IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

TERRY RICH, and PHILLIP HARRIS, Individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. PUTNAM COUNTY, TENNESSEE, Defendant.	Case No: 2:19-cv-00056 Judge Waverly D. Crenshaw, Jr. Magistrate Judge Alistair Newbern JURY TRIAL DEMANDED Collective Action

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR APPROVAL OF COLLECTIVE ACTION SETTLEMENT

Named Plaintiffs Terry Rich and Phillip Harris ("Named Plaintiffs"), the Opt-In Plaintiffs, and Defendant Putnam County, Tennessee ("Defendant" or "County") (collectively, the "Parties") respectfully submit this Memorandum of Law in Support of Joint Motion for Approval of Collective Action Settlement. For the reasons stated herein, the Parties respectfully request that this Court approve the collective action settlement in this matter. [*See* Ex. 1, Settlement Agreement.]

I. INTRODUCTION

The Parties seek approval of the proposed Settlement Agreement ("Agreement"). Under the terms of the Agreement, Defendant will pay a gross settlement amount of $280,000.00 to resolve all claims brought by the 2 Named Plaintiffs and 21 Opt-In Plaintiffs (collectively, "Plaintiffs") under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*.

Because the Parties' settlement is "fair, reasonable and adequate" and satisfies all criteria for approval, the Parties request that the Court grant this motion and enter the proposed Order approving the Agreement. [*See* Ex. 2, Proposed Order.]

II. BACKGROUND AND PLAINTIFFS' ALLEGATIONS

This is a collective action to recover unpaid overtime compensation under the FLSA, 29 U.S.C. § 207(a), on behalf of 23 current and former employees of Putnam County in the positions of "EMT-Basic," "EMT-Advanced," "Paramedic," "Critical Care Paramedic," and "Dispatcher," at the ranks of Lieutenant and below. Defendant employs Plaintiffs to provide emergency medical and transport services out of 5 stations (East Cookeville, Monterey, Baxter, West Cookeville, and Algood) to Putnam County and the surrounding area. Defendant also operates a 911 Dispatch Center out of its Emergency Services Building to take emergency calls and to route responses from various branches of emergency services.

Plaintiffs and their coworkers staff the 5 stations and dispatch center 24 hours a day, 7 days a week to answer emergency medical calls. To meet these demanding staffing needs, Plaintiffs work regular, repeating schedules of 7 days on-duty and 7 days off-duty, typically running Thursday to Thursday. For each day on duty, Plaintiffs are typically scheduled to work 12-hour shifts. Because Plaintiffs' regular schedule spans 2 different workweeks, they are scheduled to work 3 shifts in the first Sunday-to-Sunday week and 4 shifts in the second Sunday-to-Sunday week, with the number of shifts alternating each workweek between 3 and 4 shifts. In each 2-week period, therefore, Plaintiffs are typically scheduled to work 36 hours in one week and 48 hours in the other.

Plaintiffs have alleged that the County has violated the FLSA in three principal ways: (1) failure to pay for pre-shift overtime hours performed off the clock; (2) miscalculation of the

regular rate of pay and improper reliance on the "fluctuating work week" method of overtime calculation; and (3) failure to cash out accrued "comp time" at the Plaintiffs' regular rates of pay.

A. Pre-Shift Work

Plaintiffs allege that they perform approximately 7 to 17 minutes of completely uncompensated work, depending on their position, prior to each scheduled shift. Specifically, EMTs and Paramedics allege that they perform 12 to 17 minutes of work before each shift, checking over and preparing ambulances and other equipment for service; inventorying and restocking any supplies used by the previous shift; completing "trip sheets" and other paperwork; exchanging information with the preceding shift; and performing their other regular job duties as needed. Dispatchers have alleged that they perform approximately 7 minutes or more of work before each shift checking the status of emergency response units; monitoring the current call load; checking the content of pending calls' conferring with the previous shift about recent incidents and other things of which to be aware before assuming control of dispatch; and answering calls when necessary.

Plaintiffs further allege that Defendant has actual knowledge of their uncompensated work because their supervisors witness this uncompensated work, direct it, and expect Plaintiffs to perform it regularly, and that Defendant also otherwise has constructive knowledge of the unpaid pre-shift work because of its uniformly applicable policies.

Defendant denies Plaintiffs allegations that they are performing compensable work while "off the clock" during these times and that Plaintiffs' supervisors had actual or constructive knowledge of their work.

B. Putnam County's Pay Practices: Plaintiffs' Allegations of Improper Fluctuating Work Week/Regular Rate Calculations

Plaintiffs allege that they have been improperly paid at a half-time rate for overtime worked outside their regular shift schedule. According to Plaintiffs, the County has unlawfully applied the fluctuating work week ("FWW") method of overtime pay and that they should be paid 1.5 times their regular rate of pay for all overtime work. Plaintiffs argue that Defendant fails to satisfy the criteria necessary to apply the FWW method of overtime pay, including that the parties share a "clear and mutual understanding" of the pay methodology. *See* 29 C.F.R. § 778.114. Defendant denies these allegations and contends that it has met the conditions necessary to apply the FWW method of pay.

The effect of paying employees under the FWW method is that the employees receive only additional half-time for overtime work, rather than at the rate of 1.5 times their regular rates of pay, because the salary is deemed to cover all hours worked at a straight time rate.

