

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

DAVID BAUST, et al.,)	
)	
Plaintiffs,)	
)	Case No. 2:20-cv-00595-RBS-DEM
v.)	
)	JURY TRIAL DEMANDED
CITY OF VIRGINIA BEACH, VIRGINIA,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION
TO APPROVE SETTLEMENT AGREEMENT**

Defendant, City of Virginia Beach (“City”) and the Plaintiffs, EMS Captains employed at various times by the City, have reached a Settlement Agreement that will resolve all claims in the above-captioned lawsuit, which alleged that the City failed to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and the Virginia Gap Pay Act, Va. Code §§ 9.1-701 *et. seq* (“VGPA”). All Plaintiffs have been given the opportunity to review the Settlement Agreement and have given their written authorization to settle the claims according to the tentative agreement.

For the reasons set forth below, because the proposed agreement satisfies the criteria for approval of an FLSA settlement, and Plaintiffs have each authorized the settlement, Plaintiffs and the City jointly request the Court enter an order: (1) approving the Settlement Agreement, which is incorporated herein by reference, as fair, reasonable, and just in all respects as to the Plaintiffs, and ordering the Parties to perform the Settlement Agreement in accordance with its terms; (2) reserving jurisdiction with respect to this Action for the purpose of enforcing the Settlement

Agreement; and (3) dismissing Plaintiffs' claims with prejudice upon final Court approval of the Settlement Agreement.

The Settlement Agreement is attached as **Exhibit 1** and the declaration of Plaintiffs' counsel, Sara L. Faulman, is attached hereto as **Exhibit 2**.

I. CLAIMS ASSERTED AND PROCEDURAL HISTORY

Plaintiffs are employed by the Defendant, City of Virginia Beach ("Defendant" or "City"), in its Department of Emergency Medical Services, in the position of EMS Captain. Plaintiffs filed their Complaint on November 25, 2020, alleging: (1) that the City failed to properly compensate them with overtime pay at one and one-half times their regular rate for hours worked in excess of 40 in a workweek under the Fair Labor Standard Act (FLSA); and (2) that the City failed to pay time and one-half overtime under the Virginia Gap Pay Act (VGPA) by failing to treat all paid leave hours as hours worked for purposes of calculating overtime allowances, and by failing to pay time and one-half overtime for all unscheduled hours below the 40-hour overtime threshold. *See* Dkt. 1. In its Answer, the City denied that it violated the FLSA and the VGPA, and asserted numerous defenses including, without limitation, a good faith defense to liquidated damages and any willful violation of the FLSA. Dkt. 11. The City maintains that it has at all times acted in good faith, in conformity with, and in reliance upon applicable law in its exemption classification decisions and payment of wages. *Id.*

Shortly after the lawsuit was filed, the Parties agreed to bifurcate the case into two phases—liability and damages. Dkt. 17. Following the Court's Order on bifurcation, the Parties engaged in extensive discovery on the issue of liability, including an exchange of over 7,000 pages of documents and exchange of written discovery including interrogatories, requests for production, and requests for admission. The Plaintiffs took three depositions pursuant to Fed. R. Civ. P.

30(b)(6) and a deposition of a fact witness, and the City took the depositions of all eight Plaintiffs. Discovery concluded on June 23, 2021, and the Parties agreed to file cross-motions for summary judgment. Dkts. 19, 26. Summary judgment briefing on both Parties' motions was completed on July 20, 2021.

On June 28, 2021, prior to the Parties' submission of summary judgment papers, Plaintiffs submitted a settlement demand to Defendant. Over the subsequent weeks and concurrently with the Parties' summary judgment briefing, the Parties exchanged numerous offers and counter-offers. Ex. 1, ¶ 1.3; Ex. 2, ¶ 15. Each of the Plaintiffs' offers and counter-offers were reviewed and approved by all Plaintiffs. On August 12, 2021, the Parties jointly notified the Court that they had reached a settlement in principle and requested that the Court stay all matters in the case, including issuance of a decision on the Parties' cross-motions for summary judgment. Dkt. 39. *See also* Dkt. 40 (granting motion to stay all matters in the case as a result of settlement). Subsequently, the Parties reduced their agreement to writing, and each Plaintiff signed a Settlement Authorization form, which are attached to the Settlement Agreement. Ex. 2, ¶¶ 21, 24-25.

II. TERMS OF THE PROPOSED SETTLEMENT

Counsel for the Parties have reduced the terms of the proposed Settlement to writing (the "Settlement Agreement"), attached as Exhibit 1. Under the Settlement Agreement, the City will pay a total of \$200,000.00 (two hundred thousand dollars) to resolve the Plaintiffs' FLSA and VGPA claims. Ex. 1, ¶ 2.1. The Settlement Amount will be divided and distributed as follows: (1) one check in the amount of \$80,000.00, payable to Plaintiffs' counsel, McGillivray Steele Elkin LLP, representing a negotiated amount of reimbursed attorneys' fees and expenses; and (2) a set of payroll checks payable to individual Plaintiffs, totaling a pre-tax amount of \$120,000.00, which shall be distributed to individual Plaintiffs in accordance with the pre-tax amounts set forth in

Exhibit A to the Settlement Agreement, to which the City shall be entitled to apply all applicable deductions and withholdings for each individual Plaintiff. *Id.*, ¶ 2.2. In addition, the City agreed to re-classify Plaintiffs in the position of EMS Captain as non-exempt, effective August 26, 2021. *Id.*, ¶ 2.1. These amounts and terms are agreed to among the Parties to compromise, settle, and satisfy the Released Claims described in paragraph 3.1 of the Settlement Agreement, and all attorneys' fees and expenses related to the Released Claims. Significantly, Plaintiffs and their counsel determined the method used to calculate the pro rata amounts to be paid to each Plaintiff for the Back Pay Amount. *Id.*, ¶ 2.6.

In consideration of the payments provided and the City's reclassification of Plaintiffs to a non-exempt status, Plaintiffs will release the claims raised in their Complaint for the time periods they have worked as EMS Captains through August 26, 2021. *Id.*, ¶ 3.1-3.4. The release is set forth in Paragraphs 3.1, 3.2, 3.3, and 3.4 of the Settlement Agreement. The Parties also agree that the claims asserted in the case will be dismissed with prejudice upon the Parties' execution of the Settlement Agreement and the Court's Order approving the Settlement Agreement. *Id.*, ¶ 4.1.

