



## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. The Parties' Efforts in Anticipation of Mediation.

Wake County is a political subdivision of the State of North Carolina. [D.E. 1 ¶ 20.] Named Plaintiff is currently employed by Defendant as a paramedic, and was previously employed by Defendant as a field training officer, through Defendant's Department of Emergency Medical Services ("EMS"). [Id. ¶ 18.]

On March 16, 2021, Named Plaintiff filed his Complaint against Defendant, asserting a single claim under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* [D.E. 1.] The Complaint, filed as a putative collective action on behalf of Named Plaintiff and similarly situated employees, alleged, in pertinent part, that Defendant miscalculated overtime premiums due to non-exempt EMS employees by counting all hours worked during a shift spanning two workweeks as hours worked in a single workweek. [Id. ¶¶ 3-5.] Specifically, since Defendant's FLSA workweek runs from midnight on Saturday until 11:59 p.m. on Friday, the Complaint alleged that when non-exempt EMS employees worked a shift that began on a Friday and concluded on a Saturday, their hours were only counted in the initial workweek, rather than both workweeks, resulting in overtime miscalculations. [Id.]

On March 26, 2021, Defendant executed a Waiver of Service, rendering its response to the Complaint due on or about May 24, 2021. In an effort to preserve time, expenses, and judicial resources, however, the Parties submitted their Joint Motion Requesting a Stay of Litigation to enable the Parties to participate in non-binding mediation prior to engaging in formal discovery and protracted litigation, which the Court granted on May 18, 2021. [D.E. 26, 27.] The Parties also agreed to toll the statute of limitations under the FLSA for any putative FLSA collective action

member who opted into the action by filing a written consent with the Court pursuant to pursuant to 29 U.S.C. § 216(b).

On July 21, 2021, after assessing the ramifications of N.C. Gen. Stat. § 153A-98, which statutorily prohibits Defendant from producing certain confidential personnel information requested by Named Plaintiff for individuals who had not yet opted into the action under 29 U.S.C. § 216(b), the Parties filed their Joint Motion to Lift Stay and Extend Case Deadlines, and Named Plaintiff filed his Unopposed Motion for Conditional Class Certification and Court-Supervised Notice Under 29 U.S.C. § 216(b) (“Unopposed Motion for Conditional Certification”). [D.E. 35, 36.] As stipulated by the Parties, the goal of the filings was to allow notice to be disseminated to putative collective action members, thereby allowing Defendant to produce personnel information for those who affirmatively chose to opt into this action and become parties thereto, while withholding confidential information for those who did not opt in. The Parties would then partake in mediation.

On July 26, 2021, the Court granted the Parties’ Joint Motion to Lift Stay and Extend Case Deadlines and Named Plaintiff’s Unopposed Motion for Conditional Certification. [D.E. 38, 39.] The following group of individuals were conditionally certified, as agreed by the Parties and granted by the Court:

All individuals who were or are employed by Defendant in Wake County, North Carolina, as full-time paramedics, emergency medical technicians, field training officers, or in similar positions, who worked the Late Peak or Night shifts on any Friday nights/Saturday mornings which overlapped workweeks at any time within the three (3) years prior to the date of commencement of this action, through the present, and who were not compensated at the appropriate one and one-half (1.5) of their regular hourly rate for all hours worked in excess of forty (40) per week

[D.E. 37, 39.]

On or around August 12, 2021, Plaintiffs' counsel disseminated Court-issued notice to putative collective action members, providing said individuals until October 11, 2021 to opt into the action pursuant to 29 U.S.C. § 216(b). The Parties stipulated that they would mediate the action on October 19, 2021, following the close of the opt-in period. Defendant produced scheduling records, time records, and pay records for all Plaintiffs, from March 16, 2018 through the present, in addition to relevant policies and emails, in anticipation of mediation. The Parties also partook in pre-mediation conferences on September 29 and October 13, 2021, during which the Parties openly discussed Defendant's methodology and processes for calculating alleged back pay damages for all Plaintiffs. The Parties thereafter requested and the Court ordered that the deadline to mediate be extended to December 10, 2021, as Plaintiffs' counsel continued to receive timely postmarked consent forms from putative collective action members through just days prior to the then-scheduled mediation, and Plaintiffs' counsel requested additional time to review the documents produced by Defendant, including for those individuals who filed their consent forms shortly before the then-scheduled mediation. [D.E. 48, 50.]