C. Cashing Out "Comp Time" at an Unlawful Rate

While analyzing the payroll and timekeeping materials, Plaintiffs discovered that Defendant failed to pay out "compensatory time," also known as "comp time," at their full, regular rate of pay. When Plaintiffs pick up additional shifts outside their regular schedule, they can elect to receive comp time instead of cash payment as overtime compensation. The County permits its employees to exchange accrued comp time for cash, but does so at the reduced, "part-time" rate of pay. Plaintiffs contend that they have been unlawfully paid at a rate lower than the required "regular rate" of pay when cashing out their comp time hours, in violation of the FLSA. *See* 29 U.S.C. § 207(o)(3)(B); 29 C.F.R. § 553.27(a). Defendant denies these allegations and contends that Plaintiffs were not receiving comp time in lieu of overtime and any who received comp time were paid for comp time at a lawful rate.

III. COURSE OF LITIGATION

Plaintiffs have vigorously pursued their claims, as well as the claims of the collective. Plaintiff Terry Rich filed this lawsuit as the lone plaintiff on July 17, 2019. Then, on September 25, 2019, Plaintiff Rich filed an Amended Complaint, adding Plaintiff Phillip Harris, a Dispatcher, individually and on behalf of similarly situated Dispatchers. Dkt. Nos. 1, 23. On October 28, 2019, the Parties attended an Initial Case Management Conference before Magistrate Judge Alistair E. Newbern, who entered a Case Management Order staying discovery and affording the Parties time to prepare for and to attend mediation. Dkt. No. 36.

On November 4, 2019, Plaintiffs moved for conditional certification of a collective action, seeking Court-supervised notice to current and former County employees who had worked in a covered position within the preceding 3 years. Dkt. Nos. 38–44. Defendant agreed to conditional certification of a class and notice to putative opt-in plaintiffs, on terms described in the Stipulation filed November 15, 2019. Dkt. No. 45.

On December 6, 2019, Plaintiffs mailed the "Notice of Lawsuit Against Putnam County" to the putative opt-in plaintiffs identified by Defendant. Dkt. No. 52. As of the close of the Notice period, on February 4, 2020, the collective action had grown to 23 Plaintiffs, including the Named Plaintiffs. Dkt. Nos. 32, 34, 37, 50, 53–56.

In order to facilitate settlement talks and mediation, Defendant voluntarily produced relevant personnel files, County rules and policies, and timekeeping and payroll information. On February 26, 2020, the Parties attended mediation with Michael Russell of Michael Russell Dispute Resolution, PLLC, and reached a tentative settlement, subject to final approval by the Parties and the Court.

Counsel coordinated with their respective clients and confirmed that all Parties agreed to the terms of the Agreement. Plaintiffs have been notified that they may submit any concerns, questions, or objections to counsel and that they may submit written objections to the Court. All Plaintiffs received the final proposed Agreement on April 10, 2020, for review and approval. No Plaintiffs object to the terms of the Agreement. As of April 20, 2020, the Parties have fully executed the Agreement.

IV. TERMS OF THE NEGOTIATED SETTLEMENT

The proposed monetary settlement calls for payment of $148,000 in back pay and liquidated damages and $132,000 in reasonable attorneys' fees, costs, and expenses, as detailed in the attached Agreement. [Ex. 1, ¶ 3.] The hourly fees actually incurred in litigating this case exceeded $195,682.50, and the costs and expenses totaled over $18,880.25. Additionally, the Parties request approval of a service payment of $2,500 for the original Named Plaintiff, Terry Rich, who initiated the lawsuit and assisted through mediation and settlement, as well as service payments of $1,500 each for the other two Plaintiffs who attended the mediation, Phillip Harris and Brian Williams. These service awards are approved by Plaintiffs and are included in the agreed distribution amounts reflected in "Attachment A" to the Agreement.

The County has agreed to issue payment within 30 days of Court approval, in the form of 46 checks (one back-pay check and one liquidated-damages check for each Plaintiff), as well as a check to Plaintiffs' counsel for fees, costs, and expenses, as reflected in Paragraph 3 and "Attachment A" to the Agreement.

In exchange, Plaintiffs have agreed to release Defendant from any claims they have asserted under the FLSA against the County through February 27, 2020. [Ex. 1, ¶ 5.]

V. THE COURT SHOULD APPROVE THE SETTLEMENT

Court approval is required to give final, binding effect to settlement of an FLSA collective action. *See Simmons v. Mathis Tire & Auto Serv.*, 2015 U.S. Dist. LEXIS 114008, at *2 (W.D. Tenn. Aug. 20, 2015). Generally, "[b]efore approving a settlement, a district court must conclude that it is fair, reasonable and adequate." *Int'l Union, United Auto, Aerospace, and Agr. Implement Workers of Am. v. Gen. Motors Corp*., 497 F.3d 615, 631 (6th Cir. 2007) [hereinafter *UAW*]. In this action, Defendant has agreed to pay a substantial sum, given the considerable risks Plaintiffs face in continued litigation. Based on Plaintiffs' counsel's damages calculations, the Settlement Amount provides for an appropriately discounted recovery, as explained below, even **after** the payment of attorneys' fees, litigation expenses, administration costs, and service payments. Plaintiffs' counsel believe this is a fair, reasonable, and adequate result.

