

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**DANIEL RUDELLE, on his own  
behalf and on behalf of those  
similarly situated,**

**CASE NO.: 3:14-cv-00873-MMH-MCR**

**Plaintiff,**

**vs.**

**FLAGLER COUNTY SHERIFF'S  
OFFICE and JAMES L. MANFRE  
Individually and in his official capacity  
as Sheriff of FLAGLER COUNTY  
SHERIFF'S OFFICE,**

**Defendant.** \_\_\_\_\_ /

**JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, DANIEL RUDELLE, on his own behalf and on behalf of those similarly situated, and Defendants, FLAGLER COUNTY SHERIFF'S OFFICE and JAMES L. MANFRE, Individually and in his official capacity as Sheriff of FLAGLER COUNTY SHERIFF'S OFFICE (collectively "the Parties"), by and through their undersigned attorneys, hereby file this Joint Motion to Approve Settlement Agreement and to Enter Final Order of Dismissal and, in support of the Joint Motion, state:

The Parties have reached a settlement in this case. In support of the settlement, the Parties attach hereto as Exhibit "A" the Settlement Agreement executed by the Parties, the Class Notice to putative Class Members as Exhibit "B," the Claim Form for putative class members as Exhibit "C," a spreadsheet with the settlement allocation for the Road

Patrol Deputy Class Members as Exhibit “D,” and a spreadsheet with the settlement allocation for the Correctional Officer Class Members as Exhibit “E.”

**I. PROCEDURAL HISTORY**

Plaintiff filed his Complaint in this case for unpaid overtime on July 24, 2014. *See* Doc. 1. Plaintiff filed his Amended Complaint in this case to include as Count II a claim for unpaid regular wages pursuant to Florida Statute on September 30, 2014. *See* Doc. 18. Plaintiff filed a Motion for Conditional Certification of this case on October 21, 2014. *See* Doc. 24. Plaintiff filed a Motion for Class Certification on October 21, 2014. *See* Doc. 25. On October 23, 2014, the Parties filed a Motion to Stay Proceedings in order to attend mediation. *See* Doc. 26. After being advised that the Parties sought to attempt to resolve the case on a class-wide basis, the Court entered an Order on October 27, 2014 allowing the Parties to attend mediation, which occurred on December 3, 2014. *See* Doc. 27. On December 3, 2014, the Parties attended mediation and reached a settlement of the alleged Fair Labor Standards Act (“FLSA”) overtime claims and State wage claims on a class-wide basis. The Parties now seek approval of the settlement and dismissal of this action with prejudice.

**II. LIABILITY DISPUTE**

This action was brought under the Fair Labor Standards Act (“FLSA”) to recover from Defendant overtime compensation, liquidated damages, and reasonable attorneys’ fees and costs. Although the Amended Complaint alleged unpaid wages under Florida Statutes, the Parties exchanged voluminous records that revealed that the Class Members alleged unpaid shift briefings, when they occurred, primarily resulted in unpaid overtime

hours worked. The records revealed that even if the Class Members attendance at shift briefings had resulted in unpaid regular hours worked, the damages to each Class Member would be nominal. Plaintiffs were Road Patrol Deputies and/or Correctional Officers employed by Defendants. During the relevant time period (July 2011 through July 2014) Defendants' Road Patrol Deputies allegedly attended fifteen (15) minute unpaid shift briefings at a frequency of two (2) times per bi-weekly pay period through April 14, 2014. The Correctional Officer Plaintiffs allegedly attended fifteen (15) minute unpaid shift briefings at a frequency of seven (7) times per bi-weekly pay period through November 12, 2013. As a result, Plaintiffs allegedly worked overtime hours without receiving proper overtime compensation during one or more workweeks.

### **III. SETTLEMENT OF FLSA CLAIMS**

Pursuant to the case law regarding settlement of claims arising under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et. seq.* ("FLSA"), there are two ways in which compromised claims under the FLSA can be settled and released by employees. First, § 216(c) of the FLSA allows employees to settle and waive their claims under the FLSA if the payment of unpaid wages by the employer to the employee is supervised by the Secretary of Labor. *See* 29 U.S.C. § 216(c); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). Second, in the context of a private lawsuit brought by an employee against an employer under § 216(b) of the FLSA, or a collective action by multiple employees to recover against an employer as outlined in § 216(b) of the FLSA, employees may settle and release FLSA claims against an employer if the parties present the district court with a proposed settlement and the district court enters a

stipulated judgment approving the fairness of the settlement. *Id*; see also *Sculte, Inc. v. Gandi*, 328 U.S. 108, 66 S. Ct. 925, 928 n.8, 90 L.Ed. 1114 (1946); *Jarrad v. Southeastern Shipbuilding Corp.*, 163 F.2d 960, 961 (5th Cir. 1947). In detailing the circumstances justifying court approval of an FLSA settlement in the litigation context, the Eleventh Circuit has stated as follows:

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

*Lynn's Food Stores*, 679 F.2d at 1354.

