

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, <i>et al.</i>	:	
	:	
v.	:	3:15-cv-02307-MEM
	:	
SMITH MANAGEMENT AND	:	
CONSULTING, LLC.	:	
	:	

---

**PLAINTIFFS’ UNOPPOSED MOTION FOR  
APPROVAL OF COLLECTIVE ACTION SETTLEMENT**

Plaintiffs respectfully move for judicial approval of the settlement of this collective action lawsuit. *See DiClemente v. Adams Outdoor Advertising, Inc.*, 2016 U.S. Dist. LEXIS 88394, \*5 (M.D. Pa. July 7, 2016) (Mannion, J.). The pertinent settlement terms and procedures are described in the accompanying “Settlement Agreement and Release” (“Agreement”) (Doc. 35-1). As discussed in Plaintiffs’ brief, the settlement deserves judicial approval because it represents a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act.

**WHEREFORE**, Plaintiffs respectfully request that the Court sign and enter the accompanying proposed order.

Date: March 1, 2017

/s/ R. Andrew Santillo  
Peter Winebrake  
R. Andrew Santillo  
Mark J. Gottesfeld  
Winebrake & Santillo, LLC  
715 Twining Road, Suite 211

Dresher, PA 19025  
(215) 884-2491

Don J. Foty\*  
KENNEDY HODGES, L.L.P.  
711 W. Alabama Street  
Houston, Texas 77006  
(713) 523-0001

\*admitted *pro hac vice*

*For Plaintiffs*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, et al.

v.

SMITH MANAGEMENT AND CONSULTING,  
LLC.

---

:  
:  
: 3:15-cv-02307-MEM  
:  
:  
:  
:  
:  
:

**SETTLEMENT AGREEMENT AND RELEASE**

Originating Plaintiff (as defined below) and Defendant (as defined below) STIPULATE and AGREE as follows:

**1. Definitions.** The following terms will have the following meanings:

“**Action**” means the above-captioned class action lawsuit.

“**Agreement**” means this “Settlement Agreement and Release.”

“**Approval Date**” means the date on which the Court enters a final order approving the Settlement as fair, reasonable, and adequate under the Fair Labor Standards Act, following the Court’s ruling on any objections to the Settlement filed by Plaintiffs in this Action, assuming no appeal is filed.

“**Approval Motion**” means the motion to be filed by Plaintiffs’ Counsel attaching a copy of the Agreement and requesting that the Court enter a final order approving the Settlement as fair, reasonable, and adequate under the Fair Labor Standards Act.

“**Court**” means the United States District Court for the Middle District of Pennsylvania.

“**Defendant**” means Smith Management and Consulting, LLC.

“**Defense Counsel**” means Duane Morris LLP.

“**Originating Plaintiff**” means Francis Crevatas.

**“Parties”** refers jointly to Plaintiffs and Defendant.

**“Payout Amount”** means, for each Plaintiff, the amount listed in Exhibit A and totaling \$90,000.00 for all Plaintiffs combined.<sup>1</sup>

**“Plaintiffs”** means Originating Plaintiff and the additional 27 individuals listed on Exhibit A, all of whom have opted into the Action.

**“Plaintiffs’ Counsel”** means Winebrake & Santillo, LLC and Kennedy Hodges, LLP.

**“Released Parties”** means Defendant and any and all of its parents, subsidiaries, affiliates, predecessors, successors, insurers, attorneys, advisors, franchisors, partners and/or assigns and any of the foregoing’s past, present or future officers, directors, board members, shareholders, partners, owners, managers, supervisors, servants, agents, employees, executors, administrators, heirs, spouses, and all other persons or entities acting on behalf of Defendant, both individually and/or as representatives of Defendant.

**“Settlement”** means the terms and conditions described in this Agreement.

**2. Maximum Settlement Amount.** Defendant’s maximum monetary payment of \$137,500.00 to fund the Settlement will consist of the following: (i) payments to Plaintiffs of \$90,000.00 (allocated as stated in Exhibit A) pursuant to Section 5 below;<sup>2</sup> (ii) a payment of up to \$2,500.00 payable to Originating Plaintiff pursuant to Section 6 below; and (iii) a payment of up to \$45,000.00 payable to Plaintiffs’ Counsel pursuant to Section 7 below. Defendant’s total payment under this Settlement will not under any circumstances exceed \$137,500.00, inclusive of any employer share of applicable federal, state and/or local payroll withholding taxes on back wage payments, penalties and interest, if applicable.

---

<sup>1</sup>These amounts to Plaintiffs will be enhanced *pro rata* if the Court disapproves any portion of the extra payment to Originating Plaintiff or of Plaintiffs’ Counsel’s requested attorney’s fees and expenses.

<sup>2</sup> See Footnote 1 above.

**3. Condition Precedent.** This Settlement is conditioned on: (i) Plaintiffs' Counsel's accounting firm performing a review of Defendant's financial records pursuant to Section 8; (ii) Plaintiffs' Counsel informing Defense Counsel that Plaintiffs will not exercise their right to cancel pursuant to Section 9; (iii) passage of the Approval Date and the applicable period for appeal of the Court's final order approving the Settlement of this Action; (iv) Defendant making all payments as required under Section 2 following the Court's final approval of such payments based on Plaintiffs' releases as provided for herein and the dismissal of the Action with prejudice.

**4. Release by All Plaintiffs.** Upon passage of the Approval Date and the applicable period for appeal of the Court's final order approving the Settlement of this Action and Defendant's fulfillment of its payment obligations under Sections 5-7, each Plaintiff (on behalf of himself/herself and his/her heirs, spouses, executors, administrators, representatives, successors, assigns and all others claiming by or through him or her) waives, remises, releases and forever discharges the Released Parties from all federal, state or local legal or equitable claims arising prior to the Approval Date and alleging unpaid wages, liquidated damages/penalties, interest, attorneys' fees and costs, and any other damages available under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101, *et seq.*, the Pennsylvania Wage Payment & Collection Law, 43 P.S. §§ 260.1, *et seq.*, or any other federal, state, or local statute, regulation, rule, or common law theory, including, but not limited to, all claims asserted in the Action or that could have been asserted in this Action based on the facts alleged. This release provision extends through the Approval Date.