**B. The Parties Enter Into a Fair and Reasonable Settlement Agreement.**

On December 8, 2021, the Parties mediated the action, ultimately culminating in an agreement to settle all elements of Plaintiffs' alleged damages under the FLSA except for attorneys' fees and costs that Plaintiffs' counsel is eligible to recover. The total amount of the settlement agreed upon is \$297,121.90, which is comprised of \$144,810.95 in back wages, an equal amount in liquidated damages, and \$7,500 as a service award to Named Plaintiff. The amounts recoverable by each individual Plaintiff were precisely calculated based on their unique scheduling records, time records, and pay records. In a good faith effort to do right by its current and former

employees, Defendant has also voluntarily proffered over \$53,000 to the class as a result of extrapolation calculations utilized at mediation that have since been recalibrated.

According to Defendant's analysis of potential back wages owed in this action using all available records and data, the settlement reached provides Plaintiffs with all damages – including back wages dating back three years and liquidated damages in an equal amount – that they would have been eligible to recover in this action had they successfully litigated through trial, plus an additional amount exceeding \$53,000 as a result of extrapolation calculations used at mediation that Defendant opted to correct by erring in Plaintiffs' favor. The settlement reached is consistent with Defendant's principal objective since the inception of this action, which is to make things right for any eligible employees who may have not been compensated as required by law. Insofar as any Plaintiffs actually earned more than they were entitled to because of Defendant's alleged practices (for example, if an employee began a shift spanning two workweeks in a workweek that was scheduled to include overtime work, such that the employee would earn more in overtime premiums than he or she otherwise would have earned had a portion of the shift been allocated to the subsequent week), Defendant did not require those employees to pay such amounts back. Accordingly, Plaintiffs clearly obtained a fair, just, and reasonable recovery for their claim. Further, by reaching the settlement, the Parties conserved substantial time and expense that would have been required had the case been further litigated and/or advanced to trial.

The Parties agreed to brief attorneys' fees and costs separately in an effort to enable Plaintiffs to recover all sums allegedly due to them under the FLSA without implicating any conflicts or otherwise derailing their fair, just, and reasonable recovery based on attorneys' fees and costs alone. The Parties have agreed to fully allow the Court to determine, in its discretion, the amount of attorneys' fees and costs recoverable by Plaintiffs' counsel, and will brief the issue

in accordance with Rule 7.1 of the Local Civil Rules for the United States District Court for the Eastern District of North Carolina.

If the Settlement Agreement is approved, there will be no remaining matters in dispute between the Parties with regard to the claim raised in this action, notwithstanding the Parties' contemporaneous briefing on attorneys' fees and costs recoverable by Plaintiffs' counsel, and this action should be dismissed with prejudice.

### **III. ARGUMENT**

The FLSA provides that “[a]ny employer who violates [its] provisions . . . shall be liable to the employee . . . affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation.” 29 U.S.C. § 216(b). The FLSA’s provisions are mandatory and, except in two narrow circumstances, generally are not subject to bargaining, waiver, or modification by contract or private settlement. *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 706 (1945). The two limited circumstances in which FLSA claims may be compromised are (1) when the Secretary of Labor supervises the settlement pursuant to 29 U.S.C. § 216(c), or (2) when a court reviews and approves a settlement in a private action for back wages under 29 U.S.C. § 216(b). *Lynn’s Food Stores, Inc. v. United States, U.S. Dep’t of Labor*, 679 F.2d 1350, 1353 (11th Cir. 1982); *see also Taylor v. Progress Energy, Inc.*, 493 F.3d 454, 460-61, 463 (4th Cir. 2007), *reinstating* 415 F.3d 364 (4th Cir. 2005) (discussing the need for prior approval from court or Department of Labor of any waiver or release of FLSA claims, and stating that “there is a judicial prohibition against the unsupervised waiver or settlement of [FLSA] claims.”).

