

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDRE COOPER, <i>et. al.</i>)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 1:23-cv-00471-CFC
)	
CITY OF WILMINGTON, DELAWARE,)	
)	
Defendant.)	
)	
)	

JOINT MOTION FOR SETTLEMENT APPROVAL

MARKOWITZ & RICHMAN

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Dated: April 1, 2024

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. CLAIMS ASSERTED AND PROCEDURAL HISTORY	1
III. TERMS OF THE PROPOSED SETTLEMENT	2
IV. APPLICABLE FACTORS FOR APPROVING FLSA SETTLEMENTS	3
V. APPLICATION OF THE FLSA FACTORS TO THE PROPOSED SETTLEMENT AGREEMENT	4
A. The Settlement Resolves a Bona Fide Dispute	4
B. The Settlement Terms are Fair and Reasonable and Do Not Frustrate the Purposes of the FLSA	5
C. The Attorneys' Fees Requested Are Reasonable	8
VI. CONCLUSION	11

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>Altnor v. Preferred Freezer Servs.</i> , 197 F. Supp. 3d 746 (E.D. Pa. 2016)	6
<i>Balgowan v. New Jersey</i> , 115 F.3d 214 (3d Cir. 1997)	6
<i>Bellan v. Cap. Blue Cross</i> , 2022 U.S. Dist. LEXIS 43025 (M.D. Pa. Mar. 10, 2022)	9
<i>Bettger v. Crossmark, Inc.</i> , 2015 U.S. Dist. LEXIS 7213 (M.D. Pa. Jan. 22, 2015)	4
<i>Brumley v. Camin Cargo Control, Inc.</i> , 2012 U.S. Dist. LEXIS 20599 (D.N.J. Mar. 26, 2012)	8
<i>Carpenter v. Allpoints Courier Serv.</i> , 2018 U.S. Dist. LEXIS 155000 (D.N.J. 2018)	7
<i>Clarke v. Flik Int’s Corp.</i> , 2020 U.S. Dist. LEXIS 26306, (D.N.J. Feb. 14, 2020)	4
<i>Gunter v. Ridgewood Energy Corp.</i> , 223 F.3d 190 (3d Cir. 2000)	8
<i>Horton v. Right Turn Supply, LLC</i> , 455 F. Supp. 3d 202 (W.D. Pa. 2020)	4
<i>Howard v. Phila. Hous. Auth.</i> , 197 F. Supp. 3d 773 (E.D. Pa. 2016)	4, 7, 10
<i>In re AT & T Corp.</i> , 455 F.3d 160 (3d Cir. 2006)	8
<i>Keller v. TD Bank, N.A.</i> , 2014 U.S. Dist. LEXIS 155889 (E.D. Pa. Nov. 4, 2014)	5, 8, 9, 10
<i>Kraus v. PA Fit II, LLC</i> , 155 F. Supp. 3d 516 (E.D. Pa. 2016)	5, 6

Lynn's Food Stores, Inc. v. U.S.,
679 F.2d 1350 (11th Cir. 1982) 4, 5

Mabry v. Hildebrandt,
2015 U.S. Dist. LEXIS 112137 (E.D. Pa. Aug. 24, 2015) 8, 9

Morales v. Unique Beginning Caterers Ltd. Liab. Co.,
2021 U.S. Dist. LEXIS 236744 (D.N.J. Dec. 10, 2021) 9

O'Mara v. Creative Waste Sols., LLC,
2020 U.S. Dist. LEXIS 86496 (E.D. Pa. May 14, 2020) 9

Rabnenou v. Dayan Foods, Ltd.,
2017 U.S. Dist. LEXIS 122055 (D.N.J. Aug. 3, 2017) 6

Rouse v. Comcast Corp.,
2015 U.S. Dist. LEXIS 49347 (E.D. Pa. Apr. 14, 2015) 11

Singleton v. First Student Mgmt. LLC,
2014 U.S. Dist. LEXIS 108427 (D.N.J. Aug. 6, 2014) 4, 7, 8

Solkoff v. Pa. State Univ.,
435 F. Supp. 3d 646 (E.D. Pa. 2020) 4, 6, 7

Sullivan v. DB Investments, Inc.,
667 F.3d 273 (3d Cir. 2011) 8

Wehr v. Burroughs Corp.,
619 F.3d 276 (3d Cir. 1980) 11

STATUTES AND REGULATIONS

28 U.S.C. § 1961 3

29 U.S.C. §§ 201 *et seq.* *passim*

I. INTRODUCTION

Plaintiffs, Andre Cooper, *et al.*, and Defendant, City of Wilmington, Delaware (“Defendant” or “City”), by and through counsel, hereby jointly move this Court to enter an Order approving their Settlement Agreement and dismissing the above-captioned litigation with prejudice. As set forth below, the Parties have reached a Settlement Agreement that will resolve all claims in the instant lawsuit, which alleges that the City failed to pay overtime to Plaintiffs during time periods when they were employed by the City in the position of Battalion Chief in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”). Because the proposed Settlement Agreement satisfies the criteria for approval of an FLSA settlement in the Third Circuit, the Parties 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 hereto as **Exhibit 1** and the declaration of Plaintiffs’ Counsel, Lauren P. McDermott, is attached hereto as **Exhibit 2**.

