1, 2019 to date.

The expense and likely duration of the litigation also support approving the Settlement Agreement. It is clear that this case will otherwise not be resolved quickly if not resolved now.

3. The Stage Of The Proceedings And The Amount Of Discovery Completed Support Approving The Settlement Agreement.

The parties exchanged pay records, schedules, time records, and documents that reflected or recorded Plaintiffs' job duties and certifications. Because accurate and reliable time records (including Plaintiffs' notes of off the clock work) existed for the entire period in question, the parties were able to accurately gauge the range of potential liability in this case, which allowed them to assess their relative risks in light of Plaintiffs' potential recovery. As such, Plaintiffs and their counsel had sufficient information at the time the case was conditionally settled to determine an accurate range of damages and recoveries. This factor, too, weighs

in favor of approving the Settlement Agreement.

4. The Probability Of Plaintiffs' Success And The Range Of Recovery Support Approving The Proposed Settlement Agreement.

The parties disagree as to the merits of this case. Plaintiffs and their counsel believe that Plaintiffs would prevail at summary judgment, albeit not for many months and not until significant additional resources were spent. Defendant disagrees and contends that it would prevail at summary judgment or at trial. Thus, substantial uncertainties and risks existed for all parties and was a significant catalyst to serious settlement negotiations. The settlement amount is clearly in Plaintiffs' interest, as it provides them with full back pay since they were reclassified as exempt (July 1, 2018 to date) and includes an agreement to reclassify Plaintiffs as non-exempt firefighters for a minimum of three years. As such, the Settlement Agreement should be approved as fair.

C. The "External Factors" Support Approving The Settlement Agreement.

The "external factors" to examine when considering the fairness of a proposed FLSA settlement address whether the compromise frustrates the purposes of the FLSA. *Dees*, 706 F. Supp. 2d at 1244. Factors to be considered are whether the compromise requires confidentiality, whether there exist other similarly situated employees, the likelihood that the claimant's circumstance will recur, whether there

is a history of FLSA non-compliance by the same employer or others in the same industry or geographic region, “or the requirement for a mature record and a pointed determination of the governing factual or legal issue to further the development of the law either in general or in an industry or in a workplace.” *Id.*

These factors also favor approval of the Settlement Agreement. First, the compromise is filed as a public record. Further, all of the Battalion Chiefs in Newton County are Plaintiffs in this action. Their sole objection to the manner in which they are paid stems from the July 1, 2018 reclassification of them as exempt, and this settlement reverses that reclassification as of July 1, 2019 and pays them full backpay. As the external factors support approval of the Settlement Agreement, the parties respectfully request that this Court approve it.

II. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court approve the Settlement Agreement entered into between the Plaintiffs and Defendant. The parties also request that the Court dismiss this action with prejudice, but retaining jurisdiction to enforce the parties Settlement Agreement, if necessary. A proposed order is attached hereto as Exhibit B for the Court’s consideration.

Jointly and respectfully submitted this 10th day of December, 2019.

/s Mitchell D. Benjamin

Mitchell D. Benjamin
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/s Charles R. Bridgers

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Attorneys for Defendant

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and RALPH "TREY" STEWART III,	:	CIVIL ACTION FILE NO.
	:	1:19-CV-05408-JPB
Plaintiffs,	:	
	:	
v.	:	
	:	
NEWTON COUNTY, GEORGIA,	:	
	:	
Defendant.	:	

**CERTIFICATE OF FONT COMPLIANCE REQUIRED BY LOCAL RULE 7.1D
AND SERVICE**

In accordance with Local Rule 7.1D, I hereby certify that the foregoing **JOINT MOTION FOR APPROVAL OF FLSA SETTLEMENT AGREEMENT AND DISMISSAL OF ACTION WITH PREJUDICE** was prepared with one of the font and point selections approved by the Court in Local Rule 5.1B. Specifically, it was prepared with Times New Roman, 14 point. I further certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email or other notification of such filing to the following attorneys of record:

Megan Martin
JARRARD & DAVIS, LLP
222 Webb Street
Cumming, GA 30040

This 10th day of December, 2019.