The standard for approving the settlement of a FLSA collective action is significantly lower than for a Rule 23 class-action settlement, because an "FLSA settlement does not implicate the same due process concerns as a Rule 23 settlement." *Flores v. One Hanover, LLC*, No. 13 Civ. 5184 (AJP), 2014 U.S. Dist. LEXIS 78269, at *19 (S.D.N.Y. 2014). "If the proposed settlement reflects a reasonable compromise over contested issues, the settlement should be approved." *Simmons*, 2015 U.S. Dist. LEXIS 114008, at *2. Courts generally "regard the adversarial nature of a litigated FLSA case to be an adequate indicator of fairness of the settlement," and will "approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes concerning a plaintiff's entitlement to compensation under the FLSA." *David v. Kohler Co.*, 2019 U.S. Dist. LEXIS 213737, at *9 (W.D. Tenn. 2019) (citing *Lynn's Food Stores,* 679 F.2d 1350, 1353–54 & n.8 (11th Cir. 1982)).

Courts in the Sixth Circuit consider several factors when deciding whether a FLSA settlement is fair, reasonable, and adequate, including:

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

West v. Emeritus Corp., 2017 U.S. Dist. LEXIS 104269, at *2 (M.D. Tenn. July 5, 2017) (quoting *UAW*, 497 F.3d at 631). The Court may consider "only those factors that are relevant" and may "weigh particular factors according to the demands of the case." *Id.* (quoting *Redington v. Goodyear Tire & Rubber Co.*, 2008 U.S. Dist. LEXIS 64639 (N.D. Ohio 2008)).

A. The *UAW* Factors Weigh in Favor of Approval

Each of the seven factors laid out in *West* and *UAW* weigh in favor of approving the Parties' settlement. *See West*, 2017 U.S. Dist. LEXIS 104269, at *2 (quoting *UAW*, 497 F.3d at 631).

First, this lawsuit constitutes a *bona fide* dispute between the Parties, and the risk of fraud or collusion is therefore minimal. All Parties are represented by experienced counsel, who, in the "adversarial context of a lawsuit," negotiated "a reasonable compromise of disputed issues." *Lynn's Food Stores,* 679 F.2d at 1354. The lawsuit has only been resolved following contentious, arm's-length negotiations during an extended mediation session coordinated by an accomplished mediator with experience in FLSA and employment lawsuits. Among other defenses, Defendant contends that Plaintiffs failed to report their overtime work to their employer, that it has been lawfully relying on the FWW method of overtime pay, that Plaintiffs have been overpaid at times, that it acted in good faith, and that it has been lawfully issuing comp-time payments. Both sides carry real litigation risk on these issues. *Compare White v. Baptist Mem'l Health Care Corp.*, 699 F.3d 869 (6th Cir. 2012) ("[I]f an employer establishes a

reasonable process for an employee to report uncompensated work time[,] the employer is not liable for non-payment if the employee fails to follow the established process.") *with Craig v. Bridges Brothers Trucking LLC*, 823 F.3d 382, 387–88 (6th Cir. 2016) (holding that an employer with reasonable reporting processes who nevertheless knows or should know of unreported work is "still on the hook for unpaid overtime"). The Parties anticipate significant disputes as to liability, as well as the amount of Plaintiffs' damages, and the risk of fraud or collusion is therefore minimal, weighing in favor of approval.

Second, the complexity, expense, and likely duration of the litigation also weigh in favor of approval. Both the pre-shift and FWW claims will be fact-intensive, expensive, and time-consuming to litigate through trial. Avoiding this substantial expenditure of time and resources is in the Parties' interests.

Third, the Parties have had the opportunity to fully investigate the claims at issue in this lawsuit, despite the absence of formal discovery. Plaintiffs' counsel investigated the case thoroughly prior to filing suit, based on the available County policies and procedures, as well as multiple years of pay and timekeeping data provided by Named Plaintiff Rich. Further, Defendant voluntarily produced thousands of pages of documents prior to mediation, which shed additional light. Although considerable additional discovery would be necessary to bring this case to trial, the investigation already conducted has permitted an informed, reasoned analysis of Plaintiffs' potential recoveries and Defendant's potential liability.

Fourth, although Plaintiffs and Plaintiffs' counsel believe strongly in the merits of their case, they are aware that it carries real litigation risk. For example, Defendant intends to argue that it lacked actual or constructive knowledge of the overtime work being performed by Plaintiffs prior to the start of their shift, based on the holding in *White*, 699 F.3d at 876–77.

Should Defendants successfully argue that *White* precludes a finding that Defendant knew or should have known of the work Plaintiffs performed, Plaintiffs may be left with no recovery at all for their pre-shift claims. Similarly, regarding the FWW claim, the U.S. Department of Labor ("DOL") recently issued a Notice of Proposed Rulemaking, in which it proposed a rule that—if finalized in its proposed form—may limit Plaintiffs' arguments that the County has unlawfully utilized the FWW method of overtime compensation. *See* 84 Fed. Reg. 59590 (Nov. 5, 2019). Substantial litigation risks on both sides weigh in favor of approving the Agreement. As the Eastern District of Michigan has eloquently recognized: "Whatever the relative merits of the Parties' legal positions, there is no risk-free, expense-free litigation." *Sheick v. Auto. Component Carrier LLC*, 2010 U.S. Dist. LEXIS 110411, at *50 (E.D. Mich. 2010).