II. CLAIMS ASSERTED AND PROCEDURAL HISTORY

Plaintiffs are or were formerly employed by the Defendant, the City of Wilmington, in the Wilmington Fire Department in the position of Battalion Chief. Plaintiffs filed their Complaint on April 28, 2023. *See* Dkt 1. In their Complaint, Plaintiffs alleged that the City failed to properly compensate them with overtime pay at one and one-half times their regular rate of pay for all hours worked in excess of the applicable overtime threshold—212 hours for a 28-day work period—under the Fair Labor Standards Act (FLSA). *See* Dkt. 1. After the Complaint was filed, the City reached

out to Plaintiffs' counsel regarding the lawsuit. The City denied that it violated the FLSA and asserted numerous defenses including, without limitation, that Plaintiffs are properly classified as exempt from the overtime requirements of the FLSA and a good faith defense to liquidated damages. The City also 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 to Plaintiffs.

Nevertheless, the Parties agreed to exchange relevant documents and discuss whether the matter could be settled. Most significantly, Defendant produced Plaintiffs' timekeeping and payroll data to Plaintiffs, and, after a thorough analysis, Plaintiffs shared their damages calculations with Defendant. Defendant similarly shared its calculation of potential damages. Thereafter, the Parties exchanged offers and counteroffers and participated in multiple conferences to discuss the Parties' proposals and damages calculations. Ex. 2, ¶ 11. During these negotiations, the parties jointly submitted motions to the Court to extend the deadline for Defendant to file its Answer. On March 11, 2024, the Parties reached an agreement in principle to resolve the case.

Following the Parties' agreement to a settlement in principle, Plaintiffs' Counsel sent each Plaintiff correspondence informing them of the terms of the settlement and providing information about each individual Plaintiff's damages award. Ex. 2, ¶ 16. The correspondence also provided Plaintiffs with information about how to ask questions about the settlement as well as how to submit any objections to the settlement. *Id.* No Plaintiff contacted Plaintiffs' Counsel to object to the settlement or its terms. *Id.*

III. 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 \$459,695.36 to resolve the Plaintiffs' FLSA claims. Ex. 1, ¶ 2.1. Specifically, this amount reflects \$215,015.93 in backpay, \$215,015.93 in liquidated damages, and \$29,663.50 in reimbursed attorneys' fees and expenses. *Id.* ¶ 2.2. The backpay and liquidated damages amounts will be distributed to Plaintiffs in accordance with Exhibit A to the Settlement Agreement. *Id.* The amounts to be distributed to each Plaintiff were determined by Plaintiffs and their counsel, based on the payroll and timekeeping data provided by Defendants for each individual Plaintiff. *Id.* ¶ 2.6. The City will apply all applicable deductions and withholdings to the backpay amount set forth in Exhibit A for each individual Plaintiff. *Id.* ¶ 2.2(1). In addition, the City agreed to convert the FLSA classification status of Battalion Chiefs to non-exempt, with all of the rights and benefits that accrue as a result of that classification, effective July 25, 2023. *Id.* ¶ 2.1.

In consideration of Defendant's payment of the Settlement Amount and agreement to re-classify Plaintiffs as non-exempt, Plaintiffs have agreed to a limited release, covering only the Fair Labor Standards Act claims set forth in the action relating to overtime pay for time worked in the Battalion Chief position through July 25, 2023. *Id.* ¶ 3.1. The Plaintiffs also agreed to dismiss all claims asserted in the lawsuit with prejudice upon the Parties' execution of the Settlement Agreement and the Court's Order approving the Settlement Agreement. *Id.* ¶ 4.1.

If the Court enters an Order approving the Settlement Agreement, the City will issue payment of the Settlement Amount within 45 calendar days of the Court's approval of the Settlement Agreement, with interest to accrue on any unpaid Settlement Amount after the agreed 45-day period at the rate set forth in 28 U.S.C. § 1961. *Id.* ¶ 2.3.