#### **IV. THE DISPUTED ISSUES IN THE ADVERSARIAL ACTION AT HAND**

In accordance with the legal principles outlined above, the Parties respectfully request that the Court approve the Parties' negotiated settlement of Plaintiffs' wage claims. The Parties agree that the instant adversarial action involves disputed factual and legal issues, including: (i) whether Plaintiffs, who are current/former Road Deputies and/or Correctional Officers (hereinafter collectively as "Deputies") for Defendants, were required to attend unpaid shift briefings that resulted in uncompensated overtime; (ii) the number of overtime hours worked by Plaintiffs during each workweek, if any; (iii)

whether Plaintiffs are entitled to recover liquidated damages; and (iv) whether a 2-year or 3-year statute of limitations applies to Plaintiffs' overtime claims.

Defendants, at all times, denied that Plaintiffs were not properly compensated for their overtime hours worked. Defendants also asserted that any alleged amount of unpaid overtime hours is nominal. In addition, even if Defendants had been found liable, they asserted good faith and reasonable grounds for any wage violations which could have precluded Plaintiffs from recovering liquidated damages (*i.e.*, double damages) under the FLSA (*see* 29 U.S.C. § 260). Finally, Defendants contend that even if they had been found liable, any violation was not willful and thus the two year statute of limitations would apply pursuant to 28 U.S.C. § 255(a) (2010).

After exchanging, reviewing, and analyzing more than 18,000 pages of documents, the Parties agreed to conduct mediation in the hopes of resolving the matter in the early stages of the litigation. The Parties reached a settlement at the mediation conducted on December 3, 2014. The Parties agree that the terms of settlement reached reflect a reasonable "give-and-take" on the major issues in dispute. Specifically, Defendants' agreement to make *any* payment to Plaintiffs reflects a significant concession (for purposes of settlement only). In return for that concession, the Parties then reached a reasonable compromise with respect to the number of overtime hours worked each week by Plaintiffs, ultimately agreeing to compensate Plaintiffs for a reasonable estimation of overtime hours worked for *each week wherein overtime hours could have been worked*. Notably, this means that Plaintiffs will not receive compensation under the agreement for workweeks during which they could not have

worked overtime hours, such as workweeks during which they were absent due to illness, personal reasons, vacation, or holiday, because in such weeks, Plaintiffs could not have worked overtime hours, even taking into consideration additional hours worked due to shift briefings. Although Defendants vehemently deny that the Class Members attendance at shift briefings resulted in *any* unpaid non-overtime hours worked, Defendants have allocated nominal compensation to each Class Member based on a pro rata formula to resolve Plaintiffs' State wage law claims. The Parties reviewed and assessed the potential risks of litigation with their respective counsel. The Parties agree that the negotiated terms of settlement, as summarized below, reflects a reasonable compromise of all disputed issues, and that the negotiated settlement is in the Parties' best interest.

Ultimately, the parties agreed that Defendants will pay Actual Damages of one half hour (.5) of overtime per pay period for all weeks worked by each Road Patrol Deputy Class Member that could have resulted in unpaid overtime hours worked during the period of April 4, 2012 to April 14, 2014, when the alleged unpaid shift briefings no longer occurred and one and three quarter hours (1.75) of overtime per pay period for all weeks worked by each Correctional Officer Class Member that could have<sup>1</sup> resulted in unpaid overtime hours worked during the period of April 4, 2012 to November 12, 2013, when the alleged unpaid shift briefings no longer occurred. In addition, Defendants will also pay an amount equal to one-half the Actual Damages figure that will represent Liquidated Damages. Defendants will pay this figure despite the fact that they dispute

owing *any* Liquidated Damages in this case. Finally, Defendants will pay each Class Member their pro rata share of the total amount of funds agreed to by the Parties to be allocated for any unpaid non-overtime hours worked. Defendants will pay this amount despite the fact that they dispute owing *any* non-overtime wages in this case. Considering the above-referenced formula, the Parties have reached a fair and reasonable agreement.