Fifth, the opinion of Plaintiffs' counsel and the amount of the settlement itself demonstrate that this Court should approve the settlement. The opinion of Plaintiffs' counsel "is entitled to significant weight and supports the fairness of the class settlement." *IUE-CWA v. GMC*, 238 F.R.D. 583, 597 (E.D. Mich. 2006); *see also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 525 (E.D. Mich. 2003) ("[I]n approving a proposed settlement, the court also considers the opinion of experienced counsel as to the merits of the settlement."). Here, Plaintiffs' counsel, who possess considerable experience in FLSA cases, have weighed the respective risks of proceeding with litigation and have extensively analyzed the County's potential liability based on thorough damages calculations using Defendant's payroll records. Based on those calculations, Plaintiffs' counsel have calculated the maximum recovery for Plaintiffs, if successful on all issues except for the FWW, to be $89,080.61, including a third year of recovery and full liquidated damages. The Parties' Agreement **exceeds** Plaintiffs' maximum recovery under those circumstances by $58,919.39, even after deducting fees, costs,

expenses, and service awards. As noted above, the anticipated regulations on the FWW method present substantial risk for Plaintiffs, and Plaintiffs' counsel believe the settlement amount to be a fair and adequate recovery, appropriately weighing the risk of Plaintiffs potentially losing an entire theory of recovery due to action by the DOL while the litigation is pending.

Sixth, both the Named Plaintiffs and the Opt-In Plaintiffs have been given full opportunity to consider the terms of the Agreement, and all approve. This factor weighs significantly in favor of approving settlement. *Applegate-Walton v. Olan Mills, Inc.*, 2010 U.S. Dist. LEXIS 77965, at *5 (M.D. Tenn. 2010) ("The Court further finds that the absence of any objections to the settlement and significant support for the settlement by the Settlement Classes supports final approval of this Settlement.").

Seventh, as the *Lynn's Foods* Court recognized, settlements of litigation where there are issues in *bona fide* dispute and where employees are represented by "an attorney who can protect their rights under the statute," are to be approved by district courts "in order to promote the policy of encouraging settlement of litigation." 679 F.2d at 1354.

This Court accordingly should approve the Agreement as fair and reasonable.

B. The Service Payments Included in the Settlement Agreement Are Also Fair and Reasonable and Should Be Approved

Plaintiffs submit that the proposed service payments of $2,500 to Plaintiff Terry Rich and $1,500 each to Plaintiffs Phillip Harris and Brian Williams, in addition to their back-pay and liquidated-damages distributions, are fair and reasonable and should be approved with the Agreement.

As one court explained in approving service payments to plaintiffs involved in filing and litigating a similar claim, in "a wage and hours case, where a low level employee assumes responsibility for prosecuting an action against an employer and takes considerable personal risk

in so doing, such awards are singularly appropriate." *Henry v. Little Mint, Inc*., No. 12 Civ. 3996 (CM), 2014 U.S. Dist. LEXIS 72574, at *27 (S.D.N.Y. 2014). Service payments in wage-and-hour actions "serve the dual functions of recognizing the risks incurred by named plaintiffs and compensating them for their additional efforts," *Mills v. Capital One*, 2015 U.S. Dist. LEXIS 133530, at *47 (S.D.N.Y. 2015) (internal quotation marks omitted), as well as reflecting the vocational risks assumed by a named plaintiff and the contribution to the progress of a case made by a plaintiff who secures counsel and participates in discovery, *Bozak v. FedEx Ground Package Sys.*, 2014 U.S. Dist. LEXIS 106042, at *12–15 (D. Conn. 2014). "[B]ecause a named plaintiff is an essential ingredient of any [collective] action, an incentive or service award can be appropriate to encourage or induce an individual to participate in the suit" and to other participating plaintiffs because "class counsel may need the support and assistance of other class members who are not named plaintiffs" during the course of the litigation. *Scovil v. FedEx Ground Package Sys*., 2014 U.S. Dist. LEXIS 33361, at *23 (D. Me. 2014) (approving service payments between $10,000 and $20,000 to named and participating plaintiffs). To determine whether a service payment is warranted, courts consider "the steps these individuals have taken to protect the interests of the class, the degree to which the class has benefited from those actions, the amount of time and effort they have expended in pursuing the litigation, and any negative effects that they have risked." *Id.*

Plaintiffs Rich, Harris, and Williams each expended significant time and effort for the benefit of all Plaintiffs. [Yezbak Decl., ¶ 3.] Plaintiff Rich contributed many hours of his time meeting with counsel on the phone and in-person for extended periods to prepare the case for filing and to assist substantially with the litigation through mediation and settlement. [*Id*.] Plaintiffs Harris and Williams joined Plaintiff Rich in assisting with the preparation of the

Amended Complaint and with litigation thereafter. [*Id*.] On February 26, 2020, Plaintiffs Rich, Harris, and Williams traveled for hours to attend a full-day mediation in Brentwood on behalf of all Plaintiffs. [*Id*.]