IV. APPLICABLE FACTORS FOR APPROVING FLSA SETTLEMENTS

Although the Third Circuit has not explicitly opined on whether judicial approval is required of FLSA settlements reached, district courts nevertheless "abide by the principle that

settlement of collective action FLSA claims under 29 U.S.C. § 216(b) requires court approval.” *Clarke v. Flik Int’s Corp.*, 2020 U.S. Dist. LEXIS 26306, *1-2 (D.N.J. Feb. 14, 2020). *See also Horton v. Right Turn Supply, LLC*, 455 F. Supp. 3d 202, 204 (W.D. Pa. 2020). Thus, 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. 29 U.S.C. § 216(b); *Howard v. Phila. Hous. Auth.*, 197 F. Supp. 3d 773, 776 (E.D. Pa. 2016).

When reviewing FLSA settlements, district courts within the Third Circuit have adopted the guidance set forth by the Eleventh Circuit in *Lynn’s Food Stores, Inc. v. U.S.*, 679 F.2d 1350 (11th Cir. 1982), meaning that a court will approve a settlement agreement after determining: (1) that the settlement resolves a bona fide dispute, and (2) that the settlement is a fair and reasonable resolution of the FLSA claims. *Clarke*, 2020 U.S. Dist. LEXIS 26306 at *4-5; *Bettger v. Crossmark, Inc.*, 2015 U.S. Dist. LEXIS 7213, *9 (M.D. Pa. Jan. 22, 2015). In addition, a court will approve a settlement if it “furthers the FLSA’s implementation in the workplace.” *Solkoff v. Pa. State Univ.*, 435 F. Supp. 3d 646, 652 (E.D. Pa. 2020). The court must also analyze the reasonableness of attorneys’ fees requested under 29 U.S.C. § 216(b). *Singleton v. First Student Mgmt. LLC*, 2014 U.S. Dist. LEXIS 108427, *21-22 (D.N.J. Aug. 6, 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.

V. APPLICATION OF THE FLSA FACTORS TO THE PROPOSED SETTLEMENT AGREEMENT

A. The Settlement Resolves a Bona Fide Dispute

A proposed settlement agreement resolves a bona fide dispute where the terms of the settlement “reflect a reasonable compromise over issues, such as...back wages, that are actually in dispute” and are not a “mere waiver of statutory rights brought about by an employer’s

overreaching.” *Lynn’s Food Stores, Inc.*, 679 F.2d at 1355. *See also Kraus v. PA Fit II, LLC*, 155 F. Supp. 3d 516, 530 (E.D. Pa. 2016) (citing *Lynn’s Food Stores*). “In essence, for a bona fide dispute to exist, the dispute must fall within the contours of the FLSA and there must be evidence of the defendant’s intent to reject or actual rejection of that claim when it is presented.” *Kraus*, 155 F. Supp. 3d at 531.

Here, the Parties’ Settlement Agreement resolves a bona fide dispute because the Parties disagree as to the City’s liability under the FLSA, and the appropriateness of the City’s classification of Battalion Chiefs as exempt from the overtime requirements of the FLSA. During the course of settlement negotiations, the City made clear its position that it does not agree with Plaintiffs’ assertion that it violated the FLSA by classifying Plaintiffs as exempt and refusing to pay them overtime at a time and one-half rate for all hours worked in excess of the applicable FLSA threshold, or 212-hours in a 28-day work period. As explained herein, because the settlement represents a “reasonable compromise” of this issue, the Settlement Agreement should be approved.

B. The Settlement Terms are Fair and Reasonable and Do Not Frustrate the Purposes of the FLSA

The Parties’ Settlement Agreement—which provides almost full monetary relief, contains no confidentiality clause, and includes only a limited release of FLSA claims—reflects a fair and reasonable resolution of the Plaintiffs’ claims in the case and does not frustrate the purposes of the FLSA, so should be approved. *See, e.g., Keller v. TD Bank, N.A.*, 2014 U.S. Dist. LEXIS 155889, *27 (E.D. Pa. Nov. 4, 2014) (Restrepo, J.) (approving FLSA settlement as fair and reasonable “where the Plaintiffs brought suit in federal court over allegedly uncompensated time and the settlement is designed to provide due compensation”).