**5. Payments to Plaintiffs.** Within forty-five (45) days of the Approval Date, Defendant will issue the first of two non-payroll checks payable to each Plaintiff in half the amount of his/her Payout Amount (which potentially may be adjusted upwards pursuant to Sections 6-7). Within ninety (90) days thereafter, Defendant will issue a second non-payroll check payable to each Plaintiff in half the amount of his/her Payout Amount (which may potentially be adjusted upwards pursuant to Sections 6-7). These checks shall be delivered to Winebrake & Santillo, LLC. No later than seven (7) days after receiving the checks from Defendant, Plaintiffs' Counsel will send the individual settlement checks to Plaintiffs via first class mail.

**Taxes.** Each Plaintiff is solely responsible for the payment of any taxes associated with his/her Payout Amount. Plaintiffs acknowledge that they are not in any way relying upon Defendant, Defendant's Counsel, or Plaintiffs' Counsel for tax advice, as none of them have made any representations, promises or gave any opinions to Plaintiffs regarding the tax treatment of the Payout Amount to Plaintiffs. The Parties' agreement with respect to the tax treatment of the Settlement does not in any way affect Plaintiffs' independent obligation to pay any taxes due on the Settlement under this Agreement to the extent required by law. Plaintiffs acknowledge and agree that they shall be responsible for all federal, state or local taxes, interest and penalties that may be due on account of the Settlement made pursuant to Section 2 of this Agreement.

**Release of Liens.** The Parties agree that each Plaintiff shall be responsible for the payment of all applicable liens on his/her Payout Amount, as well as any costs, fines or penalties incurred as a result of his/her failure to pay such liens, if any. Plaintiffs acknowledge that the satisfaction of such liens shall be their sole responsibility, and they agree to release and hold harmless the Released Parties from any and all liability for claims, causes of action and/or

subrogation rights associated with liens asserted against the Payout Amount to each Plaintiff, including without limitation wage liens, workers' compensation liens, unemployment compensation liens, attorney liens, medical liens, etc.

**Uncashed Checks.** If the Postal Service returns any check with a forwarding address, Plaintiffs' Counsel will promptly re-mail the check to the forwarding address. If the Postal Service returns any check without a forwarding address, Plaintiffs' Counsel will make good faith and reasonable efforts to obtain the Plaintiff's current mailing address and will promptly re-mail the check to any updated address. At the end of the year in which the checks are issued, Defendant will issue and distribute (pursuant to its ordinary business practices) to each Plaintiff who cashes his/her settlement check an IRS 1099 Form that includes the Payout Amount among his/her total fees.<sup>3</sup> Any check that remains uncashed within 180 days of issuance will not be reissued. Defendant shall provide Plaintiffs' Counsel with a list of any checks that remain uncashed as of one hundred (100) days after being issued. This list shall be sent to Plaintiffs' Counsel within one hundred and ten (110) days of the checks being issued. Any Plaintiff who fails to cash his or her checks within 180 days of issuance will be bound by this Agreement nevertheless, including the Release in Section 4, and will not receive any additional checks for his/her Payout Amount, and forfeits/waives his or her right to collect that payment and any future payment he or she might have been entitled to receive. The funds that are not distributed to Plaintiffs due to uncashed checks shall revert to Defendant.

**6. Extra Service Award Payment to Originating Plaintiff.** Plaintiffs' Counsel will seek (and Defendant will not oppose) Court approval of an additional service award to Originating Plaintiff in the amount of \$2,500.00. The Settlement is *not* contingent upon the

---

<sup>3</sup>To assist with this process, Plaintiffs' Counsel will provide to Defense Counsel a spreadsheet listing each Plaintiff's most up-to-date address on or before December 1, 2017.

Court's approval of this amount. If the Court disapproves any portion of the requested service award for Originating Plaintiff, the disapproved monies will be used to enhance, on a *pro rata* basis, Plaintiffs' Payout Amounts listed in Exhibit A. Within forty-five (45) days of the Approval Date, Defendant will deliver to Winebrake & Santillo, LLC the first of two non-payroll checks made payable to Originating Plaintiff and equaling half the amount of any Court-approved service award. Within ninety (90) days thereafter, Defendant will issue a second non-payroll check payable to Originating Plaintiff equaling half the amount of any Court-approved service award. Defendant will mail an IRS 1099 Form reflecting payment of the service award to Originating Plaintiff at P.O. Box 564, Mountainhome, PA 18342.

**Taxes.** Originating Plaintiff is solely responsible for the payment of any taxes associated with payment of the service award. Originating Plaintiff acknowledges that he is not in any way relying upon Defendant, Defendant's Counsel, or Plaintiffs' Counsel for tax advice, as none of them have made any representations, promises or gave any opinions to Originating Plaintiff regarding the tax treatment of his Payout Amount and/or his service award. The Parties' agreement with respect to the tax treatment of the Settlement does not in any way affect Originating Plaintiff's independent obligation to any pay taxes due on the Settlement under this Agreement to the extent required by law. Originating Plaintiff acknowledges and agrees that he shall be responsible for all federal, state or local taxes, interest and penalties that may be due on account of the Settlement made pursuant to Sections 2 and 6 of this Agreement.

**General Release by Originating Plaintiff.** In consideration of his eligibility for this additional payment/service award, Originating Plaintiff (on behalf of himself, his spouse, executors, administrators, representatives, successors, assigns and all others claiming by or through him) waives, releases and forever discharges the Released Parties from any and all



legally waivable claims, obligations, causes of action, actions, disputes, grievances, demands, rights, and liabilities of every kind, nature and description, whether known or unknown, whether anticipated or unanticipated, arising on or prior to the date Originating Plaintiff executes this Agreement. For the avoidance of doubt, this additional release for Originating Plaintiff only is intended to be a general and complete release of all legally waivable claims, not just a release of the claims included in Section 4, including, but not limited to, any and all claims arising out of Originating Plaintiff's engagement with Defendant such as claims for compensatory damages, economic damages (lost wages, front pay and back pay), non-economic damages (emotional distress, humiliation, damage to reputation, etc.), liquidated damages, breach of contract damages, consequential damages, punitive damages, attorneys' fees, costs of suit, as well as any and all claims arising under or relating to Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Vocational Rehabilitation Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Fair Labor Standards Act, Sections 1981 through 1988 of Title 42 of the United States Code, the Genetic Information Non-Discrimination Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, the Immigration Reform and Control Act, the Uniformed Services Employment and Reemployment Rights Act, the Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act, the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Family and Medical Leave Act, the Pennsylvania Human Relations Act, the Philadelphia Fair Practices Ordinance, the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, the Philadelphia Promoting Healthy Families and Workplaces Ordinance, as well as any whistleblower and/or retaliation claims, claims of invasion of privacy, libel, slander, wrongful discharge, intentional

infliction of emotional distress, promissory estoppel, equitable estoppel and misrepresentation, and any and all other claims arising under federal, state or local law, rule, regulation, constitution, ordinance, public policy or common law, now existing or hereinafter recognized, arising up to and including the date of execution of this Agreement.