The agreed service payments are reasonable and well within the range awarded by district courts in this Circuit, as well as in wage-and-hour actions in other jurisdictions. *See, e.g.*, *Abadeer v. Tyson Foods, Inc.*, 3:09-cv-00125, Docket Entry #420, at 2 (M.D. Tenn. Oct. 17, 2014) (approving service awards ranging from $500 to $11,500 for participating plaintiffs); *see also Bijoux v. Amerigroup N.Y., LLC*, 2016 U.S. Dist. LEXIS 68969, at *4 (E.D.N.Y. 2016) (approving service payments between $2,000 and $10,000); *Karic v. Major Auto. Cos.*, 2016 U.S. Dist. LEXIS 57782, at *24–25 (E.D.N.Y. 2016) (approving $20,000 service awards); *DeLeon v. Wells Fargo Bank, N.A*., 2015 U.S. Dist. LEXIS 65261, at *15 (S.D.N.Y. 2015) (approving a $15,000 service award); *Swigart v. Fifth Third Bank*, 2014 U.S. Dist. LEXIS 94450, at *20 (S.D. Ohio 2014) (approving a "modest class representative award" of $10,000); *Henry*, 2014 U.S. Dist. LEXIS 72574, at *10 (approving $10,000 service awards); *Fosbinder-Bittorf v. SSM Health Care of Wis., Inc*., 2013 U.S. Dist. LEXIS 152087, at *4 (W.D. Wis. 2013) (approving service payments between $5,000 and $15,000).

Accordingly, this Court should approve the proposed service payments to Plaintiffs Rich ($2,500), Harris ($1,500), and Williams ($1,500) as fair and reasonable.

C. This Court Should Approve the Agreed, Reasonable Attorneys' Fees Included in the Settlement Agreement

The FLSA provides: "The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and

costs of the action." 29 U.S.C. § 216(b).[1] An award of attorneys' fees under § 216(b) is mandatory if Plaintiffs prevail. *Smith v. Service Master Corp.,* 592 F. App'x 363, 367 (6th Cir. 2014); *United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass'n Local 307 v. G & M Roofing and Sheet Metal Co.*, 732 F.3d 495, 501 (6th Cir. 1984). Congress enacted fee-shifting statutes such as the FLSA "in order to ensure that federal rights are adequately enforced." *Morales v. Farmland Foods, Inc.*, 2013 U.S. Dist. LEXIS 56501 (D. Neb. 2013). Under a fee-shifting statute, "a reasonable fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious action to vindicate the rights protected under the statute." *Id.* When assessing a reasonable fee under the FLSA, courts should approve awards that will ensure that "attorneys of quality and experience with other profitable demands upon their time will not need to sacrifice income available in alternative enterprises in order to effect a public policy intended to protect all citizens." *Id.* (citing *Casey v. City of Cabool*, 12 F.3d 799, 805 (8th Cir. 1993)).

Plaintiffs' counsel have extensive experience litigating multi-plaintiff wage-and-hour actions and have litigated and settled this case efficiently. [Yezbak Decl., ¶ 22.] Plaintiffs' counsel took this case on a contingency basis, with the understanding that if there was no recovery there would be no entitlement to fees. Plaintiffs' counsel also agreed to advance all expenses necessary to litigate this case to completion. Plaintiffs agreed to pay either a 40% contingency fee or Plaintiffs' counsel's hourly fees, whichever is greater. [*Id.*]

In this case, Plaintiffs' counsel incurred over $195,682.50 in hourly fees. Plaintiffs' counsel has agreed, however, to accept only $113,119.75 in fees, which is a discount of more

1. Defendant neither opposes the amount of Plaintiffs' fees and expenses nor contests the reasonableness of the Plaintiffs' fees and expenses.

than 42% from the amount of fees actually incurred. Plaintiffs' counsel advised all Plaintiffs of the specific dollar amount of fees and costs and explicitly set out that amount in the Agreement, to which no Plaintiff has objected. [*Id*.]

Cognizant of the relatively small size of the collective, counsel litigated this case as efficiently as possible prior to mediation so that the County could preserve resources to pay a fair settlement to Plaintiffs. [*Id*. at ¶ 23.] Nevertheless, Plaintiffs' counsel expended considerable time and resources due to the technical legal issues presented and the complexity of the County's pay and timekeeping systems. [*Id.*] If the case did not settle, Plaintiffs' counsel were committed to devoting whatever time and money was necessary to litigate the matter to a successful verdict. [*Id.*]

Including both attorneys and paralegals, billing professionals performed a total of 568.8 hours of work on this case. [*Id*. at ¶ 24.] The blended hourly rate based on the fee award included in the Agreement is $198.87 per hour. [*Id*.] Plaintiffs' counsel anticipates they will spend another 8 to 10 attorney hours and 10 to 15 paralegal hours communicating with the Court and Defendant to finalize the Agreement, to administer the settlement, and to answer questions from Plaintiffs. Each additional hour of time expended by Plaintiffs' counsel and support staff reduces the blended rate. The fees agreed to by the Parties, resulting in a blended hourly rate of $198.87 or less, are therefore reasonable, and this Court should approve the Agreement, including the full amount of fees set out therein, as fair and reasonable.