First, the negotiated settlement amount demonstrates the fairness of the Parties' agreement. As one court has explained, "[t]he fairness of the settlement primarily depends on the amount of the settlement compared to the amount the plaintiff claims in FLSA damages." *Solkoff*, 435 F. Supp. 3d at 654-55; *See also Kraus*, 155 F. Supp. 3d at 532 ("The Court finds the compensation terms fair and reasonable because the settlement amount is significant in light of Plaintiff's claim."). Here, after the agreed-upon contingency fee is taken, the settlement amount represents 100% of the backpay that Plaintiffs would be owed at trial over the full, three-year statute of limitations, plus liquidated damages equal to 64% of the backpay. Ex. 2, ¶ 20. In addition, the City has agreed to re-classify Battalion Chiefs as non-exempt effective July 25, 2023, which neither a jury nor the Court would have authority to award as a part of the litigation. *Id.* ¶ 21. *See also, e.g., Balgowan v. New Jersey*, 115 F.3d 214, 218 (3d Cir. 1997) (there is no private right of action for injunctive relief under the FLSA). Thus, the settlement amount awards Plaintiffs almost full monetary relief plus future relief not available from the Court, while simultaneously avoiding additional expenditure of resources by both parties and the Court that would be required to continue litigating the case—namely those costs related to discovery, dispositive motions, and trial. *See, e.g., Rabnenou v. Dayan Foods, Ltd.*, 2017 U.S. Dist. LEXIS 122055, *3 (D.N.J. Aug. 3, 2017) (finding settlement in FLSA exemption case fair and reasonable where plaintiff will receive an amount higher than his calculated unpaid overtime pay).

Second, there is no confidentiality clause in the agreement. While courts have routinely held that "confidentiality clauses in FLSA settlement agreements frustrate the purpose of the FLSA by facilitating information asymmetry that hinders FLSA enforcement," there is no such obstacle to settlement approval here. *Solkoff*, 435 F. Supp. 3d at 658; *See also Altnor v. Preferred Freezer Servs.*, 197 F. Supp. 3d 746, 764 (E.D. Pa. 2016) ("The proposed Settlement Agreement here does

not contain a confidentiality clause, thereby avoiding a common basis for rejecting a proposed FLSA collective settlement.”).

Third, the Parties have agreed to a limited release which only includes the FLSA claims alleged in this lawsuit “relating to overtime pay for time worked in the Battalion Chief position through July 25, 2023.” Ex. 1, ¶ 3.1. Courts in the Third Circuit have routinely found broad releases to frustrate the purposes of the FLSA “by allowing employers to use their superior bargaining power to disadvantage FLSA claimants[;]” here, the Plaintiffs will release *only* the FLSA claims asserted in the lawsuit up until the date of their reclassification to a non-exempt status. *Solkoff*, 435 F. Supp. 3d at 659-60. *See also Howard*, 197 F. Supp. 3d at 780 (“The release of an unknown claim based on a separate statutory cause of action frustrates the fairness of the benefit otherwise provided under the proposed Settlement Agreement.”). As such, the agreed-upon release of claims is consistent with the purpose of the FLSA because it does not provide the City with any benefit beyond fair resolution of the claims at issue in the case. *See, e.g., Singleton*, 2014 U.S. Dist. LEXIS 108427 at *24 (approving release limited to claims related to the specific litigation and not incorporating any state or FLSA wage and hour claims that a plaintiff alleges subsequent to the settlement approval).

Thus, the settlement agreement should be approved as it provides plaintiffs with significant monetary and non-monetary relief and “furthers the purposes of the FLSA, containing a limited release and no confidentiality agreement while fostering the public interest in vindicating wage and hour rights of workers.” *Carpenter v. Allpoints Courier Serv.*, 2018 U.S. Dist. LEXIS 155000, *2 (D.N.J. 2018).

C. The Attorneys' Fees Requested Are Reasonable

Under the FLSA, a Court “shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorneys’ fee to be paid by the defendant, and costs of the action.” 29 U.S.C. § 216(b). Thus, an award of attorneys’ fees and costs to prevailing plaintiffs is mandatory. “[J]udicial approval of attorneys’ fees is necessary to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement.” *Singleton*, 2014 U.S. Dist. LEXIS 108427, at *26-27 (quoting *Brumley v. Camin Cargo Control, Inc.*, 2012 U.S. Dist. LEXIS 20599, *29 (D.N.J. Mar. 26, 2012)).

The percentage-of-the-recovery method, which allows a district court judge to award attorneys’ fees as a percentage of the total settlement recovered, is the prevailing method used in the Third Circuit to determine the reasonableness of an attorneys’ fee request. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir. 2011); *Mabry v. Hildebrandt*, 2015 U.S. Dist. LEXIS 112137, *9 (E.D. Pa. Aug. 24, 2015) (citing *Keller*). Factors to be considered in reviewing an attorneys’ fee award under this method include: “(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; and (7) the awards in similar cases.” *Keller*, 2014 U.S. Dist. LEXIS 155889 at *38 (quoting *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). The factors “need not be applied in a formulaic way” and “in certain cases, one factor may outweigh the rest.” *In re AT & T Corp.*, 455 F.3d 160, 166 (3d Cir. 2006). An analysis of the factors in this case weighs in favor of approving the requested attorneys’ fees.