**Cancellation of Master Services Agreement.** Originating Plaintiff hereby confirms that the Master Services Agreement between Originating Plaintiff and Defendant has been canceled.

**7. Payment of Plaintiffs' Counsel's Fees and Expenses.** Plaintiffs' Counsel will seek (and Defendant will not oppose) Court approval of fees and expenses of \$45,000.00. Within forty-five (45) days of the Approval Date, and assuming Defendant is in receipt of an properly executed W-9 form from Plaintiffs' Counsel, Defendant will mail to Plaintiffs' Counsel a non-payroll check made payable to Winebrake & Santillo, LLC and equaling half the amount of any Court-approved fees and expenses. Within ninety (90) days thereafter, Defendant will issue a second non-payroll check payable to Plaintiffs' Counsel equaling half the amount of any Court-approved fees and expenses. Defendant will issue to Plaintiffs' Counsel an IRS 1099 Form reflecting payment of Plaintiffs' counsel's fees and expenses. Plaintiffs' Counsel is solely responsible for the payment of any taxes associated with payment of such fees and expenses. If the Court disapproves any portion of Plaintiffs' Counsel's requested fees or expenses, the disapproved monies will be used to enhance, on a *pro rata* basis, Plaintiffs' Payout Amounts listed in Exhibit A.

**8. Plaintiffs' Review of Defendant's Financial Records.** During the negotiations of this Agreement, Defendant made representations regarding Defendant's current financial condition. Prior to the execution by the Parties of this Agreement, Defendant will allow Brian J. Hoffman, CPA, CFE of the accounting firm Citrin Cooperman LLP to review certain financial

records for the purpose of verifying Defendant's financial circumstances for Plaintiffs' counsel. Mr. Hoffman shall execute a Non-Disclosure Agreement prior to commencing his review of Defendant's financial records, which review shall be completed no later than January 31, 2017. Upon completion of his review, Mr. Hoffman shall provide his conclusions to Plaintiffs' Counsel for purposes of evaluating Plaintiffs' right to cancel this Agreement pursuant to Section 9.

**9. Plaintiffs' Right to Cancel.** Upon completion of the review of Defendant's financial records pursuant to Section 8, Plaintiffs will have the absolute right, in their sole discretion, and notwithstanding any other provisions of this Agreement, to withdraw from and cancel this Agreement in its entirety based on Defendant's financial condition, whereupon this Agreement will be null and void for all purposes and may not be used or introduced in further litigation. No later than three (3) business days after the completion of the review of Defendant's financial records pursuant to Section 8, Plaintiffs' Counsel shall inform Defense Counsel whether or not it will be exercising this right in writing by email, facsimile and/or mail.

**10. Approval Motion.** Within fourteen (14) days of Plaintiffs' Counsel informing Defense Counsel that Plaintiffs will not be exercising their right to cancel pursuant to Section 9, Plaintiffs will file their Approval Motion. Upon the Approval Date, Plaintiffs shall be deemed to have fully, finally and forever released the Released Parties from all released claims described in Section 4.

**11. Entire Agreement.** This Agreement embodies the entire agreement between the Parties and controls over any prior communications. In entering into the Settlement, no Party has relied on any representations not explicitly contained in this Agreement.

**12. Successors.** The Settlement and this Agreement will inure to the benefit of and be binding upon the Parties' heirs, representatives, successors and assigns.

**13. No Admissions of Liability.** Nothing in this Agreement constitutes an admission or suggestion of liability by any Party, nor should this Agreement be construed as an admission of any fault, wrongdoing or liability whatsoever. Defendant denies any wrongdoing and continues to assert that, absent this Settlement, Defendant ultimately would prevail in the Action. Nonetheless, Defendant has concluded that continuation of the Action would be protracted, distracting, inconvenient and expensive and has taken into account the uncertainty and risks inherent in any litigation, and thus, has determined that it is desirable and beneficial that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

**14. Court Approval Not Obtained.** If the Court does not approve the Settlement, the Parties' litigation positions will return to the *status quo ante* and, for example, Defendant will not have waived, compromised, or impacted any objections or defenses to Plaintiffs' claims or Defendant's right to contest certification of this collective Action on any grounds if this Action were to proceed.

**15. Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement.

**16. Warranty of Authority.** Each signatory to this Agreement warrants and represents that he/she is competent and authorized to enter into this Agreement on behalf of the Party that he/she represents.

**17. No Press Releases.** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, or respond to any inquiry from the press about this case other than describing what is available in public documents.

**18. Construction, Drafting and Headings.** The Parties agree that, in all cases, the language of this Agreement shall be constructed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. The Parties agree that the terms and conditions of this Agreement are the result of arm's-length negotiations between the Parties, and this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Agreement. The Parties further agree that the headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning of this Agreement or its provisions.

**19. Severability.** The Parties agree that if any portion of this Agreement is held by a court of competent jurisdiction to be void, voidable, illegal or unenforceable under applicable law, the unenforceable provision shall be deemed deleted or shall be revised by a court to be enforceable, and the validity and enforceability of the remaining provisions shall not be affected thereby; provided, however, that if any release or waiver set forth in this Agreement is declared to be invalid, illegal or unenforceable in whole in or in part, Defendant shall have the right to elect to consider its obligations under this Agreement to be nullified and in such case, any payment that had been or was to be afforded under this Agreement shall be returned to Defendant, and Defendant shall have no further obligations hereunder.

**20. No Waiver of Enforcement Rights.** In the event of one or more events that violate this Agreement, the Parties' failure to seek enforcement of any particular term of this Agreement shall not constitute a waiver of any rights of the Parties to enforce this Agreement against subsequent violations.