VI. CONCLUSION AND RELIEF REQUESTED

The Parties' Agreement represents an arm's-length negotiation by counsel. It provides relief to Plaintiffs and eliminates the inherent risks that both sides would bear if this litigation were to continue. Accordingly, and for the reasons stated above, the Parties respectfully request that the Court enter an Order:

1. Approving the Settlement Agreement, including the distribution to Plaintiffs attached as Exhibit A of the Settlement Agreement, the attorneys' fees and costs, and the service payments;
2. Directing the Parties to File a Joint Stipulation of Dismissal with Prejudice, each party to bear its own fees and costs except as stated in the Settlement Agreement, or a Status Report showing cause why the case should not be dismissed, within 30 days.
3. Retaining jurisdiction over the parties to the Settlement Agreement for purposes of interpretation, compliance, and enforcement of the Settlement Agreement, if necessary.

Dated: May 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2020, using the Court's CM/ECF system, I filed the foregoing Memorandum of Law in Support of the Joint Motion for Approval of Collective Action Settlement, via the Court's CM/ECF system, on all counsel, including counsel for Defendant Putnam County, Tennessee:

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

TERRY RICH, and PHILLIP HARRIS, Individually and on behalf of themselves and all others similarly situated,	)	Case No: 2:19-cv-00056
Plaintiffs,	)	Judge Waverly D. Crenshaw, Jr. Magistrate Judge Alistair Newbern
v.	)	
PUTNAM COUNTY, TENNESSEE,	)	
Defendant.	)	

SETTLEMENT AGREEMENT

This FULL AND FINAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into this day, by and between Defendant Putnam County, Tennessee, (the "County") and Plaintiffs Terry Rich, Phillip Harris, Kerrie L. Alford, Mary S. Allen, Karla L. Beaty, Curtis Black, Jason L. Bohannon, Lucie M. Bolenbarker, William C. Brown, Jr., James M. Dutton, Kristi Ellis, Alyssa Elmore, Jason W. Ervin, Tammy Fields, Robert Haney, Jessica Harris, Lisa A. Langford, Kevin E. Leatherwood, Ray E. Pharris, Dragan A.G. Ramsey, Michelle L. Simpson, Paul J. White, and Brian Q. Williams (collectively, "Plaintiffs"). The County and Plaintiffs are referred to collectively as the "Parties."

RECITALS

A. **WHEREAS,** Plaintiffs presently are and/or have been employees of the County, working, at the rank of Lieutenant or below, as Emergency Medical Technicians, Paramedics, and/or Dispatchers;

B. **WHEREAS**, on July 17, 2019, Plaintiff Terry Rich, a Paramedic, filed a collective action under 29 U.S.C. § 216(b), on behalf of himself and all those similarly situated, in the United States District Court for the Middle District of Tennessee, Case No: 2:19-cv-00056, alleging violations of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201–19, and seeking recovery of allegedly unpaid overtime hours, liquidated damages, and attorneys' fees and costs, as well as application of the FLSA's three-year statute of limitations for willful violations;

C. **WHEREAS**, on September 25, 2019, Plaintiffs filed their Amended Collective Action Complaint, joining Plaintiff Phillip Harris, a Dispatcher, on behalf of himself and all those similarly situated, and the Parties subsequently stipulated to conditional class certification and Court-supervised notice;

D. **WHEREAS**, 21 additional Plaintiffs opted into the lawsuit, filing written consents to sue with the Court;

E. **WHEREAS**, based on Plaintiffs' review of payroll and timekeeping records provided by the County on February 12, 2020, should this litigation continue, Plaintiffs intend to seek leave to amend their Complaint and allege that the County has failed to compensate them at the "regular rate" when paying out accrued "compensatory time," in violation of 29 U.S.C. 207(o);

F. **WHEREAS**, the Parties participated in mediation on February 26, 2020, and engaged in negotiations to resolve their differences and, throughout these negotiations, all Parties were, and continue to be, represented by counsel experienced in wage and employment matters;

G. **WHEREAS**, while by entering into this Agreement, the parties are not admitting liability, the potential recovery at trial, if any, remains unknown, but the Parties believe that the terms of this Agreement are consistent with and within the range of a reasonable results that Plaintiffs might expect to obtain if they prevailed after a trial;

H. **WHEREAS,** the County believes that its current pay system, using the "Fluctuating Workweek" pay method recognized in 29 CFR Section 778.114, is lawful and in compliance with the FLSA, which Plaintiffs dispute; and

I. **WHEREAS,** as a result of their negotiations, the Parties wish to settle their claims; dismiss the above-captioned lawsuit with prejudice; resolve and release all disputes and claims arising out of the alleged violations of the FLSA, as alleged by the Plaintiffs against the County on the following fair, just, and reasonable terms; and desire to avoid the risk, expense and uncertainties of litigation.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual promises of the Parties to this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Compromise Acknowledgement: The Parties have conducted investigation of the facts and law during this litigation, including the limited exchange of documents and payroll data. The Parties have also analyzed the applicable law and the damages claims by Plaintiffs based on the payroll data and information gathered. Relying on their fact investigations and legal analyses, the Parties have engaged in arms-length settlement negotiations. While the Parties each believe that their legal positions have merit, the Parties recognize the expense and length of continued litigation, as well as the uncertain outcome and risk of litigation. The Parties therefore believe that settlement is the best interests of the Parties and is the best way to resolve their disputes while minimizing future expenditures.