As explained further in Section V below, if the Court enters an Order approving this Agreement, the City will issue payment of the Settlement Amount within 30 calendar days of the Court's approval of the Settlement Agreement, with interest to accrue on any unpaid Settlement Amount after the agreed 30-day period. *Id.*, ¶ 2.3.

III. APPLICABLE FACTOR FOR APPROVING FLSA SETTLEMENTS

A settlement in an FLSA lawsuit is not effective unless it is approved by either a district court or the United States Department of Labor. *Lomascolo v. Parsons Brinckerhoff, Inc.*, 2009 U.S. Dist. LEXIS 89136, at *8 (E.D. Va. Sept. 29, 2009) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1353 (11th Cir. 1982)). FLSA settlements in the Fourth Circuit will be approved

when the court determines that the settlement “is a fair and reasonable resolution of a bona fide dispute over FLSA provisions.” *Id. See also Davis v. Kayree, Inc.*, 2020 U.S. Dist. LEXIS 53909, at *5 (E.D. Va. Mar. 23, 2020) (“The Court, therefore, must determine whether the proposed settlement represents a fair and reasonable compromise of a bona fide dispute about the application of the FLSA to the case at hand.”).

In evaluating the fairness of settlements under the FLSA, this court has relied on six factors: (1) the extent of discovery that has taken place; (2) the state of the proceedings, including the complexity, expense, and likely duration of the litigation; (3) the absence of fraud or collusion in the settlement; (4) the experience of counsel who have represented the Plaintiffs; (5) the probability of Plaintiffs’ success on the merits; and (6) the amount of the settlement in relation to the potential recovery. *Devine v. City of Hampton, VA*, 2015 U.S. Dist. LEXIS 177155, at *38 (E.D. Va. 2015) (citing *Patel v. Barot*, 15 F. Supp. 3d 648, 656 (E.D. Va. 2014)).

Based on an analysis of these factors, as discussed below, the settlement is fair and reasonable, and the Parties jointly request that it be approved.

IV. APPLICATION OF THE FLSA FACTORS TO THE PROPOSED SETTLEMENT

As set forth below, and upon application of the factors considered by this Court, the Parties believe that the proposed settlement terms are fair and reasonable to both the Plaintiffs and the Defendant and should be approved. The settlement represents a good faith compromise of the parties’ *bona fide* dispute regarding the amount of back pay and other relief to which the Plaintiffs are entitled to under the FLSA and VGPA. This compromise was reached after arms-length negotiations between the Parties.

A. The Extent of Discovery

At the time of settlement, the Parties had exchanged in significant discovery as to the issue of liability. Specifically, the Parties exchanged written discovery including interrogatories, requests for production of documents, and requests for admissions, and also exchanged over 7,500 documents. Ex. 2, ¶ 22. In addition, the Defendants took the depositions of all eight Plaintiffs, and Plaintiffs took the depositions of three Fed. R. Civ. P. 30(b)(6) witnesses and one fact witness. *Id.* As such, the parties were in a position to “fairly evaluate the liability and financial aspects of [the] case.” *Lomascolo*, 2009 U.S. Dist. LEXIS 89136 at *31. This factor, therefore, weighs in favor of settlement approval.

B. The State of the Proceedings Including the Complexity and Expense of Further Proceedings

Absent a settlement, the Court and/or a jury would have to decide the following issues that affect the calculation of damages: (1) whether Plaintiffs are exempt from the overtime requirements of the FLSA; (2) whether the Defendant paid Plaintiffs overtime compensation at a rate of one and one-half times the regular rate for hours worked in excess of 40 in a workweek pursuant to 29 U.S.C. § 207(a); (3) whether Defendant counted the hours in which Plaintiffs were in a paid leave status toward the overtime threshold pursuant to Va. Code §§ 9.1-701; (4) whether Defendant paid Plaintiffs overtime at a rate of one and one-half times the regular rate when Plaintiffs took leave and worked additional unscheduled hours within the same week and worked in excess of the statutory maximum pursuant to Va. Code §§ 9.1-701; (5) whether Defendant paid Plaintiffs one and one-half times their regular rate of pay for all hours between their scheduled hours and the hourly maximum set forth in the FLSA pursuant to Va. Code § 9.1-701; (6) whether the Defendant can avoid the imposition of otherwise mandatory liquidated damages by proving that its actions were in good faith and objective under 29 U.S.C. §§ 216(b) and 260; and (7)

whether the Plaintiffs can prove that they are entitled to a third year of liability because they have demonstrated that the City's violation was willful under 29 U.S.C. § 255, which extends the statute of limitations for willful FLSA violations from two years to three years.

Given the various arguments on each side supporting each side's position, it is unclear how the Court or a jury would decide these issues and whether a jury trial would be necessary. At the time of settlement, both Parties had filed and fully briefed motions for summary judgment, and both Parties would likely appeal an adverse decision following summary judgment and/or a trial on any disputed liability issues. Accordingly, the expense of further proceedings is great, as is the complexity of the remaining issues, and "these proceedings advanced to a stage sufficient to permit the Parties and their counsel to obtain and review evidence, to evaluate their claims and defenses and to engage in informed arms-length settlement negotiations with the understanding that it would be a difficult and costly undertaking to proceed to the trial of this case." *Lomascolo*, 2009 U.S. Dist. LEXIS 89136 at *32. Therefore, this factor weighs in favor of settlement approval.

C. Possibility of Fraud or Collusion

"There is a presumption that no fraud or collusion occurred between counsel, in the absence of any evidence to the contrary." *Id.* Given the Parties' arms-length negotiations, there was no opportunity and no possibility for fraud or collusion, and the Parties agree that the Settlement Agreement was not the product of undue influence, duress, overreaching, collusion or intimidation. Ex. 2, ¶ 23. Counsel for the Parties represented their clients zealously and obtained what both sides consider to be an appropriate settlement. As such, this factor weighs in favor of settlement approval.

D. Plaintiffs' Counsel's Experience in Wage and Hour Litigation

Plaintiffs' Counsel are locally and nationally recognized leaders in the field of wage and hour law. Ex. 2, ¶¶ 2-12. The quality of representation is best demonstrated by the substantial benefit achieved for the Plaintiffs and the effective prosecution and resolution of the litigation. Indeed, the substantial recovery obtained for the Plaintiffs is the direct result of the significant efforts of highly skilled and specialized attorneys who possess great experience in the prosecution of complex, multi-plaintiff wage and hour litigation. *Id.* From the outset of the litigation, Plaintiffs' Counsel engaged in a concerted effort to obtain the maximum recovery for the Plaintiffs and committed considerable resources and time in the research, investigation, and prosecution of this case. As such, this factor also weighs in favor of settlement approval.