Here, each of the Plaintiffs entered into a private fee agreement to pay a 25% contingency fee. Ex. 2, ¶ 5. Thus, the total amount of attorneys' fees that will be awarded to Plaintiffs' Counsel is \$107,507.97. Significantly, the Settlement Agreement provides that—separate and apart from payments to Plaintiffs—Defendant will, pursuant to Section 216(b) of the FLSA, pay \$29,663.50 in attorneys' fees and expenses. Ex. 1, ¶ 2.1(2). Ex. 2, ¶ 6. As such, the amount actually paid by Plaintiffs as a contingency fee is less than the amount they agreed to at the outset of the case, equal to approximately 18 percent. *Id.* ¶ 5. There have been no objections to the proposed amount of attorneys' fees and costs. *Id.* ¶ 16.

Courts in the Third Circuit routinely approve percentage-of-the-recovery awards in FLSA cases ranging from 20-45% of the settlement amount. *Mabry*, 2015 U.S. Dist. LEXIS 112137 at *9 (collecting cases); *Keller*, 2014 U.S. Dist. LEXIS 155889 at *39 (in approving an FLSA settlement, noting that “In the Third Circuit, courts have approved as reasonable attorneys' fees awards ranging from approximately 19% to 45% of the common fund.”). The attorneys' fees requested by Plaintiffs' Counsel in this case equal to 25% of the total settlement falls within the lower end of the general range of attorneys' fee awards that the Third Circuit has found to be reasonable. *See, e.g., O'Mara v. Creative Waste Sols., LLC*, 2020 U.S. Dist. LEXIS 86496, *14 (E.D. Pa. May 14, 2020) (approving fee request in FLSA settlement where percentage of the recovery proposed—a recovery of 28.6%—“falls at the lower end of this generally accepted range.”). *See also Bellan v. Cap. Blue Cross*, 2022 U.S. Dist. LEXIS 43025, *22 (M.D. Pa. Mar. 10, 2022) (finding requested fee of one-third of the total settlement to be reasonable, noting that the fee request “is in keeping with awards in other FLSA collective actions within the Third Circuit”); *Morales v. Unique Beginning Caterers Ltd. Liab. Co.*, 2021 U.S. Dist. LEXIS 236744, *8 (D.N.J. Dec. 10, 2021) (“courts of this Circuit routinely approve attorneys' fees of around 30

percent of settlement funds in FLSA cases”); *Howard*, 197 F. Supp. 3d at 782 (approving a 32.4% fee award in private FLSA action as fair and reasonable). In addition, as noted above, Plaintiffs will actually pay less than the 25% contingent fee they initially agreed to given Defendant’s agreement to separately pay \$29,663.50 in attorneys’ fees and expenses. Ex. 2, ¶¶ 25-26. All of the Plaintiffs were informed, in writing, of the settlement terms including the amount of the requested attorneys’ fees, and none of the Plaintiffs have objected. *Id.*, ¶ 16.

Further, as described in the attached Declaration of Lauren P. McDermott, Plaintiffs were represented by counsel with considerable litigation experience. See Ex. 2, ¶¶ 1-4. Indeed, lead Plaintiffs’ Counsel Lauren P. McDermott has successfully litigated cases in federal court for approximately 13 years and is currently litigating multiple actions similar to the instant case challenging fire fighters’ misclassification as exempt from the overtime requirements of the FLSA across the country. *Id.* Plaintiffs’ Counsel also represented Plaintiffs competently, diligently, and efficiently through the entire litigation. Notably, Plaintiffs’ Counsel worked collaboratively with counsel for Defendant to reach an early resolution of the case, conducting a targeted exchange of payroll and timekeeping data to permit educated settlement negotiations and to avoid unnecessary litigation expense. *Id.* ¶ 13. Additionally, Plaintiffs’ Counsel took this case on a contingent basis and have not yet been paid for their work in representing Plaintiffs, undertaking significant risk of non-payment. *Keller*, 2014 U.S. Dist. LEXIS 155889 at *41-42 (risk that Plaintiffs’ claims would fail in a case taken on contingent basis weighs in favor of awarding requested fees). For these reasons, the requested attorneys’ fees are reasonable and should be approved.