**V. MONETARY TERMS OF SETTLEMENT**

The Parties have agreed to settle Plaintiffs' claims in the captioned matter on the following basis:

**A. Common Fund Settlement**

Defendants will pay **\$183,310.72** to settle all Plaintiffs' Class member claims ("Settlement Fund"). Under no circumstances shall Defendants be obligated to pay an amount in excess of **\$183,310.72**. The Settlement Fund will be disbursed as follows:

1. The breakdown of the Settlement Fund is as follows:
  - i. \$79,174.22 for payments to the Plaintiff Class representing Actual Overtime Damages ("Plaintiff Class Fund") to be divided into two separate funds as follows:
    1. \$29,518.25 to Road Patrol Deputy Class Members, and
    2. \$49,655.97 to Correctional Officer Class Members; and
  - ii. \$39,587.22 for payments to the Plaintiff Class representing Liquidated Damages ("Plaintiff Class Fund") to be divided into two separate funds as follows:
    1. \$14,759.13 to Road Patrol Deputy Class Members, and
    2. \$24,828.09 to Correctional Officer Class Members; and

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<sup>1</sup> The records revealed that the briefings occurred approximately 49% of the time with respect to Road Patrol Deputies and approximately 54% of the time with respect to Correctional Officers.

- iii. \$17,049.28 for payments to the Plaintiff Class representing alleged State Wage Damages (“Plaintiff Class Fund”) to be divided into two separate funds as follows:
  - 1. \$6,356.42 to Road Patrol Deputy Class Members, and
  - 2. \$10,692.86 to Correctional Officer Class Members; and
- iv. \$2,500.00 payment to Daniel Ruddell as an incentive payment; and
- v. \$45,000.00 for attorneys’ fees, administrative and taxable costs, as explained below; and

2. To receive the settlement compensation set forth in paragraph (A)(1), Class members must submit a claim form and release agreement which will be sent with the Notice within forty-five (45) days of receiving the claim form and release. Within fifteen (15) days following the expiration of the time period to file a valid claim form and release, Defendants shall provide Plaintiffs’ counsel with all checks to be provided to each individual Class member who has submitted a claim form and release agreement. Within ten (10) days following receipt of the checks to be provided to the individual Class Members, Plaintiffs’ counsel shall mail the checks to the individual Class Members. Each member of the Class is eligible to receive a pro rata share of the settlement based on the ratio of weeks worked as a Deputy, with the pro rata share to be no greater than the amount it would be if every putative plaintiff elects to participate. All Plaintiffs who opt into this settlement and who are not dismissed without prejudice shall execute the Settlement Agreement and Release attached as Exhibit C prior to receipt of any of the settlement monies. Any and all sums attributable to putative class members who do not opt-in to this lawsuit shall irrevocably revert back to Defendants.

**B. Incentive Payments**



Also included in the total settlement amount, Plaintiff Ruddell, will receive an incentive payment in the amount of \$2,500.00 for his part as named plaintiff, class liaison, and the extra time and expense put in by him to assist Plaintiffs' counsel in this matter, including but not limited to, his travel time and expense incurred in attending a class mediation in Orlando, Florida. Mr. Ruddell has incurred personal risk by being the named Plaintiff and being the first Plaintiff to step forward and pursue his rights to overtime. Mr. Ruddell and Plaintiffs' counsel communicated extensively throughout the litigation and during the settlement process. He has been and was the "point person" for many class members throughout the case. His role in this matter was crucial to the success of settling this matter. Defendants agree with the incentive payment and believe it to be a fair part of this settlement.

Incentive awards are not uncommon in class action cases and are within the discretion of the court. In calculating incentive fees, courts consider:

the existence of special circumstances including the personal risk (if any) incurred by the plaintiff applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and of course, the ultimate recovery.

*Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y.1997) (citing *Yap v. Sumitomo Corp. of America*, 1991 WL 29112 (S.D.N.Y.1991); *Green v. Battery Park City Auth.*, 1987 WL 11698 (S.D.N.Y.1987); *Block v. Revlon*, 1985 WL 56614, 37 Fair Empl. Cas. (BNA) 1327 (S.D.N.Y.1985); *Wire Serv. Guild v. Associated Press*, No. 78-4502, No. 79-0991, slip op. (S.D.N.Y.1983)).

In employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the

class as a whole, undertaken the risk of adverse actions by the employer or co-workers. *Su v. Electronic Arts, Inc.*, 2006 WL 4792780 No. 6:05-cv-131-Orl-28JGG (M.D.Fla. 2006); *See also Roberts v. Texaco, Inc.*, 979 F. Supp. at 201 (citations omitted); *see also Women's Comm. for Equal Employment Opportunity v. National Broad. Co.*, 76 F.R.D. at 182 (“plaintiffs here ... undertook significant obligations, perhaps at some risk to job security and good will with co-workers, resulting in broad-ranging benefits to the class”); *Lepinske v. Mercedes Homes, Inc.*, 6:07-cv-915-Orl-31DAB (July 7, 2008) (Presnell, J.).