E. Probability of Plaintiffs' Success on the Merits

While Plaintiffs believe that their legal positions are strong, “[w]hatever 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. Oct. 18, 2010). The Parties dispute the primary liability issue—as demonstrated by their cross-motions for summary judgment as to liability (Dkts. 28, 31)—and two significant damages-related issues. The ultimate resolution of these issues through litigation could result in Plaintiffs failing on liability and, therefore, not recovering at all. Alternatively, even if the Plaintiffs succeed on liability, they could obtain only a two-year recovery period and no liquidated damages or obtain a three-year recovery period and full liquidated damages.

1. Plaintiffs' Exemption Status

Plaintiffs contend that the City has wrongfully misclassified them as exempt from the overtime requirements of the FLSA, and contend both the record evidence and Fourth Circuit case

law—namely, *Morrison v. County of Fairfax*, 826 F.3d 758 (4th Cir. 2016)—support their position. Defendant, on the other hand, contends that Plaintiffs are properly classified as exempt and that other Fourth Circuit case law—*Emmons v. City of Chesapeake*, 982 F.3d 245 (4th Cir. 2020)—supports its position. Given the Parties’ arguments and pending cross-motions for summary judgment with respect to three different job assignments (field captain, lifeguard captain, and logistics captain), as well as the Fourth Circuit case law on exemptions, appeal would be likely regardless of this Court’s decision on the Parties’ cross-motions and/or following a jury trial on liability, which would result in delay and additional expense. Accordingly, settlement now for \$120,000 in backpay to be paid within 30 days of court approval of the Settlement and a change in Plaintiffs’ exemption status going forward, effective August 26, 2021, is a fair and reasonable outcome for Plaintiffs.

2. *Liquidated Damages*

The FLSA provides that “[a]ny employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.” 29 U.S.C. §216(b) (emphasis added); *see also Lockwood v. Prince George’s County*, 2000 U.S. App. LEXIS 15302 at *17 (4th Cir. June 29, 2000) (upholding a finding that fire investigators were entitled to FLSA overtime and an award of liquidated damages, noting that liquidated damages were “the norm” for FLSA violations).

The only potential defense to an award of liquidated damages is if the “employer shows to the satisfaction of the court that the act or omission giving rise to [the violation of the FLSA] . . . was in good faith *and* that [the employer] had reasonable grounds for believing that [its] act or

omission was not a violation of the [FLSA].” 29 U.S.C. § 260 (emphasis added).¹ The burden of proving good faith under section 260 of the FLSA is on the employer, and the burden to do so is substantial. *Lockwood*, 2000 U.S. App. LEXIS 15302 at *18 (citing *Mayhew v. Wells*, 125 F.3d 216, 220 (4th Cir. 1997) (the employer bears a “plain and substantial burden”)); *see also Arasimowicz v. All Panel Systems*, 948 F. Supp. 2d 211, 226 (D. Conn. 2013) (the employer’s burden “is a difficult one”) (citations omitted).

While Plaintiffs contend that a full award of liquidated damages is mandatory on the record here, the City argues the opposite. The City contends that it acted reasonably and in good faith. Meanwhile, Plaintiffs contend that the City does not have sufficient evidence that it acted in good faith to avoid the imposition of liquidated damages. As set forth in the Parties’ motions for summary judgment, each side believes they have the better argument, and appeal would be likely regardless of this Court’s decision, which would result in delay and additional expense. Given the Parties’ significant monetary settlement over a three-year statute of limitations and the change in exemption status, coupled with the City’s strong arguments that it has satisfied the good faith defense to liquidated damages, a settlement without liquidated damages is reasonable.

3. Three-Year Statute of Limitations

The FLSA provides that non-willful violations are subject to a two-year statute of limitations. However, “when the [defendant’s] violation is willful, a three-year statute of limitations applies.” *Desmond v. PNGI Charles Town Gaming, LLC*, 630 F.3d 351, 357 (4th Cir. 2011) (citing 29 U.S.C. § 255(a)) (internal citations omitted). In 1988, the Supreme Court issued its decision in *McLaughlin v. Richland Shoe Company*, finding that an employer’s violation of the

¹ Under, the VGPA, if an employer can establish good faith, the employee remains entitled to interest at eight percent annually. *See* Va. Code Ann. § 9.1-704(A).

FLSA is willful within the meaning of Section 255(a) where it “either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.” 486 U.S. 128, 133 (1988). A violation is not willful if “an employer acts reasonably in determining its legal obligation.” *Id.* at 134. The Fourth Circuit has found that employers act recklessly when they have “notice, actual or constructive[,] of the existence and general requirements of the FLSA.” *Chao v. Self Pride, Inc.*, 232 Fed. Appx. 280, 287 (4th Cir. 2007).

Plaintiffs contend they could carry their burden of proof of a willful violation, based on the evidence obtained in discovery and as set forth in their motion for summary judgment, showing that the City showed reckless disregard for whether its conduct was prohibited by the FLSA. The City, however, contends the opposite in its motion for summary judgment and that the Plaintiffs are not able to prove a willful violation because it acted reasonably in determining its legal obligations. Based on the foregoing dispute, a settlement that pays a full three years of back pay (*i.e.*, back to November 25, 2017) and extends up to August 26, 2021, is a favorable outcome for the Plaintiffs as part of the negotiated settlement.

F. Amount of the Settlement in Relation to the Potential Recovery

Although the Parties have not formally exchanged payroll and employment data to permit them to calculate Plaintiffs’ damages with particularity, Plaintiffs’ estimated potential maximum recovery, available only if Plaintiffs won full liquidated damages and a three-year recovery period for a willful violation,² and assuming Plaintiffs’ damages estimates are accurate, is approximately

² An award of fees and expenses is mandatory under the FLSA to the prevailing plaintiff. 29 U.S.C. § 216(b). Under the settlement, Plaintiffs will recover \$80,000.00 in statutory fees and expenses from the Defendant. As set forth in the Faulman Declaration, from November 4, 2020, through the date of Plaintiffs’ post-discovery settlement demand, June 28, 2021, Plaintiffs’ fees and expenses totaled \$148,412.09. Of course, that amount increased as the Parties continued to negotiate and draft and file cross-motions for summary judgment; through August 16, 2021,

\$470,000.00. If Plaintiffs were to win on their FLSA and VGPA claims but lose on liquidated damages and the three-year statute of limitations, the recovery would be significantly less. Ex. 2, ¶ 27. Further, there was no guarantee that Plaintiffs would be successful on their exemption or VGPA claims, particularly given that there were multiple job assignments at issue—field captains, lifeguard captains, and logistics captains. Thus, the range of potential recovery was in flux.