**21. Applicable Law.** This Agreement is governed and construed pursuant to Pennsylvania law and the laws of the United States of America.

**22. Written Modifications.** This Agreement may not be modified except by a written agreement signed by all Parties and approved by the Court.

**23. Execution in Counterparts.** This Agreement may be executed in counterparts that, taken together, will constitute the entire Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties execute this

Agreement on the dates indicated below:



\_\_\_\_\_  
Francis Crevatas

\_\_\_\_\_  
01-23-2017

Date

\_\_\_\_\_  
Winebrake & Santillo, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kennedy Hodges, LLP

\_\_\_\_\_  
Date

\_\_\_\_\_  
Smith Management and Consulting, LLC

\_\_\_\_\_  
Date

22. **Written Modifications.** This Agreement may not be modified except by a written agreement signed by all Parties and approved by the Court.

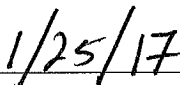
23. **Execution in Counterparts.** This Agreement may be executed in counterparts that, taken together, will constitute the entire Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties execute this Agreement on the dates indicated below:

\_\_\_\_\_  
Francis Crevatas

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Winebrake & Santillo, LLC

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kennedy Hodges, LLP

1/24/2017  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Smith Management and Consulting, LLC

\_\_\_\_\_  
Date

**22. Written Modifications.** This Agreement may not be modified except by a written agreement signed by all Parties and approved by the Court.

**23. Execution in Counterparts.** This Agreement may be executed in counterparts that, taken together, will constitute the entire Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties execute this Agreement on the dates indicated below:

\_\_\_\_\_  
Francis Crevatas

\_\_\_\_\_  
Date

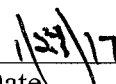
\_\_\_\_\_  
Winebrake & Santillo, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kennedy Hodges, LLP

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Smith Management and Consulting, LLC

  
\_\_\_\_\_  
Date



**EXHIBIT A**

<b><u>Name</u></b>	<b><u>Payment 1</u></b>	<b><u>Payment 2</u></b>	<b><u>Total Individual Settlement Share</u></b>
Blane Hurler	\$570.05	\$570.05	\$1,140.10
Brandon Williams	\$2,554.70	\$2,554.70	\$5,109.41
Christopher Bice	\$1,927.97	\$1,927.97	\$3,855.94
Cody Delp	\$1,196.78	\$1,196.78	\$2,393.56
Corey Matthews	\$465.59	\$465.59	\$931.19
Darryl Snyder	\$152.23	\$152.23	\$304.46
Eric M Rapp	\$256.68	\$256.68	\$513.37
Francis Crevatas	\$778.96	\$778.96	\$1,557.92
Frank Zerangue	\$1,144.55	\$1,144.55	\$2,289.11
James R Jones	\$517.82	\$517.82	\$1,035.64
Jason Scott Hale	\$4,591.58	\$4,591.58	\$9,183.17
Johnathan Beken	\$2,450.25	\$2,450.25	\$4,900.50
Joseph Sanchez	\$204.46	\$204.46	\$408.91
Juan Jose Arevalo	\$2,189.11	\$2,189.11	\$4,378.22
Justin Roy	\$570.05	\$570.05	\$1,140.10
Kevin McCarley	\$465.59	\$465.59	\$931.19
Kevin Pierce	\$256.68	\$256.68	\$513.37
Kristian Clay Hicks	\$5,531.68	\$5,531.68	\$11,063.37
Mark Harnish	\$2,920.30	\$2,920.30	\$5,840.59
Michael Baker	\$4,696.04	\$4,696.04	\$9,392.08
Michael Leblanc	\$361.14	\$361.14	\$722.28
Nathan Bassett	\$1,614.60	\$1,614.60	\$3,229.21
Nicholas Garramone	\$778.96	\$778.96	\$1,557.92
Radhames Tatis	\$308.91	\$308.91	\$617.82
Russell Breaux	\$1,144.55	\$1,144.55	\$2,289.11
Terry M Sheridan, II	\$1,040.10	\$1,040.10	\$2,080.20
Tom Bruring	\$5,375.00	\$5,375.00	\$10,750.00
Zachary Zimmers	\$935.64	\$935.64	\$1,871.29
<b>TOTAL</b>	<b>\$45,000.00</b>	<b>\$45,000.00</b>	<b>\$90,000.00</b>

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, *et al.*

v.

SMITH MANAGEMENT AND  
CONSULTING, LLC.

---

:  
:  
: 3:15-cv-02307-MEM  
:  
:  
:  
:  
:  
:  
:

**DECLARATION OF R. ANDREW SANTILLO**

I, R. Andrew Santillo, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following facts are true and correct:

1. I am an attorney at Winebrake & Santillo, LLC (“W&S”), 715 Twining Road, Suite 211, Dresher, PA 19025 and am personally familiar with the firm’s involvement in this litigation.

2. I submit this declaration to provide the Court with information concerning the fee lodestar and litigation expenses incurred by W&S during the litigation.

**W&S’s Experience in the Field of Wage and Hour Litigation**

3. Since its founding in January 2007, W&S has exclusively represented plaintiffs in employment rights litigation. W&S is a pure contingency fee law firm and is “at risk” in every matter it handles. W&S never requires a client to pay an hourly fee or retainer. If a matter does not result in a money recovery, W&S recovers

no attorney's fees and is not reimbursed for any of its out-of-pocket expenditures.

This is a risky business. While W&S has enjoyed substantial success over the years, it also has invested thousands of attorney hours and tens of thousands of dollars on high-stakes litigation adventures that have fallen flat. *See, e.g., Resch v. Krapf's Coaches, Inc.*, 785 F.3d 869 (3d Cir. 2015) (summary judgment entered against W&S clients in FLSA collective action); *Itterly v. Family Dollar Stores, Inc.*, 606 Fed. Appx. 643 (3d Cir. 2015) (summary judgment entered against W&S clients in PMWA class action); *Parker v. NutriSystem, Inc.*, 620 F.3d 274 (3d Cir. 2010) (summary judgment entered against W&S clients in FLSA collective action).

4. Many of W&S's cases are class or collective actions seeking damages on behalf of groups of employees. W&S has resolved 124 separate class/collective actions in courts throughout the United States. *See* Appendix A.