In this litigation, Plaintiffs’ Counsel has incurred over \$452.00 in out-of-pocket expenses. Ex. 2, ¶ 7. Plaintiffs are entitled to reimbursement of litigation expenses from the settlement fund. See 29 U.S.C § 216(b). Plaintiffs’ Counsel’s expenses, including filing fees, fees associated with

service of process, and electronic research fees, were reasonable and necessary to counsel's representation of Plaintiffs. *See, e.g., Rouse v. Comcast Corp.*, 2015 U.S. Dist. LEXIS 49347, *35 (E.D. Pa. Apr. 14, 2015) (awarding costs and expenses to cover, among other things, filing and service fees and photocopying costs); *See also Wehr v. Burroughs Corp.*, 619 F.3d 276, 285 (3d Cir. 1980) (awarding costs for computer-aided legal research, noting that “ Use of computer-aided legal research such as LEXIS, or WESTLAW, or similar systems, is certainly reasonable, if not essential, in contemporary legal practice.”).

Accordingly, attorneys' fees and expenses in the amount of \$107,507.97, equal to 25% of the settlement amount, is reasonable and should be approved by this Court.

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.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDRE COOPER, <i>et. al.</i>)	
)	
Plaintiffs,)	
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v.)	C.A. No. 1:23-cv-00471-CFC
)	
CITY OF WILMINGTON, DELAWARE,)	
)	
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 Wilmington, Delaware (the “City” or “Defendant”), and is based on the following:

I. RECITALS

1.1 Plaintiffs are eleven (11) individuals employed, or formerly employed, by the City as Battalion Chiefs. On April 28, 2023, Plaintiffs filed a complaint in the U.S. District Court for the District of Delaware seeking overtime pay pursuant to the Fair Labor Standards Act (“FLSA”).

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. 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.

1.3 The Parties ultimately reached an agreement in principle to resolve the case on March 11, 2024.

1.4 The Parties have agreed to resolve 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 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 \$459,695.36 ("the Settlement Amount"), and will convert the Battalion Chief classification status to non-exempt, with all of the benefits and rights that accrue as a result of that classification, effective July 25, 2023.

2.2 The Settlement Amount will be divided and distributed to Plaintiffs as follows:

- (1) a set of payroll checks and/or stubs for direct deposit payments, regular payroll checks for active (employed) Plaintiffs, and separate payroll checks for

inactive (no longer employed) Plaintiffs, made Payable to each Plaintiff in accordance with Exhibit A to this Agreement and totaling a pre-tax amount of \$215,015.93 (the “Backpay Amount”), less all applicable deductions and withholdings for each individual Plaintiff. Plaintiffs will notify the City if they wish to defer any additional amounts to applicable benefit plans prior to distribution. With respect to all Plaintiffs who are no longer employed by the City as of the effective date of this Agreement, the Defendant shall utilize the last known withholding amount for each former employee; and

(2) one check in the total amount of \$244,679.43 representing \$215,015.93 in liquidated damages and \$29,663.50 in reimbursed attorneys’ fees and expenses (the “Lump Sum Amount”), payable to Plaintiffs’ Counsel Mooney, Green, Saindon, Murphy & Welch, P.C. for distribution to the Plaintiffs. Plaintiffs’ counsel shall provide the City with a W-9 within three (3) days after the Parties have executed this Agreement. In accordance with Paragraph 2.4 below and pursuant to the individual retainer agreements signed by all Plaintiffs, Plaintiffs’ counsel will deduct their litigation expenses and contingency attorney fee equal to twenty-five percent (25%) of the Settlement Amount prior to distributing to all Plaintiffs their liquidated damages share of the Lump Sum Amount.

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 forty-five (45) calendar days after the date that the Court enters an Order approving this Agreement. After this

45- day period, interest shall accrue on any unpaid Settlement Amount at the rate set forth in 28 U.S.C. § 1961.

2.4 Plaintiffs have entered into individual agreements with Plaintiffs' Counsel. These agreements provide for a contingency attorney fee amount equal to twenty-five percent (25%) of the Settlement Amount calculated after expenses are deducted from the Settlement Amount. Plaintiffs and their counsel are solely responsible for determining the contingency attorney fee applicable to this Agreement. Plaintiffs' counsel shall deduct their contingency attorney fee from the Lump Sum Amount in accordance with Plaintiffs' individual agreements with Plaintiffs' Counsel.

2.5 Defendant will forward the Lump Sum Amount payable to Mooney, Green, Saindon, Murphy and Welch, P.C., who will be responsible for distributing to each Plaintiff listed in Exhibit A his/her respective share of the Lump Sum Amount.

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 and his/her share of the Lump Sum Amount.

2.7 Plaintiffs and their counsel, Mooney, Green, Saindon, Murphy & Welch, P.C., 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. Plaintiffs' counsel will be responsible for distributing 1099-MISC forms to the Plaintiff for their share of the Lump Sum Amount.