The settlement (exclusive of statutory fees and expenses) is \$120,000.00, and, significantly, includes the City’s agreement to convert the Plaintiff EMS Captains to a non-exempt status as of August 26, 2021. *See* Ex. 1, ¶ 2.1. While this is not a complete victory in terms of monetary recovery, the settlement is fair, reasonable and adequate given the substantial risks in continuing to litigate the case and the delay and expense relating to obtaining final decisions on the parties’ summary judgment motions, trial, eventual damages discovery, and any putative appeals beyond the district court. For this reason, too, the settlement should be approved.

V. CONDITIONS AND TIMETABLE FOR FINALIZATION AND APPROVAL

Assuming the Court finds that the terms of the Settlement Agreement are fair and reasonable and in accordance with law, the City will issue payment of the Settlement Amount within 30 calendar days after the date that the Court enters an Order approving the Settlement Agreement. *See* Ex. 1, ¶ 2.3. The Parties also agree that, upon the Court’s order approving the Settlement Agreement, Plaintiffs’ claims asserted in the litigation will be dismissed with prejudice. *Id.*, ¶ 4.1.

Plaintiffs’ fees and expenses equaled \$206,591.59. Ex. 2, ¶ 16. The recording of time and services by McGillivray Steele Elkin LLP was done on a contemporaneous basis, and that information was accurately extracted from the firm’s billing records to prepare the summary fee listing that was provided to opposing counsel. *Id.* ¶ 18. All of the time and expenses were, in fact, necessarily and reasonably expended on behalf of the Plaintiffs in this case. *Id.* ¶ 19. Although the Plaintiffs agreed to pay a contingent fee of 25%, the Plaintiffs will not pay any contingent fee here given the statutory fees to be paid by Defendant pursuant to the Settlement Agreement. *Id.* ¶ 17.

VI. CONCLUSION

For all of the above reasons, the Parties believe this proposed settlement will successfully provide appropriate overtime compensation for Plaintiffs and adequately resolve their claims as asserted in the above-captioned case. Accordingly, the Parties respectfully submit that the proposed settlement is fair and reasonable and should be approved by the Court.

DATE: September 14, 2021

Respectfully submitted,

/s/ T. Reid Coploff

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Counsel for Plaintiffs

***SEEN AND CONSENTED TO WITHOUT
OBJECTION***

/s/ Gerald L. Harris

Mark D. Stiles (VSB No. 30683)
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Counsel for Defendant

CERTIFICATE OF SERVICE

This is to certify that on September 14, 2021, true and accurate copies of the foregoing document was electronically filed in this Court's CM/ECF system and served on the following counsel for Defendant:

Mark D. Stiles (VSB No. 30683)

City Attorney

Christopher S. Boynton (VSB No. 38501)

Deputy City Attorney

Gerald L. Harris (VSB No. 80446)

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/s/ T. Reid Coploff

T. Reid Coploff

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

DAVID BAUST, et al.,)	
)	
Plaintiffs,)	
)	Case No. 2:20-cv-00595-RBS-DEM
v.)	
)	JURY TRIAL DEMANDED
CITY OF VIRGINIA BEACH, VIRGINIA,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and among all the Parties in the above-captioned case, namely Plaintiffs, each of whom are identified on Exhibit A attached hereto, and who have consented to be Party-Plaintiffs in the above-captioned case, and the Defendant, the City of Virginia Beach, Virginia (the “City” or “Defendant”), and is based on the following:

I. RECITALS

1.1 Plaintiffs are eight (8) individuals employed by the City as EMS Captains. On November 25, 2020, they filed a complaint in the U.S. District Court for the Eastern District of Virginia seeking overtime pay pursuant to the Fair Labor Standards Act (“FLSA”) and the Virginia Gap Pay Act (“VGPA”), Va. Code Ann. §§ 9.1-701 *et seq.*

1.2 In the above-captioned case, Plaintiffs alleged that the City erroneously classified them as exempt from the FLSA, and therefore failed to properly pay them overtime compensation pursuant to the FLSA and VGPA. As a result, the Plaintiffs alleged they were entitled to backpay, liquidated damages, a three-year statute of limitations, and attorneys’ fees and costs. The City

denied Plaintiffs' allegations and alleged that Plaintiffs were properly classified pursuant to the FLSA and that Plaintiffs were not entitled to any form of relief whatsoever under FLSA or VGPA.

1.3 The Parties engaged in extensive discovery – taking multiple depositions pursuant to Rule 30(b)(6), a fact deposition, and the depositions of each of the eight plaintiffs, in addition to the exchange of thousands of pages of documents. Following discovery, both parties filed cross-motions for summary judgment on all issues. While the parties were briefing summary judgment and waiting for a decision, they began to participate in informal settlement discussions, ultimately reaching an agreement in principle on August 11, 2021.

1.4 The Parties have agreed to settle the matters in dispute between and among them pursuant to the terms of this Agreement. Specifically, the Parties and their counsel have considered that the interests of all concerned are best served by compromise, settlement, and dismissal of the Plaintiffs' FLSA and VGPA law claims. The Parties have concluded that the terms of this Agreement are fair, reasonable, adequate, and in the Parties' mutual best interests.

1.5 The Parties, through their counsel, by separate motion, will seek judicial approval of this Settlement Agreement. In the event the proposed settlement contained in this Agreement is not finally approved by the Court, this Agreement will no longer have any effect and the Parties will revert to their respective positions as of the date and time immediately prior to the execution of this Agreement.

II. PAYMENT AND DISTRIBUTION

2.1 In consideration for the terms, conditions, and promises in this Agreement, the City, in accordance with paragraph 2.2, shall pay or cause to be paid to Plaintiffs a total of \$200,000.00 (“the Settlement Amount”), and will convert the EMS Captains' classification status to non-exempt (with all of the benefits and rights that accrue as a result of that classification) by August 26, 2021.