5. In addition, W&S has successfully resolved over 200 "individual" employment rights actions in which a single plaintiff (or a small group of named plaintiffs) alleges violations of federal or state employment laws. Indeed, on October 25, 2016, W&S received the Guardián Award from Friends of Farmworkers, Inc. in recognition of, *inter alia*, its work on behalf of low-wage workers in individual wage actions.

6. Various federal courts have issued opinions commenting on W&S's work in class/collective action lawsuits. *See, e.g., Schaub v. Chesapeake & Del. Brewing Holdings*, 2016 U.S. Dist. LEXIS 157203, \*11 (E.D. Pa. Nov. 14, 2016)

(W&S “provided highly competent representation for the Class”); *Tavares v. S-L Distribution Co., Inc.*, 2016 U.S. Dist. LEXIS 57689, \*43 (M.D. Pa. May 2, 2016) (W&S and its co-counsel “are skilled and experienced litigators who have handled complex employment rights class actions numerous times before”); *Lapan v. Dick’s Sporting Goods, Inc.*, 2015 U.S. Dist. LEXIS 169508, \*7 (D. Mass. Dec. 11, 2015) (W&S and its co-counsel “have an established record of competent and successful prosecution of large wage and hour class actions.”); *Kiefer v. Moran Foods, LLC*, 2014 U.S. Dist. LEXIS 106924, \*49 (D. Conn. Aug. 5, 2014) (W&S and its co-counsel are “experienced class action employment lawyers with good reputations among the employment law bar”); *Young v. Tri County Sec. Agency, Inc.*, 2014 U.S. Dist. LEXIS 62931, \*10 (E.D. Pa. May 7, 2014) (W&S “has particular experience with wage and overtime rights litigation,” “has been involved in dozen of class action lawsuits in this area of law,” and “have enjoyed great success in the field.”); *Craig v. Rite Aid Corp.*, 2013 U.S. Dist. LEXIS 2658, \*45 (M.D. Pa. Jan 7, 2013) (W&S and its co-counsel “are experienced wage and hour class action litigators with decades of accomplished complex class action between them and that the Class Members have benefitted tremendously from able counsel’s representation”); *Cuevas v. Citizens Financial Group*, 283 F.R.D. 95, 101 (E.D.N.Y. 2012) (W&S has “been appointed class counsel for dozens of wage and hour class claims across the country”).

### **W&S Attorneys’ Individual Experience**

7. Attorney **Peter Winebrake** (“Winebrake”) graduated in 1988 from

Lehigh University (*magna cum laude*) and in 1991 from Temple University School of Law (*cum laude*), where he served as a Managing Editor of the *Temple Law Review*. Winebrake has been a member of the New York bar since 1993 and the Pennsylvania bar since 1997. He also is admitted in the following federal courts: (i) the United States Supreme Court; (ii) the United States Courts of Appeals for the First, Second, Third, Seventh, and Tenth Circuits; and (iii) the United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, Eastern District of New York, Northern District of New York, Southern District of New York, Northern District of Ohio, Northern District of Illinois, and District of Colorado.

8. Prior to founding W&S in January 2007, Winebrake held the following positions: (i) Law Clerk to Justice William R. Johnson of the New Hampshire Supreme Court (9/91-8/92); (ii) Assistant Corporation Counsel at the New York City Law Department's General Litigation Unit (9/92-2/97); (iii) Associate at the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll, LLP (2/97-12/98); (iv) Deputy City Solicitor and, later, Chief Deputy City Solicitor at the Philadelphia Law Department (12/98-2/02); and (v) Non-Equity Partner at the Philadelphia law firm of Trujillo Rodriguez & Richards, LLC (3/02-1/07).

9. Winebrake has personally handled through conclusion well over 750 civil actions in the United States District Courts and has tried at least 15 federal cases to verdict. The great majority of these civil actions have arisen under the Nation's

civil rights or employment rights laws. At the appellate court level, Winebrake has argued appeals involving complex and important issues of class action law. *See, e.g., Cuevas v. Citizens Financial Group, Inc.*, 526 Fed. Appx. 19 (2d Cir. 2013); *Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012); *McNulty v. H&R Block, Inc.*, 843 A.2d 1267 (Pa. Super. 2004).

10. Winebrake serves *pro bono* on the Mediation Panel of the United States District Court for the Middle District of Pennsylvania, and the Martindale-Hubbell Peer Review Rating System gives him an “AV-Preeminent” rating. Winebrake has lectured on employment law at the Vanderbilt University School of law, the Wharton School of Business at the University of Pennsylvania; the Beasley School of Law at Temple University; the University of Pennsylvania Law School; the Earle Mack School of Law at Drexel University; the Pennsylvania Bar Institute; the Workplace Injury Law & Advocacy Group; the American Association of Justice; the National Employment Lawyers Association; the National Employment Lawyers Association of New York; and the Ohio Association of Justice.

11. Attorney **R. Andrew Santillo** (“Santillo”) graduated in 1998 from Bucknell University and in 2004 from the Temple University School of Law, where he served as Editor-in-Chief of the *Temple Political & Civil Rights Law Review*. Santillo has been a member of the Pennsylvania and New Jersey bars since 2004. He also is admitted to the following federal courts: (i) the United States Court of Appeals for the Third Circuit and (ii) the United States District Courts for the Eastern District

of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, District of New Jersey, Northern District of Illinois, District of Colorado, and Eastern District of Michigan.

12. Prior to joining W&S as an equity partner in 2008, Santillo was an associate at the firm of Trujillo Rodriguez & Richards, LLC where he participated in the litigation of complex class action lawsuits arising under federal and state wage and hour, securities, and antitrust laws.

13. The Martindale-Hubbell Peer Review Rating System gives Santillo an “AV-Preeminent” designation. Santillo has lectured on wage and hour law topics at the Pennsylvania Bar Institute; the National Employment Lawyers Association; the Workers’ Injury Law & Advocacy Group; the Ohio Association of Justice; and the Philadelphia Chinatown Development Corporation. In addition to handling hundreds of wage and overtime rights cases in the federal trial courts, Santillo has argued several important wage and overtime cases decided by the Third Circuit Court of Appeals. *See Resch v. Krapf’s Coaches, Inc.*, 780 F.3d 869 (3d Cir. 2015); *McMaster v. Eastern Armored Services*, 780 F.3d 167 (3d Cir. 2015).