/s Mitchell D. Benjamin
Mitchell D. Benjamin
Georgia Bar No. 049888

SETTLEMENT AGREEMENT AND RELEASE

~~October~~^{November} This Settlement Agreement and Release ("Agreement") is entered into this 19th day of ~~October~~, 2019 by and between Newton County, and Bobby Cagle ("Cagle"), Brian Massey ("Massey") and Ralph "Trey" Stewart III also hereinafter collectively referred to as "Plaintiffs" (each also a "Party" and collectively with Newton County, the "Parties").

WHEREAS, Plaintiffs have been employed by Newton County in its Fire Department;

WHEREAS, a *bona-fide* dispute exists between Newton County and Plaintiffs regarding whether Plaintiffs should have been classified as exempt or non-exempt under the Fair Labor Standards Act ("FLSA");

WHEREAS, for independent operational reasons and to resolve the dispute, Newton County has agreed to re-classify Plaintiffs performing the job duties of Battalion Chiefs as non-exempt under the FLSA;

WHEREAS, the Parties mutually desire to amicably resolve any and all wage disputes among them in order to avoid the expense and inconvenience of litigation of this dispute;

IT IS HEREBY AGREED by the Parties, intending to be legally bound, as follows:

(1) Newton County and all Plaintiffs must sign this Agreement for it to become effective. Further, the "Effective Date" of this Agreement shall be the date the Court approves the Parties' settlement as set forth herein. If any Party refuses to sign, or the Court does not so approve the Parties' settlement, this Agreement is null, void, and of no effect, and neither party shall rely upon or refer to this Agreement, or the terms hereof, for any purpose in the Action.

(2) In consideration of the mutual execution of this Agreement and Release, the undertakings herein, and the agreement to be legally bound, Newton County agrees to pay or cause to be paid the following (the "Settlement Amounts"), as outlined herein.

- **Bobby Cagle:** the gross amount of **\$3500** broken down as follows: Check 1, for **\$1750**, for alleged unpaid wages, less applicable withholdings; Check 2, **\$1750** for alleged liquidated damages, both made payable to "Bobby Cagle";
- **Brian Massey:** the gross amount of **\$3500** broken down as follows: Check 1, for **\$1750**, for alleged unpaid wages, less applicable withholdings; Check 2, **\$1750** for alleged liquidated damages, both made payable to "Brian Massey";
- **Ralph "Trey" Stewart III:** the gross amount of **\$3500** broken down as follows: Check 1, for **\$1750**, for alleged unpaid wages, less applicable withholdings; Check 2, **\$1750** for alleged liquidated damages, both made payable to "Ralph Stewart III".
- **Attorney's Fees:** **\$9000** for attorneys' fees and costs made payable to "Mitchell D. Benjamin LLC".

(3) The amounts to be paid each Plaintiff reflect that Newton County has paid each Plaintiff a stipend of **\$2000.18** in 2018 in lieu of overtime pay at the time Newton County reclassified each Plaintiff as exempt. Under this Settlement Agreement, the stipend payment to each Plaintiff constitutes an offset to the amount of overtime pay and liquidated damages allegedly owed to each Plaintiff since July 1, 2018.

(4) As part of this Settlement Agreement, no further payments of the stipend will be made in 2019 or any subsequent years, and each Plaintiff will be paid the following hourly rates until such rates are revised as part of Newton County's budget process:

Bobby Cagle: \$27.78

Brian Massey: \$26.57

Ralph "Trey" Stewart III: \$28.98

(5) Newton County shall pay the foregoing Settlement Amounts, by delivery to Plaintiffs' counsel, Mitchell D. Benjamin, on or before the date that is thirty (30) days following the date a copy of this Agreement and release, executed by all three Plaintiffs is delivered to Newton County through its attorneys.

(6) In addition to the payment of the Settlement Amounts, Newton County shall reclassify the Battalion Chiefs working in the operational division of its Fire Department as hourly, non-exempt employees, effective as of July 1, 2019. Newton County shall pay each of the Plaintiffs for all overtime worked by them from July 1, 2019 through the Effective Date at time and one half of each Plaintiff's current hourly rate of pay as set forth above. As part of this Settlement, Plaintiffs will receive full pay for all holiday time and holiday time worked as they received prior to July 1, 2018.