2.2 The Settlement Amount will be divided and distributed to Plaintiffs as follows: (1) one check in the amount of \$80,000.00, payable to Plaintiffs' counsel, McGillivray Steele Elkin LLP, representing reimbursed attorneys' fees and expenses (the "Attorneys' Fees Amount"); Plaintiffs' counsel shall provide the City with a W-9 within two days after the Parties have executed this Agreement; and (2) a set of payroll checks payable to individual Plaintiffs, totaling a pre-tax amount of \$120,000.00 ("the Back Pay Amount"), which shall be distributed to individual Plaintiffs in accordance with the pre-tax amounts set forth in Exhibit A to this Agreement, to which the City shall be entitled to apply all applicable deductions and withholdings for that individual Plaintiff (the "Individual Back Pay Amounts Less Applicable Deductions"). These amounts are agreed to among the Parties to compromise, settle, and satisfy the Released Claims described in paragraph 3.1 below, liquidated damages related to the Released Claims, and all attorneys' fees and expenses related to the Released Claims.

2.3 The City shall issue payment of the Settlement Amount within thirty (30) calendar days after the date that the Court enters an Order approving this Agreement. After this 30-day period, interest shall accrue on any unpaid Settlement Amount at the rate set forth in 28 U.S.C. § 1961.

2.4 Plaintiffs' counsel McGillivray Steele Elkin LLP will be responsible for distributing payroll checks to each Plaintiff listed in Exhibit A his/her respective share of the Back Pay Amount.

2.5 The City will be responsible for forwarding each payroll check by sending to Plaintiffs' counsel the payroll checks for each Plaintiff's Individual Back Pay Amount Less Applicable Deductions and Withholdings, along with a document identifying all deductions and withholdings for each Plaintiff.

2.6 Plaintiffs and their counsel determined the method used to calculate the amounts to be paid to each Plaintiff for the Back Pay Amount.

2.7 Plaintiffs and their counsel, McGillivray Steele Elkin LLP, will defend, release, and hold the City harmless from any and all claims or causes of action arising from the allocation and distribution of the Settlement Amount.

2.8 The City shall reflect the Individual Back Pay Amounts on each Plaintiff's W-2 form as set forth in Exhibit A to this Agreement, Less Applicable Deductions.

III. RELEASE AND WAIVER OF CLAIMS

3.1 Plaintiffs hereby release, acquit, and forever discharge the Defendant from all claims set forth in the above-referenced action relating to time worked in the EMS Captain position through August 26, 2021. Plaintiffs agree and acknowledge that, with respect to such claims, Plaintiffs are waiving not only their right to recover money or other relief in any action that they might institute but also that they are waiving their right to recover money or other relief in any action that might be brought for such claims on their behalf by any other person or entity including, but not limited to, the Commonwealth of Virginia, the United States Department of Labor ("DOL"), or any other (U.S. or foreign) federal, state, or local agency or department.

3.2 All Plaintiffs shall be deemed to and shall have waived, released, discharged, and dismissed all Released Claims as set forth in Paragraph 3.1, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved or with regard to any facts which are now unknown to them.

3.3 All Plaintiffs understand and agree that, to the fullest extent permitted by law, they are precluded from filing or pursuing any legal claim or action of any kind against any entity at any time in the future, or with any federal, state or municipal court, tribunal or other authority arising out of the Released Claims.

3.4 All Plaintiffs agree that they are entering this Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Plaintiff affirms that he/she has not been coerced, threatened, or intimidated into agreeing to the terms of this Agreement, and he/she has been advised to consult with an attorney.

IV. DISMISSAL OF CLAIMS

4.1 Plaintiffs agree to dismissal of all claims asserted in the Lawsuit against the City with prejudice as specified in paragraph 3.1, upon the Parties' execution of the Settlement Agreement and the Court's Order approving the Settlement Agreement.

V. NO ADMISSION OF LIABILITY

5.1 The City does not admit any allegations made against it in the above-captioned lawsuit. Nothing contained in this Agreement, including the promise by the City to reclassify the Plaintiffs as FLSA non-exempt with all the rights and benefits that apply with that classification, shall be deemed an admission of liability or of any violation of any applicable law, rule, regulation, order, or contract of any kind. The City acknowledges that retaliation is prohibited under both the FLSA and the laws of the Commonwealth of Virginia.

VI. CONTINUED JURISDICTION

6.1 The U.S. District Court for the Eastern District of Virginia shall have continuing jurisdiction to construe, interpret and enforce the provisions of this Agreement, and to hear and adjudicate any dispute or litigation arising under this Agreement.

VII. PARTIES' AUTHORITY

7.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the parties hereto to the terms and conditions hereof. By signing the

settlement authorizations attached as Exhibit B, the individual Party Plaintiffs signify their full understanding, agreement, and acceptance of the Agreement.

7.2 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

7.3 Any signature made and transmitted by facsimile, email, or verified electronic signature program such as DocuSign for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement.

VIII. MUTUAL FULL COOPERATION

8.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

IX. MODIFICATION

9.1 This Agreement and its attachment may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court.

X. ENTIRE AGREEMENT

10.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other settlement-related document, the parties intend that this Agreement shall be controlling.

XI. CHOICE OF LAW/JURISDICTION

11.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the Commonwealth of Virginia, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the United States District Court for the Eastern District of Virginia. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any Party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

XII. VOIDING THE AGREEMENT

12.1 In the event this Agreement does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

McGILLIVARY STEELE ELKIN LLP
1101 Vermont Street N.W., Suite 1000
Washington, D.C. 20005

CITY OF VIRGINIA BEACH, VIRGINIA

By: 

T. Reid Coploff
Counsel for Plaintiffs

By: 

Mark D. Stiles
City Attorney

Dated: 9/7/21

Dated: 9/7/21

EXHIBIT A

First Name	Last Name	Settlement Amount
David	Baust	\$ 19,823.32
Elizabeth	Beatty	\$ 9,858.66
Michael	Brown	\$ 14,522.97
Nicholas	DiCaprio	\$ 14,522.97
William	Padgett	\$ 19,823.32
Erik	Svejda	\$ 19,823.32
Kaleigh	Zehr	\$ 9,222.61
Christopher	West	\$ 12,402.83
	TOTAL	\$ 120,000.00

Exhibit B

Settlement Authorization Form

I, David Baust, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$19,823.32. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:
David Baust
194A3E2A25BB446...