III. RELEASE AND WAIVER OF CLAIMS

3.1 Plaintiffs hereby release, acquit, and forever discharge the Defendant from all Fair Labor Standards Act claims set forth in the above-referenced action relating to overtime pay for time worked in the Battalion Chief position through July 25, 2023 (“Released Claims”). 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 state of Delaware, 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 and has had the opportunity to consult with an attorney with respect to the terms of this Agreement.

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 the FLSA.

VI. CONTINUED JURISDICTION

6.1 The U.S. District Court for the District of Delaware 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. The Parties acknowledge that the Court may schedule a settlement approval conference in this matter, and that to object to the settlement, a Plaintiff must either appear in person at the settlement approval conference, or by telephone if the Court conducts a telephonic settlement conference, to voice their objection. A Plaintiff who does not object to the Settlement Agreement does not have to attend the

settlement approval conference or take any action to approve the settlement and/or otherwise indicate his/her agreement to the terms of the settlement.

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 state of Delaware, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the United States District Court for the District of Delaware. 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.

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

**MOONEY, GREEN, SAINDON,
MURPHY & WELCH, P.C.**

DocuSigned by:

Lauren McDermott

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Lauren P. McDermott
1920 L Street NW, STE 400
Washington, DC 20036
Telephone: (202) 783-0010
Facsimile: (202) 783-6088
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Attorneys for Plaintiffs

Dated:

**YOUNG CONAWAY STARGATT
& TAYLOR, LLP**

DocuSigned by:

Michael P. Stafford

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Michael P. Stafford, Esquire (No. 4461)
Elise K. Wolpert, Esq. (No. 6343)
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Attorneys for Defendant

Dated:

MARKOWITZ & RICHMAN

DocuSigned by:

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Attorneys for Plaintiffs

Dated: 3/22/2024

EXHIBIT A

#	Last Name	First Name	Gross Backpay	Gross Liquidated Damages	Total Gross Backpay and Liquidated Damages
1	Cooper	Andre	\$ 12,262.51	\$ 12,262.51	\$ 24,525.02
2	Danner	Richard	\$ 12,749.15	\$ 12,749.15	\$ 25,498.30
3	Gregg	Brandon	\$ 48,968.52	\$ 48,968.52	\$ 97,937.04
4	Harris	Michael	\$ 38,327.37	\$ 38,327.37	\$ 76,654.74
5	Hoban	John	\$ 8,557.70	\$ 8,557.70	\$ 17,115.40
6	Kirlin	Dennis	\$ 53,888.65	\$ 53,888.65	\$ 107,777.30
7	Perkins	Timothy	\$ 10,157.71	\$ 10,157.71	\$ 20,315.42
8	Pryor	Robert	\$ 478.77	\$ 478.77	\$ 957.54
9	Schaal	Michael	\$ 258.97	\$ 258.97	\$ 517.94
10	Todd	Demetrius	\$ 27,212.88	\$ 27,212.88	\$ 54,425.76
11	Zipfel	Carl	\$ 2,153.70	\$ 2,153.70	\$ 4,307.40
			\$215,015.93	\$ 215,015.93	\$ 430,031.86

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDRE COOPER, <i>et. al.</i>)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 1:23-cv-00471-CFC
)	
CITY OF WILMINGTON, DELAWARE,)	
)	
Defendant.)	
)	
)	

DECLARATION OF LAUREN P. MCDERMOTT

I, Lauren P. McDermott, 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 Mooney, Green, Saindon, Murphy & Welch, P.C. (“Mooney Green”). I have been an attorney with Mooney Green since November 2011, and became a partner in 2018. I serve as lead Plaintiffs’ Counsel (pro hac vice) in the above-referenced case, in conjunction with Delaware Counsel Claiborne Newlin of Markowitz & Richman. I submit this Declaration in support of the Parties’ Joint Motion for Settlement Approval.

2. I have approximately 13 years of civil litigation experience. I am a 2011 graduate of Catholic University Columbus School of Law. I am a member in good standing of the bars of New Jersey (2011), New York (2012), and the District of Columbia (2012). I am also a member of the Second Circuit, Fourth Circuit, and D.C Circuit Courts of Appeals.

3. I lead Mooney Green’s Fair Labor Standards Act (“FLSA”) practice. Mooney Green serves as the General Counsel to the International Association of Fire Fighters (“IAFF”).

As such, Mooney Green and its attorneys regularly represent fire fighters in wage and hour litigation.