14. Attorney **Mark Gottesfeld** (“Gottesfeld”) graduated in 2006 from Lehigh University (*magna cum laude*) and in 2009 from Drexel University Earle Mack School of Law (*cum laude*), where he served as an editor on the *Drexel University Earle Mack School of Law Review*. During law school, Gottesfeld served as a Judicial Intern to Pennsylvania Superior Court Judge Jack A. Panella.

15. Gottesfeld has been a Member of the Pennsylvania and New Jersey bars since 2009 and a member of the New York bar since 2010. He also is admitted to the United States District Courts for the Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of Pennsylvania, and District of New Jersey.

16. Prior to joining W&S as an associate in 2010, Gottesfeld worked at the Philadelphia firm of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.

17. Gottesfeld has lectured on wage and hour issues at the Ohio Association of Justice.

**Hours Spent by W&S and the Resulting Fee Lodestar**

18. W&S attorneys use the firm's case management system to contemporaneously record each case-related activity and the amount of time spent performing the activity in six minute increments.

19. W&S's work on this litigation is reflected in the contemporaneous time records attached at Appendix B. These records have been redacted to exclude the identities of class members who have spoken with W&S, the substance of attorney-client communications, and the mental impressions of W&S attorneys.<sup>1</sup>

20. As indicated in the time records, W&S has spent **91.7 hours** and incurred a total fee lodestar of **\$34,003.00** when using the hourly rates described in the fee schedule developed by Philadelphia Community Legal Services ("CLS") at

---

<sup>1</sup> Of course, un-redacted versions of the time records are available for the Court's *in camera* inspection.



<https://clsphila.org/about-cls/attorney-fees:>

<b>NAME</b>	<b>TITLE</b>	<b>TOTAL HOURS</b>	<b>HOURLY RATE</b>	<b>TOTAL</b>
Peter Winebrake	Partner	12.7	\$590.00	\$7,493.00
R. Andrew Santillo	Partner	63.6	\$375.00	\$23,850.00
Mark J. Gottesfeld	Associate	6.4	\$275.00	\$1,760.00
Clerical		9.0	\$100.00	\$900.00
<b>TOTALS</b>		<b>91.7</b>		<b>\$34,003.00</b>

### **Out-of-Pocket Litigation Expenses of W&S**

21. To date, W&S incurred a total of **\$1,822.56** in costs and expenses in connection with this litigation.

### **Reaction of the Collective to the Settlement**

22. On December 8, 2016, I sent a memorandum to each Plaintiff explaining the settlement and describing his individual payment amount. *See* Appendix C (sample template of the settlement memorandum). The memorandum also explained that the Court would be evaluating the settlement for fairness and encouraged each Plaintiff to contact me if he wished to convey his views to the Court. *See id.* In response to these memoranda, my firm received several phone calls from Plaintiffs asking about the timing of the payments of the settlement but not providing feedback (positive or negative) to the settlement. On January 3, 2017, Plaintiff James Jones called my firm and told me that he did not think the individual settlement amount was large enough. On December 19, 2016, Plaintiff Christopher Bice called and said he was happy with the settlement. In addition, on January 13, 2017 Plaintiff Mark

Harnish called and informed me that he was also very happy with the settlement.

**I HEREBY DECLARE, UNDER PENALTY OF PERJURY AND  
PURSUANT TO 28 U.S.C. § 1746, THAT THE ABOVE FACTS ARE TRUE  
AND CORRECT:**

March 1, 2017

Date

A handwritten signature in black ink, appearing to read "R. Andrew Santillo", written over a horizontal line.