Plaintiff

8/26/2021

Date

Settlement Authorization Form

I, Elizabeth Beatty, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$9,858.66. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:
Elizabeth Beatty
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Plaintiff

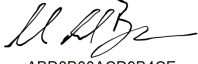
8/26/2021

Date

Settlement Authorization Form

I, Michael Brown, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$14,522.97. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:

ABD0B00ACD9B4CF

Plaintiff

8/25/2021

Date

Settlement Authorization Form

I, Nicholas DiCaprio, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$14,522.97. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:
Nicholas DiCaprio
B831D300CA4C49A

Plaintiff


8/25/2021

Date

Settlement Authorization Form

I, William Padgett, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$19,823.32. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:

AB5695886EB742A...

Plaintiff

8/25/2021

Date

Settlement Authorization Form

I, Erik Svejda, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$19,823.32. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:
Erik Svejda
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Plaintiff

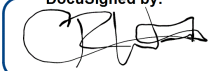
8/25/2021

Date

Settlement Authorization Form

I, Christopher West, hereby authorize my attorneys, McGillivary Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$12,402.83. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivary Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:

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Plaintiff

8/25/2021

Date

Settlement Authorization Form

I, Kaleigh Zehr, hereby authorize my attorneys, McGillivray Steele Elkin LLP, to settle my wage and hour and overtime claims against the City of Virginia Beach, Virginia for total payment of \$200,000. I understand that the amount comprises \$120,000 in backpay and \$80,000 in reimbursement of attorneys' fees and expenses, plus an agreement to re-classify my position as EMS Captain as non-exempt effective August 26, 2021. My individual gross settlement amount is \$9,222.61. I also acknowledge the following:

1. That I have been provided the settlement amounts for each Plaintiff;
2. That I have had the opportunity to discuss this settlement proposal with McGillivray Steele Elkin LLP, including the opportunity to ask questions and seek any additional information if I so desire;
3. That this settlement proposal represents a compromise of disputed claims, including claims for backpay, liquidated damages, and interest;
4. That I have the right to consult with an independent attorney about the terms of the settlement proposal; and
5. That this settlement proposal is not final unless approved by each Plaintiff, by the appropriate officials of the City of Virginia Beach, Virginia, and by the U.S. District Court for the Eastern District of Virginia.

DocuSigned by:
Kaleigh Zehr
A071E788C83D4D4

Plaintiff

8/25/2021

Date

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

DAVID BAUST, et al.,)	
)	
Plaintiffs,)	
)	Case No. 2:20-cv-00595-RBS-DEM
v.)	
)	JURY TRIAL DEMANDED
CITY OF VIRGINIA BEACH, VIRGINIA,)	
)	
Defendant.)	

DECLARATION OF SARA L. FAULMAN

I, Sara L. Faulman, do hereby affirm, under penalty of perjury, that the following representations contained in this Declaration are true and correct to the best of my personal knowledge:

1. I am a partner with the law firm of McGillivray Steele Elkin LLP (“MSE”). I have been an attorney with MSE since October 2007, and I became a partner in 2014. I serve as lead Plaintiffs’ Counsel (*pro hac vice*) in the above-referenced case, in conjunction with Virginia Counsel T. Reid Coploff and *pro hac vice* attorneys Sarah M. Block and Chelsea Williams, and submit this declaration in support of the Parties’ Joint Motion for Approval Settlement.

2. I have over 17 years of civil litigation experience with particular emphasis in wage and hour collective and class actions on behalf of employees in FLSA and other wage cases. I am a 2004 graduate of University of Michigan Law School. I am a member in good standing of the bars of New York (2005), the District of Columbia (2006), and Maryland (2021) as well as the U.S. Supreme Court (2010). I am also a member of the bars of the United States District Courts

for the District of Columbia, Southern District of New York, Eastern District of New York, and Colorado, the United States Court of Federal Claims, and the bars of four Federal Courts of Appeal.

3. I am the current Union Chair of the American Bar Association's Labor and Employment Law Section sub-committee on the Family and Medical Leave Act, part of the Committee on Federal Labor Standards Legislation, and have served as a track coordinator for the Litigation and Class Action track of the ABA's Annual Labor and Employment Law Conference since 2018.

4. I am regularly invited to speak on wage and hour panels and webinars for various legal associations. For example, I served as a panelist at the 2018 Annual ABA Labor and Employment Law CLE Conference on a panel discussion of Litigating Collective Actions and spoke as a panelist at the 2017 Annual ABA Labor and Employment Law CLE Conference on the best practices with respect to FLSA settlements. Some other panels and speaking engagements include:

a. Panelist for the AFL-CIO's 2019 LCC Mid-Career Lawyering Seminar.

b. Panelist for the 2015 Annual ABA Labor and Employment Law CLE Conference on the ethics issues in collective litigation of cases involving low-wage workers.

c. Webinar speaker for the American Law Institute CLE on FLSA "late breaking" developments, including *Encino Motorcars v. Navarro* and the Department of Labor's PAID program.

d. Webinar speaker for the ABA on wage and hour topics for new practitioners.

5. I am serving or have served as lead counsel or co-lead counsel in numerous multi-plaintiff FLSA actions. *See, e.g., Ormerod et al. v. Prince George's County, Maryland*, 1:20-cv-01864 (D. Md.) (FLSA action on behalf of fire inspectors); *Anderson, et al. v. United States*, 17-

CV-01199 (Fed. Cl.) (FLSA and Title 5 action on behalf of Security Guards and Police Officers employed with the National Guard Bureau); *Armwood, et al. v. United States*, 17-CV-01839 (Fed. Cl.) (FLSA action involving unpaid work and regular rate violations on behalf of Police Officers employed with the Office of Naval Intelligence); *Battaglini, et al. v. Cnty. of Arlington*, Case No. 16-CV-00990 (E.D. Va.) (FLSA case on behalf of fire captains); *Wilson, et al. v. City of Alexandria*, Case No. 16-CV-00990 (E.D. Va.) (FLSA case on behalf of fire captains).