When reviewing a proposed settlement of an FLSA claim, a district court must “scrutiniz[e] the settlement for fairness” and decide whether the proposed settlement is a “fair and reasonable resolution of a bona fide dispute over FLSA provisions.” *Id.* at 1353, 1355. Where, as here, the

settlement proposed constitutes a reasonable compromise of *bona fide* disputes, approval of the settlement is appropriate. *See id.*

**A. Bona Fide Disputes Existed Between the Parties.**

*Bona fide* disputes existed between the Parties since the filing of this action. Though the nature of Defendant's pay practices were not in material dispute, the Parties differed as to the appropriate method of calculating potential back wages owed. In particular, Plaintiffs proposed calculating potential back wages owed based upon a formula involving the total number of workweeks affected, an assumption of the number of hours worked by Plaintiffs, and an extrapolation of Named Plaintiff's salary. Defendant, by contrast, proposed calculating potential back wages owed based upon an analysis of available scheduling records, time records, and pay records. The Parties also disagreed as to whether Defendant acted willfully under 29 U.S.C. § 255(a) and as to whether Defendant acted in good faith or with reasonable grounds under 29 U.S.C. § 216(b). These *bona fide* disputes remained outstanding as the Parties entered mediation.

**B. The Settlement is Fair and Reasonable.**

Courts consider an FLSA settlement fair and reasonable when the parties are represented by counsel, engage in arms-length settlement negotiations, and reasonably compromise in the settlement. *Lynn Food Stores, Ind.*, 679 F.2d at 1354. As with all other cases, public policy favors the voluntary settlement of FLSA cases. *Id.* (“[W]e allow the district court to approve the settlement in order to promote the policy of encouraging settlement of litigation”); *Matthews v. Cloud 10 Corp.*, No. 3:14-cv-00646-FDW-DSC, 2015 U.S. Dist. LEXIS 114586, \*6 (W.D.N.C. August 27, 2015) (“[T]here is a strong judicial policy in favor of settlements” in FLSA cases); *In re Dollar Gen. Stores FLSA Litig.*, No. 5:09-MD-15, 2011 U.S. Dist. LEXIS 98162, at \*9 (E.D.N.C. Aug. 22, 2011) (internal citations omitted) (“There is a presumption in favor of approving a settlement as fair”). Likewise, “[w]here negotiations are conducted at arms-length

and in the presence of both counsel and an experienced mediator, there is a presumption that the settlement they achieved meets the requirements of due process.” *Matthews* 2015 U.S. Dist. LEXIS 114586, at \*4.

The settlement reached in this matter easily meets the fair and reasonable standard. Plaintiffs and Defendant were represented by counsel, attended mediation with a highly experienced mediator, and engaged in arms-length settlement negotiations that ultimately culminated in an agreement to settle all elements of Plaintiffs’ alleged damages under the FLSA except for attorneys’ fees and costs. The Parties also reasonably compromised, as Plaintiffs fully accepted Defendant’s calculation of potential back wages owed, and Defendant agreed to pay back wage damages dating back three years and liquidated damages in an equal amount. Defendant also voluntarily proffered an amount exceeding \$53,000 as a result of extrapolation calculations used at mediation, which Defendant opted to correct by erring in Plaintiffs’ favor. To that end, not only did the Parties conserve substantial time and expense that would have been required had the case been further litigated and/or advanced to trial, but they also managed to do so without sacrificing Plaintiffs’ damages recovery, as is consistent with Defendant’s principal objective in this lawsuit of making things right for its employees.

Moreover, the Parties’ agreement to brief attorneys’ fees and costs separately further establishes that the settlement reached is fair and reasonable, as allowing the Court to determine the issue enables Plaintiffs to recover all sums allegedly due to them without regard to the earnings of their counsel. Relatedly, Plaintiffs will not be responsible for paying attorneys’ fees and costs out of the settlement payments they receive.

#### **IV. CONCLUSION**



The Parties entered into a fair and reasonable Settlement Agreement that resolves *bonafide* disputes under the FLSA. Accordingly, the Parties request that the Court enter an order granting the Joint Motion to Approve Settlement Agreement and dismissing this action with prejudice.

Respectfully submitted, this January 7, 2022

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