### **C. Attorney’s Fees & Costs**

Plaintiffs’ counsel will receive \$45,000.00 representing attorneys’ fees, administrative costs and taxable costs. In this case, Plaintiffs’ counsel filed a Complaint, Amended Complaint, Motion for Conditional Certification and Motion for Class Certification seeking certification of a class of all Deputies who worked for the Defendants within the past three to five years. Defendants provided more than 18,000 pages of documents which Plaintiffs’ counsel reviewed, analyzed and compiled into class data to be used for purposes of assessing potential wage exposure, calculating potential damages, and for attendance at the all-day mediation held on December 3, 2014. The total amount of fees and costs shall also include all costs of administration of the settlement (which shall be the responsibility of Plaintiffs’ Counsel), including but not limited to, mailing out the class notice and claim form to all putative class members, being the point of contact for all putative class members who have questions regarding the settlement terms and documents received, receiving and maintaining a record of all claim forms provided by class members seeking to join the class, providing such data to

Defendants at the end of the claims period, and receiving and mailing out all checks to the class members who submitted a timely claim form and release.

Throughout the settlement negotiations and with the aid of the mediator, Plaintiffs' counsel negotiated attorney's fees and costs separate from the fund so as to avoid any compromise to Plaintiffs' recovery and pursuant to *Bonetti v. Embarq Management Co.*, 2007 WL 2371407, Case No.: 6:07-cv-01335-ORL-31-GKJ, Doc. 53 (M.D. Fla. August 4, 2009); *See also King v. My Online Neighborhood, Inc.*, 2007 WL 737575, at \*4 (M.D.Fla. Mar.7, 2007); *McGinnis v. Taylor Morrison, Inc.*, 3:09-CV-01204-J-32MCR (M.D.Fla. Jan. 23, 2010). *Jacobs, et al. v. Orts Services, Inc.*, 2010 WL 497382 (M.D.Fla. February 8, 2010); *Whitson v. Chicks Ahoy, Inc.*, 2010 WL 497640 (M.D.Fla. February 8, 2010. In accordance with *Bonetti*, Plaintiffs' recovery has been negotiated and settled independent of the Plaintiffs' claims so that the attorney's fees and costs do not compromise Plaintiffs' recovery.

**D. Timing of Payment**

1. Payments to Plaintiff for the incentive payment referenced in section A(1)(iii) shall be provided to Plaintiff's counsel within twenty (20) days of the Court's Order approving the settlement.

2. Payment to Plaintiffs' counsel, Morgan & Morgan, P.A., for attorney fees, costs and class administrative costs in the amount of \$45,000.00 shall be provided to Plaintiffs' counsel within twenty (20) days of the Court's Order approving the settlement.

3. Payments to Plaintiffs' Class members who respond to the Class Notice by sending in their claim forms within the forty-five (45) day claim period, which will allow

three (3) extra days for mailing, will be paid within twenty (20) days after the period to return a Claim Form has expired and in accordance with Paragraph V(A)(3) of this Motion.

This method of settlement was recently approved in the Middle District of Florida in *Joiner v. Groupware, Inc.*, Case No.: 1:10-CV-01388-RLV, Docs. 87, 88 (M.D.Fla. Nov. 4, 2010). A similar settlement format was also approved in *Kimmel et al. v. Venture Construction Co.*, Case No.: 1:10-CV-01388-RLV, Docs. 69, 70 (N.D.Ga. Nov. 4, 2010).

**VI. CONCLUSION**

The settlement in the instant matter is fair and was structured in a similar manner as many FLSA settlements previously approved in this circuit. The Parties jointly and respectfully request that this Court approve the settlement agreement between the Parties, authorize the distribution of the Class Notice of Settlement attached as Exhibit B and Class Claim Form attached as Exhibit C to the Settlement Agreement, and dismiss this action with prejudice. The Parties agree that this is a fair settlement and that it is in both of their best interests to resolve this matter, pay the settled claims, and dismiss this matter.

Respectfully submitted this 16<sup>th</sup> day of February, 2015.

**s/ KIMBERLY DE ARCANGELIS**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the above and foregoing of Plaintiff, has been served to: Mark E. Levitt, Esquire, email: [mlevitt@anblaw.com](mailto:mlevitt@anblaw.com) and Marc A. Sugerman, email: [msugerman@anblaw.com](mailto:msugerman@anblaw.com); ALLEN, NORTON & BLUE, P.A., 1477 W. Fairbanks Ave., Suite 100, Winter Park, FL 32789, using the CM/ECF filing system, which I understand will send a notice of electronic filing this 16<sup>th</sup> day of February 2015.

**/s/ KIMBERLY DE ARCANGELIS**

Kimberly De Arcangelis, Esq.