6. In addition, I was co-counsel for the following multi-plaintiff lawsuits and collective actions involving enforcement of wage and hour laws: *Perry et al. v. City of New York*, Case No. 13-01015 (S.D.N.Y.) (FLSA collective action involving off the clock and regular rate claims of over 2600 EMTs and Paramedics); *Conzo et al. v. City of New York* and *Aarons et al. v. City of New York*, Case Nos. 05-CV-705 and 09-CV-10138 (S.D.N.Y.) (FLSA collective action involving off-the-clock and regular rate claims for EMTs and Paramedics; favorable settlements approved by court in 2011 following decisions on summary judgment); *Mullins et al. v. City of New York*, Case No. 04-CV-2979 (S.D.N.Y.) (collective action on behalf of New York Police Sergeants who were improperly classified); *Thompson, et al. v. DirecTV, et al.*, CA 3:07-cv-4112 (M.D. Tenn.) (FLSA collective action involving off-the-clock claims of 1400 technicians who installed DirecTV satellite dishes and equipment); *Morrison v. Fairfax Cnty., Va.*, Case No. 1:14-cv-0005 (FLSA case alleging fire captains are first responders entitled to overtime pay); *Abadeer, et al. v. Tyson*, C.A. No. 3:09-cv-00125 (M.D. Tenn.) (FLSA/Rule 23 hybrid for unpaid donning and doffing performed by hourly-paid meat processing workers at Tyson's Goodlettsville plant; \$7,750,000.00 settlement following summary judgment rulings).

7. I have also served as counsel for AFGE Locals and bargaining unit employees nationwide in FLSA grievances brought by the Locals against the Bureau of Prisons ("BOP")

involving the BOP's failure to pay overtime pay as required by the FLSA for work performed by correctional officers prior to and following their scheduled shifts and during unpaid meal periods, collecting millions of dollars for BOP workers.

8. Virginia counsel T. Reid Coploff joined MSE an associate attorney in 2010 and became a partner with the firm in January 2018. He is a 2009 graduate of the George Washington University Law School where he graduated with honors and was the 2009 recipient of the Laurence E. Siebel Memorial Award for Excellence in Labor and Employment. He is admitted to the bars of the state of Virginia and the District of Columbia and is admitted to practice before the United States Courts of Appeals for the District of Columbia and Federal Circuit; and the United States District Courts for the District of Columbia, District of Colorado, and Eastern District of Virginia; and the United States Court of Federal Claims.

9. Mr. Coploff received the 2015 Frances Perkins Public Service Award from the American Bar Association for pro bono work he performed, along with Gregory K. McGillivray, to assist in obtaining the release from prison in Vietnam of three labor activists who were unjustly imprisoned for organizing a strike at a factory.

10. Mr. Coploff has more than 12 years of civil litigation experience with particular emphasis in collective actions on behalf of employees in Fair Labor Standards Act ("FLSA") cases. In the last 12 years, among other things, he has specialized in pay cases arising under the FLSA and state wage and hour laws. He has participated in the successful litigation of more than 50 FLSA actions on behalf of employees in various proceedings throughout the country, including in U.S. federal courts and at arbitration, and has served as counsel in numerous multi-plaintiff actions that were resolved successfully and resulted in millions of dollars paid to the plaintiffs. *See, e.g., Stuart v. City of Portsmouth, Virginia*, 2:20-cv-449 (E.D. Va.) (settlement on behalf of single-role

paramedics for violations of the FLSA and VGPA); *Abad v. United States*, 1:14-cv-00444 (Fed. Cl.) (nationwide FLSA action on behalf of 6,108 border patrol agents which settled for \$80 million); *Abrego v. United States*, 1:14-cv-445 (Fed. Cl.) (nationwide FLSA action on behalf of 764 border patrol agent canine handlers which settled for \$34 million); *Ware v. T-Mobile*, 1:11-cv-0411 (M.D. Tenn.) (represented 6,328 call center workers in a nationwide FLSA collective action involving a systemic regular rate violation that resulted in a settlement); *Thompson, et al. v. DirecTV, et al.*, CA 3:07-cv-4112 (M.D. Tenn.) (FLSA collective action involving off the clock claims of 1,400 technicians who installed DirecTV satellite dishes and equipment; settlement approved by court in 2016 following decisions on summary judgment); *Morrison v. Fairfax County, VA*, Case No. 1:14-cv-0005 (settlement approved by Court in 2016 for \$7,850,000 following U.S. Court of Appeals for the Fourth Circuit ruling in plaintiffs' favor, holding that fire captains are first responders entitled to overtime pay); *Abadeer, et al. v. Tyson*, C.A. No. 3:09-cv-00125 (M.D. Tenn.) (FLSA/Rule 23 hybrid for unpaid donning and doffing performed by hourly-paid meat processing workers at Tyson's Goodlettsville, TN plant; \$7,750,000.00 settlement following summary judgment rulings); *Carton v. Sterling InfoSystems*, C.A. No. 1:10-cv-07827-RJS (S.D.N.Y.) (court-approved settlement for salespeople following minimal early discovery); *McManus v. City of Ceres*, Case No. 1:17-cv-00355-DAD-BAM (C.D. Cal.) (court-approved settlement in 2018 for 20 fire fighters in FLSA claim regarding miscalculation of the regular rate of pay); *Turner v. City of Flagstaff*, Case No: CV-18-08227-PCT-DWL (D. Ariz.) (court- approved settlement in 2019 for 31 fire fighters in FLSA claim regarding miscalculation of the regular rate of pay); *Jacobs v. City of Belmont*, Case No.: 4:18-cv-05823-HSG (N.D. Cal.) (court-approved settlement of \$446,000 in 2019 for 23 fire fighters in FLSA claim regarding miscalculation of the regular rate of pay); *Klinefelter v. City of Clearwater*, Case NO: 8:12-cv-01394-JSM-AEP (M.D.

Fla.) (court-approved settlement in 2013 for 159 fire fighters in FLSA claim regarding improper offsets from overtime owed); *Links v. City of San Diego*, Case No. 3:17-cv-00996-H-KSC (S.D. Cal.) (court-approved settlement in 2018 of more than \$300,000 for six plaintiff paramedics in FLSA claim regarding use of incorrect overtime threshold); *Agena v. United States*, Case No. 17-1186C (Fed. Claims) (settlement of \$150,000 in 2019 for FLSA misclassification case for four information technology specialists in Pearl Harbor, Hawaii); *Havrilla v. United States*, Case No. 14-204C (Fed. Claims) (settlement in 2017 after summary judgment of more than \$345,000 for five small arms repairers for performing uncompensated work during meal periods); *Becker v. United States*, Case No. 13-857C (Fed. Claims) (settlement of more than \$440,000 in 2016 in FLSA misclassification claim for seven police sergeants); *Adkins v. United States*, Case No. 15-995C (Fed. Claims) (nationwide FLSA action on behalf of 275 border patrol agent canine handlers which settled for \$6.7 million); *Antunez v. United States*, No. 1:16-cv-1378 (Fed. Claims) (nationwide FLSA action on behalf of 59 border patrol agent canine handlers which settled for \$884,000). As such, I have significant experience in multi-plaintiff wage and hour actions.