2. Court Approval: The Parties will present this Settlement Agreement to the Court along with a joint motion requesting the Court's approval of the settlement as fair, reasonable, and adequate and consistent with the FLSA. The County shall provide payment to Plaintiffs and their

counsel within 30 days after the Court approves the Agreement, as described below. The Parties agree and stipulate to the Court's continued jurisdiction over matters relating to the enforcement of the Agreement. This Agreement is conditioned upon approval by the Court.

3. Payment: In consideration of and in exchange for the Plaintiffs' execution of this Agreement, the County will (1) bear the full mediator's fee for the mediation conducted by Michael L. Russell, Esq., on February 26, 2020, and (2) pay Plaintiffs, through their attorneys at McGillivary Steele Elkin LLP and Yezbak Law Offices PLLC, the gross pre-tax settlement sum of **$280,000.00** ("Settlement Sum") to be paid and allocated as follows:

(a) **$132,000.00** of the Settlement Sum shall be paid to Plaintiffs as attorneys' fees and expenses in the form of a check payable to McGillivary Steele Elkin LLP, and the County shall issue an IRS Form 1099 MISC to said firm in said amount.

(b) The remaining **$148,000.00** of the Settlement Sum shall be payable to Plaintiffs, as detailed below, in full settlement of their claims in the above-captioned litigation. Allocation of the Settlement Sum among the Plaintiffs shall be made according to the chart attached hereto as Attachment A. The allocations set out in Attachment A include reasonable service awards for Plaintiffs Terry Rich ($2,500), Phillip Harris ($1,500), and Brian Williams ($1,500), in recognition for their substantial time and effort expended leading up to and participating in mediation. Of each individual Plaintiff's allocated settlement amount, 50% shall be treated as back pay and 50% shall be treated as liquidated damages.

(c) Within 30 days of Court approval of this Agreement, the County shall transmit a total of 46 checks, made payable to the individual Plaintiffs as set forth in Attachment A, to McGillivary Steele Elkin LLP. McGillivary Steele Elkin LLP will then distribute these

checks to the individual Plaintiffs. Each individual Plaintiff will receive two checks in their name, one representing back pay/wages and one representing liquidated damages, in the amounts reflected in Attachment A.

i. The check payable to each individual Plaintiff as back pay/wages shall be subject to normal tax withholdings and, prior to January 31, 2021, the County shall issue an IRS Form W-2 to each individual Plaintiff. The County further agrees to pay the appropriate employer share, if any, for Social Security, Medicare, or other taxes due that are related to the back pay paid to the Plaintiffs.

ii. The check payable to each individual Plaintiff as liquidated damages, which is not wages, shall not have any taxes or other deductions made from said amount. Prior to January 31, 2021, the County shall issue an IRS Form 1099 MISC to each individual Plaintiff.

4. No Additional Representations: Except for the terms of this Agreement, Plaintiffs and the County, respectively, have not relied upon any statement or representation, written or oral, made by any Party, or any of their respective agents, attorneys, or representatives regarding any matter including, but not limited to, the federal or state income tax consequences of the Agreement to any Party. The Parties expressly acknowledge and agree that they should rely solely upon the advice of their own, independent tax attorneys and/or accountants as to the potential tax and benefit consequences of this Agreement.

5. Release: Upon satisfaction of the terms of Paragraph 3, the Plaintiffs irrevocably and unconditionally waive, release, and forever discharge the County from any claims that the Plaintiffs have asserted under the FLSA against the County through February 27, 2020, including

the assertion that Plaintiffs have been paid an unlawfully low rate in exchange for accrued "compensatory time." This release does not extend to, nor purport to release, any claim(s) that the Parties may not release as a matter of law or to any other statutory or common law claims unrelated to the claims asserted in the above-captioned action.

6. Entire Agreement: The Parties affirm that the terms stated herein are the only consideration for signing this Agreement and that no other representations, promises, or agreements of any kind have been made to or with them any person or entity whatsoever to cause them to sign this Agreement. The Parties have accepted the terms of this Agreement because they believe them to be fair and reasonable and for no other reason.

7. Interpretation and Construction: Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identify of the Party or Parties preparing this document or the documents referenced herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. The headings used herein are for reference only and shall not affect the construction of this Agreement.

8. Governing Law: The settlement, this Agreement, and the documents referred to herein shall be interpreted in accordance with the laws of the State of Tennessee, and if necessary federal law. To the extent any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in the United States District Court for the Middle District of Tennessee.

9. Breach, Wavier and Amendment: No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or

other provisions of this Agreement. The Agreement may be amended, altered, modified, or otherwise changed only by a writing duly executed by the Parties hereto or their authorized representatives.

10. Fees for Enforcement: If any Party institutes any legal action, arbitration, or other proceeding against any other Party to enforce the provisions of this Agreement, the successful party will be entitled to recover from the unsuccessful party reasonable attorney's fees and costs.

11. Confidentiality of Negotiations: Until the filing of the joint motion for settlement approval attaching this Agreement or any other publicly accessible court filing disclosing the settlement of this action, Plaintiffs agree to refrain from discussion with coworkers or undue publication of either the terms of this Agreement or the negotiations leading up to this Agreement. Upon the filing of this Agreement, the Parties shall not be bound by the terms of this Paragraph or by any other duties of confidentiality or non-publication arising from this Agreement.