4. I am serving as lead counsel, co-lead counsel, or co-counsel in numerous multi-plaintiff FLSA actions. *See e.g., Sullivan et. al., v. Sarasota County*, 8:22-cv-0165-SPF (M.D. Fla.)(FLSA misclassification action on behalf of Battalion Chiefs); *Benitez et.al. v. City of Orlando*, 6:23-cv-01553-CEM (M.D. Fla.)(misclassification action on behalf of District Chiefs); *Bentley et. al. v. Cobb County*, 1:23-cv-01827-TWT (N.D. Ga.)(misclassification lawsuit on behalf of Battalion Chiefs); *Adinolfi et. al. v. City of Milford*, 3:23-cv-00766-KAD (D. Conn.) (FLSA action on behalf of fire fighters); *Keeley Abram et. al., v. City of Los Angeles*, 2:23-cv-095675-WLH-JPR (C.D. Ca.)(FLSA action on behalf of fire fighters); *Nicholas Acedo et. al., v. City of Los Angeles*, 2:23-cv-04482-SB-E (C.D. Ca.)(FLSA action on behalf of fire fighters).

5. Plaintiffs entered into a private fee arrangement to pay a contingent fee of 25% in this case. However, the Plaintiffs will pay a reduced contingent fee here given the statutory fees to be paid by Defendant pursuant to the Settlement Agreement. The contingency fee, after the expenses are reimbursed, will be equal to approximately 18% of the Settlement.

6. Pursuant to the Settlement Agreement, the City has agreed to pay \$29,663.50 in attorneys' fees and costs to fully and finally resolve this case.

7. All of the time and expenses expended in this matter have been, in fact, necessarily and reasonably expended on behalf of Plaintiffs in this case. Plaintiffs Counsel has incurred over \$452.00 in out-of-pocket expenses.

8. Mooney Green has a total of 21 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 Parties were to engage in written discovery, depositions, motions for summary judgment and trial. This 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.

9. In my role as lead counsel, I engaged in correspondence with plaintiffs, opposing counsel and the court, developing case strategy, participating in and overseeing the initial exchange of documents, and negotiating a settlement to resolve this matter.

10. During the past eleven 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 produced; (4) preparing and exchanging settlement offers and counter-offers, in writing and verbally; (5) analyzing payroll and timekeeping data to prepare damages calculations; (6) engaging and overseeing communications to and with Plaintiffs about the status of the case and settlement discussions; and (7) preparing and drafting settlement papers including the settlement agreement and the motion and memorandum in support of settlement approval.

11. Plaintiffs submitted a settlement demand to Defendant. Over the subsequent weeks, the Parties exchanged numerous offers and counter-offers and participated in multiple conferences to discuss the Parties' offers and damages calculations.

12. After significant arm's-length negotiation, the Parties reached an agreement in principle on March 11, 2024. Thereafter, the Parties reduced the Settlement Agreement to writing. Under the Settlement Agreement, the City will pay a total of \$459,695.36 to resolve the Plaintiffs' FLSA claims; this amount reflects \$215,015.93 in backpay, \$215,015.93 in liquidated damages, and \$29,663.50 in reimbursed attorneys' fees and expenses.

13. At the time of settlement, the Parties had exchanged initial targeted documents to permit them to engage in meaningful settlement negotiations and to avoid unnecessary litigation expense. Specifically, Defendant produced Plaintiffs' payroll and timekeeping data, and Plaintiffs produced prepared and damages calculations.

14. 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.

15. Prior to reaching an agreement in principle, Plaintiffs' counsel spoke with a Plaintiffs, who approved of the terms of the Settlement Agreement.

16. Thereafter, Plaintiffs' Counsel sent each Plaintiff correspondence informing them of the terms of the Settlement Agreement and including a chart setting for each individual Plaintiffs' damages award. This correspondence also provided Plaintiffs with information about questions or submitting objections to the settlement. To date, no Plaintiff has contacted Plaintiffs' counsel to object to the settlement.

17. 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 the Parties' own assessments of their litigation risks.

18. The Settlement Amount will be distributed to Plaintiffs based on their actual damages as calculated by Plaintiffs' Counsel and an additional amount as liquidated damages, with the minimum total award being \$517.94. Half of the monies will be allocated as backpay and half will be allocated as liquidated damages.

19. Based on the payroll and timekeeping data produced by Defendant, 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 \$430,031.86. If Plaintiffs were to win on their FLSA claims but lose on liquidated damages and the three-year statute of limitations, the recovery would be significantly less.

20. Significantly, after the contingency fee is taken, the Parties' settlement represents 100% of the backpay owed to Plaintiffs over a three-year recovery period, plus an additional amount as liquidated damages equal to 64% of backpay.

21. In addition, the City has agreed to re-classify Battalion Chiefs as non-exempt effective July 25, 2023, which neither a jury nor the Court would have authority to award as part of the litigation.

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

Dated: March 28, 2024

/s/ Lauren P. McDermott
Lauren P. McDermott