11. Sarah M. Block has been an associate attorney with the firm since June 2015, representing public employees and unions in nationwide FLSA, wage and hour, and First Amendment litigation and arbitration. She also provides general legal advice on labor relations and employment issues. Ms. Block graduated from The George Washington University Law School in 2014, where she served as the Senior Articles Editor of The Federal Circuit Bar Journal. She also holds a B.A. in History (with honors) and Spanish, *summa cum laude*, from Bucknell University. She is a member in good standing of the bars of the State of New York and the District of Columbia, as well as of the bars for the U.S. District Courts for the Southern District of New York, Eastern District of New York, Western District of New York, District of Colorado, District

of the District of Columbia, the Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit.

12. Chelsea Williams joined the firm as an Associate in August 2019. Prior to joining the firm, Ms. Williams served as a Judicial Law Clerk to the Hon. Tiffany H. Anderson at the Circuit Court for Prince George's County, and also worked as a Law Clerk at a firm representing building trade unions in labor relations and pension matters. Ms. Williams is a 2018 graduate of The George Washington University Law School, where she served as a student attorney in the Health Rights Clinic representing low income and retiring workings seeking to retain health coverage and pension benefits. Ms. Williams is a member in good standing of the bar for the District of Columbia and the U.S. District Court for the District of Columbia.

13. In my role as lead counsel, I engaged in correspondence, developing case strategy, participating in and overseeing discovery, drafting and opposing motions for summary judgment, and negotiating a settlement to resolve this matter.

14. During the past ten months of litigating this case as well as during prelitigation investigation, Plaintiffs' Counsel have not been paid for any of the work that they have performed. This uncompensated work has been substantial and includes, but is not limited to: (1) interviewing plaintiffs; (2) preparing and filing the Complaint; (3) reviewing documents; (4) engaging in extensive written discovery; (5) taking three Rule 30(b)(6) depositions as well as the deposition of a fact witness; (6) defending depositions of all eight Plaintiffs; (8) drafting Plaintiffs' motion for summary judgment and reply brief; (9) drafting an opposition to Defendant's motion for summary judgment; (10) preparing and exchanging settlement offers and counter-offers, in writing and verbally; (11) engaging and overseeing communications to and with the Plaintiffs about the status

of the case and settlement discussions; and (11) preparing and drafting settlement papers including the settlement agreement and the motion and memorandum in support of settlement approval.

15. On June 28, 2021, prior to the Parties' submission of summary judgment papers, Plaintiffs submitted a settlement demand to Defendant. Over the subsequent weeks and concurrently with the Parties' summary judgment briefing, the Parties exchanged numerous offers and counter-offers.

16. Through June 28, 2021, which was after the close of discovery but prior to the parties' summary judgment briefing, Plaintiffs' attorneys' fees and expenses totaled \$148,412.09. Of course, additional fees and expenses have accrued since that date related to the filing of cross-motions for summary judgment and settlement. Indeed, as of August 16, 2021, Plaintiffs' attorneys' fees and expenses equaled \$206,591.59.

17. Although the Plaintiffs agreed to pay a contingent fee of 25%, the Plaintiffs will not pay any contingent fee here given the statutory fees to be paid by Defendant pursuant to the Settlement Agreement.

18. The recording of time and services by McGillivary Steele Elkin LLP was done on a contemporaneous basis, and that information has been accurately extracted from the firm's billing records.

19. All of the time and expenses expended in this matter have been, in fact, necessarily and reasonably expended on behalf of the Plaintiffs in this case.

20. Our firm has a total of 16 attorneys and, for that reason, must carefully monitor the amount of time required by existing cases in determining whether to accept or pursue other matters. In addition, this case had the potential to continue to require substantial time and effort, particularly if the court were to deny both Parties' motions for summary judgment, which was a factor

considered by our firm in deciding what fee-generating cases and other matters it could, and could not, pursue during this time frame.

21. After weeks of arms-length negotiation, the Parties reached an agreement in principle and notified the Court as such on August 12, 2021. Thereafter, the Parties reduced the Settlement Agreement to writing.

22. At the time of settlement, the Parties had exchanged in significant discovery as to the issue of liability. Specifically, the Parties exchanged written discovery including interrogatories, requests for production of documents, and requests for admissions, and also exchanged over 7,500 documents. In addition, the Defendants took the depositions of all eight Plaintiffs, and Plaintiffs took the depositions of three Fed. R. Civ. P. 30(b)(6) witnesses and one fact witness.

23. There was no opportunity and no possibility for fraud or collusion, and the Parties agree that the Settlement Agreement was not the product of undue influence, duress, overreaching, collusion or intimidation.

24. Prior to reaching an agreement in principle, Plaintiffs' counsel spoke with all Plaintiffs, each of whom approved the settlement terms. In addition, each Plaintiff has signed a settlement authorization form authorizing Plaintiffs' Counsel to enter into the settlement.

25. The Plaintiffs have been given an opportunity to object to the settlement and, instead, each signed a settlement authorization form.

26. The Parties' negotiations were principled, with each side basing their offers and counter-offers on the evidence in the record, Plaintiffs' estimates of the backpay and damages owed on their claims under the FLSA and VGPA, and the Parties' own assessments of their

litigation risks, including the risks with respect to their cross-motions for summary judgment and trial.

27. Although the Parties have not formally exchanged payroll and employment data to permit them to calculate Plaintiffs' damages with particularity, Plaintiffs' estimated potential maximum recovery, available only if Plaintiffs won full liquidated damages and a three-year recovery period for a willful violation, and assuming Plaintiffs' damages estimates are accurate, is approximately \$470,000.00. If Plaintiffs were to win on their FLSA and VGPA claims but lose on liquidated damages and the three-year statute of limitations, the recovery would be significantly less.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Dated: September 14, 2021

/s/ Sara L. Faulman
Sara L. Faulman