R. Andrew Santillo

# Appendix A

**Winebrake & Santillo, LLC - Class/Collective Wage and Overtime Settlements and Judgments**

Case Name	Court	Judge	Approval/Judgment	Type	Co-Counsel?
Otto v. Pocono Medical Center, 4:06-cv-01186-JEJ	M.D. Pa.	John E. Jones, III	5/4/2007	Collective	No
Rodriguez-Fargas v. Hatfield Quality Meats, Inc., 2:06-cv-01206-LS	E.D. Pa.	Lawrence F. Stengel	5/29/2007	Class	Yes
Miller v. Antenna Star Satellites, Inc., 3:06-cv-00647-ARC	M.D. Pa.	A. Richard Caputo	5/29/2007	Collective	Yes
Sisko v. Wegmans Food Markets, Inc., 3:06-cv-00433-JMM	M.D. Pa.	James M. Munley	8/27/2007	Class	No
Evans/Smith, v. Lowe's Home Centers, Inc., 3:03-cv-00438/3:03-cv-00384-ARC	M.D. Pa.	A. Richard Caputo	9/4/2007	Collective	Yes
Diehl/Smith v. Lowe's Home Centers, Inc., 3:06-cv-01464/3:03-cv-00384-ARC	M.D. Pa.	A. Richard Caputo	1/4/2008	Class	Yes
Malec v. Kost Tire & Muffler, et al., 3:07-cv-00864-ARC	M.D. Pa.	A. Richard Caputo	1/2/2008	Collective	No
Dunn v. National Beef Packing Company, LLC, 4:07-cv-01599-JEJ	M.D. Pa.	John E. Jones, III	5/27/2008	Collective	No
Blasi v. United Financial Management Group, Inc., 3:06-cv-01519-JMM	M.D. Pa.	James M. Munley	6/19/2008	Collective	No
Palmer v. Michael Foods, Inc., 3:07-cv-02136-TIV	M.D. Pa.	Thomas I. Vanaskie	11/25/2008	Collective	No
Coluccio v. U.S. Remodelers, Inc., 1:09-cv-00819-JHR	D.N.J.	Joseph H. Rodriguez	12/15/2009	Collective	No
Shabazz v. Asurion Corporation, 3:07-cv-00653-AT	M.D. Tenn.	Aleta A. Trauger	2/26/2009	Collective	Yes
In re Cargill Meat Solutions Corp. Wage and Hour Litig., 3:06-cv-00513-WJN	M.D. Pa.	William J. Nealon	3/6/2009	Collective	Yes
Golpe v. The Wedge Medical Center, P.C., 2:08-cv-04504-JF	E.D. Pa.	John P. Fullam	3/11/2009	Collective	No
Banks, v. New Vitae, Inc. and Tri County Respite, Inc., 5:08-cv-04212-LS	E.D. Pa.	Lawrence F. Stengel	3/26/2009	Collective	No
Weatherly v. Michael Foods, Inc., 8:08-cv-00153-JFB	D. Neb.	Joseph F. Bataillon	4/15/2009	Collective	Yes
Gallagher v. Bayada Nurses, Inc., No. 071000392	Phila.C.C.P.	Idee C. Fox	4/21/2009	Class	No
Ray v. Krapf's Coaches, Inc., 2:08-cv-05097-DS	E.D. Pa.	David R. Strawbridge	9/10/2009	Collective	No
Miller v. Titanium Metals Corporation, 2:07-cv-04759-GP	E.D. Pa.	Gene E.K. Pratter	9/30/2009	Collective	No
Mayan v. Rydholm Express, Inc., 2:07-cv-02658-LS	E.D. Pa.	Lawrence F. Stengel	12/2/2009	Collective	No
Herd v. Specialty Surfaces International, Inc., 2:08-cv-01790-JCJ	E.D. Pa.	J. Curtis Joyner	1/26/2010	Collective	No
Morales v. Aaron Healthcare, Inc., 2008-C-5128	Lehigh.C.C.P.	Brian Johnson	2/1/2010	Class	No
In re Pilgrim's Pride Fair Labor Standards Act Litig., 1:06-cv-01832-HFB	E.D. Ark.	Harry F. Barnes	4/2/2010	Collective	Yes
Williams v. Owens & Minor, Inc., 2:09-cv-00742-JD	W.D. Pa.	Jan E. Dubois	7/28/2010	Collective	No
Crisostomo v. Exclusive Detailing, Inc., 2:08-cv-01771-SRC-MAS	D.N.J.	Michael A. Shipp	9/15/2010	Collective	Yes
Gallagher v. Lackawanna County, 3:07-cv-00912-CCC	M.D. Pa.	Christopher C. Connor	10/5/2010	Collective	No
Herrarte v. Joe Jurgielewicz & Sons, Ltd., 5:09-cv-02683-RK	E.D. Pa.	Robert F. Kelly	10/27/2010	Collective	No
King v. Koch Foods of Mississippi, LLC, 3:06-cv-00301-DPJ	S.D. Miss.	Daniel P. Jordan	11/29/2010	Collective	Yes
McEvoy v. The Container Store, Inc., 1:09-cv-05490-KMW	D.N.J.	Karen M. Williams	12/17/2010	Collective	No
Hilborn v. Sanofi Pasteur, 3:09-cv-02032-ARC	M.D. Pa.	A. Richard Caputo	1/18/2011	Collective	No
Alexander/Campbell/Marrero v. KRA Corporation, 09-cv-02517/10-cv-01778/09-cv-02516-JF	E.D. Pa.	John P. Fullam	1/28/2011	Collective	Yes
Duval v. Tri County Access Company, Inc., 2:10-cv-00118-RCM	W.D. Pa.	Robert C. Mitchell	3/30/2011	Class	No
Gibbons v. V.H. Cooper & Company, Inc., 3:10-cv-00897-JZ	N.D. Ohio	Jack Zouhary	4/18/2011	Class	Yes
Turner v. Mercy Health System, No. 080103670	Phila.C.C.P.	Idee C. Fox	4/20/2011	Class	Yes
Vanston v. Maxis Healthy System, No. 080605155	Phila.C.C.P.	Idee C. Fox	4/20/2011	Class	Yes
Dixon v. Dunmore Oil Company, 3:09-cv-00064-ARC	M.D. Pa.	A. Richard Caputo	4/27/2011	Collective	No
In re Tyson Foods, Inc., 4:06-cv-00143-CDL	M.D. Pa.	Clay D. Land	9/15/2011	Collective	Yes
Cover v. Feesers, Inc., 1:10-cv-00282-JEJ	M.D. Ga.	John E. Jones, III	10/11/2011	Collective	No
Muschultz v. Holcomb Behavioral Health Systems, 5:11-cv-02980-JKG	M.D. Pa.	James K. Gardner	12/15/2011	Collective	No
Johnson v. Krapf's Coaches, Inc., 2:11-cv-06974-BMS	E.D. Pa.	Berle M. Schiller	2/22/2012	Collective	No
McCray v. The Progressions Companies, Inc., 2:11-cv-07364-HB	E.D. Pa.	Harvey Bartle, III	3/2/2012	Collective	No
Slator v. Allscripts-Missys Healthcare Solutions, Inc., 1:10-cv-01069-GLS-RFT	N.D.NY	Gary L. Sharpe	4/4/2012	Collective	No
Smith v. Ameriplan Corporation, 4:10-cv-00075-ALLM	E.D. Tx.	Amos L. Mazzant	8/9/2012	Collective	Yes
In re Creditron Financial Corp. (Lepkowski v. Creditron Financial Corp.), 08-11289-TPA	W.D. Pa. Bkr.	Thomas P. Agresti	8/31/2012	Collective	No
Fazio v. Automotive Training Center, 2:11-cv-06282-DS	E.D. Pa.	David R. Strawbridge	9/24/2012	Collective	No
Jean-Charles v. AAA Warman Home Care LLC, No. 110702236	Phila.C.C.P.	Mary Collins	9/28/2012	Class	No
Thomas v. Cescaphe Limited, LLC, 1:11-cv-04359-BMS	E.D. Pa.	Berle M. Schiller	10/3/2012	Class	No
Harkin v. LA Weight Loss, LLC, 2:12-cv-01411-AB	E.D. Pa.	Anita Brody	11/8/2012	Collective	No
Grajales v. Safe Haven Quality Care, LLC, 2010-cv-15102	Dauphin C.C.P.	Andrew H. Dowling	11/8/2012	Class	No
Grayson v. Register Tapes Unlimited, Inc., et al., 8:11-cv-00887-RWT	D. Md.	Roger W. Titus	11/26/2012	Collective	Yes
Craig v. Rite Aid Corporation 4:08-cv-02317-JEJ	M.D. Pa.	John E. Jones, III	1/7/2013	Class	Yes