(7) With respect to the Plaintiffs who as of the Effective Date are employed with Newton County as Battalion Chiefs, Newton County agrees that it shall not subsequently reclassify individuals having job duties the same or substantially similar to those working as Battalion Chiefs as of the Effective Date as exempt employees during the three (3) year period following July 1, 2019.

(8) Except as provided herein, the Parties agree to be responsible for their own costs and expenses including attorney fees. To the extent any taxes are owed, Plaintiffs hereby acknowledge that they will each be individually responsible for the payment of those taxes (except any taxes which are Newton County's lawful obligation to pay, including payroll taxes).

(9) The Parties represent that there are no administrative charges, lawsuits, civil actions or claims of any kind pending against one another, their predecessors, affiliates, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees. Plaintiffs expressly acknowledge that upon his actual receipt of all amounts set forth in Paragraph 2 hereof, they have been compensated for their claims and that, to the extent any administrative agency seeks further recovery, that, by virtue of this Settlement Agreement, they would not be entitled to any further compensation.

(10) This Agreement does not constitute an admission by any Party of any wrongdoing with regard to Plaintiffs' employment with Newton County or of any violation by any Party of any federal, state or local law, ordinance or regulation or of any violation of Newton County's policies or procedures or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by any party. This Agreement may be introduced, however, in any proceeding to enforce the Agreement.

(11) Except for those obligations of the Parties set forth expressly and specifically below, the Parties do hereby irrevocably and unconditionally release and discharge forever each other from all manner of actions or causes of actions, suits, proceedings (whether civil, administrative or otherwise), debts, sums of money, accounts, controversies, damages, judgments, executions, liabilities, claims, demands, costs or expenses pertaining to the payment of wages or overtime wages which were or could have been brought in this action, including the Fair Labor Standards Act ("FLSA") or similar Georgia state statutes. Based on this Agreement, Plaintiffs expressly releases any claims he have or may have under the FLSA. For clarity, this release does not apply to claims in the future arising from acts or omissions that occur solely following the date of this Agreement.

(12) Nothing in the preceding paragraph shall be construed to waive any party's right to enforce any provision of this Agreement. It is agreed and understood that this release by the Parties is a Specific Release to be broadly construed under the FLSA, and that Newton County and its employees, agents, elected and appointed officials, officers, and directors are hereby released by this Agreement for all wage claims which were or could have been brought in any FLSA action to date.

(13) If any provision of this Agreement or the application thereof, except the release set forth in Paragraphs 11 and 12, is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and to this end, the provisions of this Agreement are declared to be severable.

(14) Plaintiffs have carefully read and fully understand all of the provisions of this Agreement. This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. Plaintiffs acknowledge that they have not relied upon any representation or statement, written or oral, not set forth in this document.

(15) This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

(16) This Agreement constitutes and contains the entire agreement and understanding concerning the Parties, and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof.

(17) This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Georgia, notwithstanding its rules governing choice of law. The parties agree that

exclusive venue and jurisdiction for any disputes between the Parties shall be the state or federal courts sitting in or for Newton County, Georgia.

(18) No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding, unless in writing and signed by the party waiving the breach.

IN WITNESS HEREOF, THE PARTIES have executed this Agreement as of the date set forth above.

This _____ day of October, 2019.

Bobby Cagle

This _____ day of October, 2019.


Brian Massey

This _____ day of October, 2019.

Ralph "Trey" Stewart III

This _____ day of October, 2019.


Newton County Georgia


By: _____,
who is authorized to execute this Agreement on its
behalf.

(18) No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding, unless in writing and signed by the party waiving the breach.

IN WITNESS HEREOF, THE PARTIES have executed this Agreement as of the date set forth above.

This 31 day of October, 2019.


Bobby Cagle

This 31 day of October, 2019.


Brian Massey

This 31 day of October, 2019.



Ralph "Trey" Stewart III

This _____ day of October, 2019.

Newton County Georgia

By: _____

_____,
who is authorized to execute
this Agreement on its
behalf.