12. Severability: Should any provision of this Agreement be determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining terms shall not be affected thereby, and the illegal or invalid term shall be deemed not to be part of this Agreement.

13. Good Faith and Best Efforts: The Parties agree to cooperate fully to implement this Agreement, including but not limited to taking further action as may be necessary or may be reasonably requested in order to fully effectuate and implement the purposes, terms, and conditions of this Agreement.

14. Execution: This Agreement, and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this

Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

15. Effective Date: This Agreement shall become effective following execution by the Parties and the approval of the Court.

16. **Acknowledgement.** ***The Parties expressly acknowledge and agree that they have carefully read and fully understand the provisions of this Agreement, that they have had an opportunity to consult with legal counsel of their own choosing, and that they have signed this Agreement freely, knowingly, and voluntarily.***

PUTNAM COUNTY, TENNESSEE

Randy Faulk
(Signature)

4/20/2020
Date

PLAINTIFFS
TERRY RICH

(Signature)

Date

PHILLIP HARRIS

(Signature)

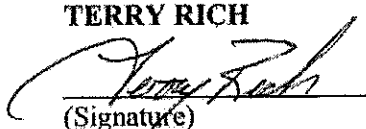
Date

PUTNAM COUNTY, TENNESSEE

_____
(Signature)

_____
Date

PLAINTIFFS
TERRY RICH


(Signature)

4-15-20
Date

PHILLIP HARRIS

_____
(Signature)

_____
Date

PUTNAM COUNTY, TENNESSEE

_____
(Signature)

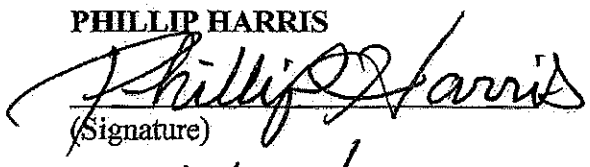
_____
Date

PLAINTIFFS
TERRY RICH

_____
(Signature)

_____
Date

PHILLIP HARRIS



(Signature)

04/17/20
Date

ATTACHMENT A

PLAINTIFF	BACK PAY DISTRIBUTION	LIQUIDATED DAMAGES DISTRIBUTION
Kerrie L. Alford	$ 750.55	$ 750.55
Mary Susan Allen	$ 3,698.34	$ 3,698.35
Karla L. Beaty	$ 3,393.40	$ 3,393.40
Curtis Black	$ 100.00	$ 100.00
Jason Lee Bohannon	$ 3,718.67	$ 3,718.68
Lucie Marie Bolenbarker	$ 3,800.00	$ 3,799.99
William Casher Brown Jr	$ 1,738.57	$ 1,738.57
James Marshall Dutton	$ 4,804.28	$ 4,804.28
Kristi Ellis	$ 3,718.67	$ 3,718.68
Alyssa Elmore	$ 2,346.43	$ 2,346.42
Jason Wade Ervin	$ 2,082.14	$ 2,082.14
Tammy Fields	$ 100.00	$ 100.00
Robert Haney	$ 4,328.57	$ 4,328.56
Jessica Harris	$ 2,927.86	$ 2,927.85
Phillip Wheeler Harris	$ 4,489.00	$ 4,489.01
Lisa Ann Langford	$ 4,355.00	$ 4,354.99
Kevin E. Leatherwood	$ 2,980.71	$ 2,980.71
Ray E. Pharris	$ 100.00	$ 100.00
an Anthony Gene Ramsey	$ 3,509.28	$ 3,509.28
Terry Rich	$ 6,344.99	$ 6,344.99
Michelle Lee Simpson	$ 4,698.56	$ 4,698.56
Paul J White	$ 4,830.70	$ 4,830.71
Brian Q Williams	$ 5,184.28	$ 5,184.28
TOTAL:	**$ 74,000.00**	**$ 74,000.00**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

TERRY RICH, and PHILLIP HARRIS, Individually and on behalf of themselves and all others similarly situated,	Case No: 2:19-cv-00056
Plaintiffs,	Judge Waverly D. Crenshaw, Jr. Magistrate Judge Alistair Newbern
v.	JURY TRIAL DEMANDED
PUTNAM COUNTY, TENNESSEE,	Collective Action
Defendant.	

[PROPOSED] ORDER GRANTING THE JOINT MOTION FOR APPROVAL OF COLLECTIVE ACTION SETTLEMENT

Upon consideration of the Plaintiffs' and Defendant's Joint Motion for Approval of Collective Action Settlement and the Memorandum of Law in Support thereof, for the reasons set forth therein, and it appearing to this Court that the Settlement Agreement is fair, reasonable, and adequate, it is this _____ day of _____, 2020, hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Settlement Agreement attached to the Motion as Exhibit 1 is APPROVED; and it is further

ORDERED that the parties shall, within 30 days of this Order, file either a Joint Stipulation of Dismissal with Prejudice, with each party to bear its own fees and costs except as stated in the Settlement Agreement, or a Status Report showing cause why the case should not be dismissed; and it is further

ORDERED that this Court shall retain jurisdiction over the parties to the Settlement Agreement for purposes of interpretation, compliance, and enforcement of the Settlement Agreement, if necessary.

SO ORDERED.

_____

United States District Court Judge