**Winebrake & Santillo, LLC - Class/Collective Wage and Overtime Settlements and Judgments**

Case Name	Court	Judge	Approval/Judgment	Type	Co-Counsel?
Knecht v. Penn Psychiatric Center, 2:12-cv-00988-CSMW	E.D. Pa.	Carol S. Moore Wells	3/6/2013	Collective	No
Thompson v. RGT Management, Inc., 2:11-cv-02573-AJT	W.D. Tenn.	Arthur J. Tarnow	3/21/2013	Collective	Yes
Kelsh v. First Niagara Financial Group, Inc., 2:12-cv-01202-PBT	E.D. Pa.	Petrese B. Tucker	4/8/2013	Class	No
Stewart v. World Communications Charter School, 2:12-cv-04993-RB	E.D. Pa.	Ronald L. Buckwalter	5/9/2013	Class	No
Edelen v. American Residential Services, LLC, 8:11-cv-2744-DKC	D. Md.	Deborah K. Chasnow	7/22/2013	Class	Yes
Ciarrocchi v. Neshaminy Electrical Contractors, Inc., 2:12-cv-06419-JHS	E.D. Pa.	Joel H. Slomsky	9/5/2013	Collective	No
LeClair v. Diakon Lutheran Social Ministries, Case No. 2010-C-5793	Lehigh.C.C.P.	Michele A. Varricchio	8/14/2013	Class	Yes
Essame v. SSC Laurel Operating Company, LLC, 8:10-cv-03519-WGC	D. Md.	William G. Connely	10/16/2013	Class	Yes
Ming v. SNI Enterprises, L.P., 5:11-cv-03873-RBS	E.D. Pa.	Barclay R. Surrick	11/29/2013	Collective	No
Bolletino v. Cellular Sales of Knoxville, Inc. 3:12-cv-00138-TC-HBG	E.D. Tenn.	Tena Campbell	11/29/2013	Collective	Yes
Wagner v. Cali, 5:12-cv-03226-JLS	E.D. Pa.	Jeffrey L. Schmehl	1/23/2014	Collective	No
Ginter/Robinson-Gibbs v. RBS Citizens, N.A., 1:12-cv-00008-M-PAS/1:13-cv-00182-PAS	D.R.I.	John J. McConnell, Jr.	2/4/2014	Class	Yes
Glatts v. Crozer-Keystone Health System, No. 090401314	Phila.C.C.P.	Mark I. Bernstein	2/6/2014	Class	Yes
Galowitch v. Wells Fargo Bank, N.A., No. 130302298	Phila.C.C.P.	Mark I. Bernstein	3/5/2014	Class	No
Young v. Tri County Security Agency, Inc., 2:13-cv-05971-BMS	E.D. Pa.	Berle M. Schiller	5/7/2014	Class	No
Cuevas v. Citizens Financial Group, Inc., 1:10-cv-05582-RM	E.D.N.Y.	Robert M. Levy	5/7/2014	Class	Yes
Sakalas v. Wilkes-Barre Hospital Company, LLC, 3:11-cv-00546-RDM	M.D. Pa.	Robert D. Mariani	5/8/2014	Class	Yes
Kershner v. Hat World, Inc., No. 120803352	Phila.C.C.P.	Jacqueline F. Allen	5/29/2014	Class	No
Sacknoff v. Lehigh County, 5:13-cv-04203-EGS	E.D. Pa.	Edward G. Smith	7/18/2014	Class	No
Oliver v. Abercrombie & Fitch Stores, Inc., No. 121102571	Phila.C.C.P.	Jacqueline F. Allen	7/21/2014	Collective	No
Kiefer v. Moran Foods, Inc., 3:12-cv-00756-WGY	D. Conn.	William G. Young	7/31/2014	Class	Yes
Lynch v. Lawrenceburg NH Operations, LLC, 1:13-cv-00129-WJH	M.D. Tenn.	William J. Haynes	9/26/2014	Collective	Yes
Farley v. Family Dollar Stores, Inc., et al., 1:12-cv-00325-RPM	D. Colo.	Raymond P. Moore	10/30/2014	Class	Yes
Warcholak v. Payless ShoeSource, Inc., No. 130901010	Phila.C.C.P.	Idee C. Fox	10/30/2014	Class	Yes
Young v. Catherine's, Inc., 2:13-cv-03288-CMR	E.D. Pa.	Cynthia M. Rufe	11/12/2014	Collective	Yes
Morrow v. County of Montgomery, 2:13-cv-01032-DS	E.D. Pa.	David R. Strawbridge	11/26/2014	Collective	Yes
Anderson v. The Scotts Company, LLC, No. 131100504	Phila.C.C.P.	Idee C. Fox	12/3/2014	Class	Yes
Eucceda v. Millwood, Inc., 3:12-cv-00895-MEM	M.D. Pa.	Malachy E. Mannion	12/9/2014	Class	Yes
Reid v. Newalta Environmental Services, Inc., 1:13-cv-03507-CMA-CBS	D. Colo.	Christine M. Arguello	2/19/2015	Collective	Yes
Stallard v. Fifth Third Bank, 2:12-cv-01092-MRH	W.D. Pa.	Mark R. Hornak	2/25/2015	Collective	Yes
Magloire v. The Ellison Nursing Group, LLC, No. 120203202	Phila.C.C.P.	Jacqueline F. Allen	3/12/2015	Class	No
Beal v. Claire's Stores, Inc., No. 131001989	Phila.C.C.P.	Idee C. Fox	3/18/2015	Class	Yes
Beck v. Bed Bath & Beyond Inc., No. 131100176	Phila.C.C.P.	Idee C. Fox	3/18/2015	Class	Yes
Jones v. Alliance Inspection Management, LLC, 2:13-cv-01662-NBF-CRE	W.D. Pa.	Nora Barry Fischer	3/23/2015	Collective	No
Menendez v. Precise Point, Inc., et al., No. 140300610	Phila.C.C.P.	Mary Collins	3/25/2015	Class	No
Calarco v. Healthcare Services Group, Inc., 3:13-cv-00688-RDM	M.D. Pa.	Robert D. Mariani	4/7/2015	Collective	No
Kelkis v. TruGreen Limited Partnership, No. 121101024	Phila.C.C.P.	Jacqueline F. Allen	5/14/2015	Class	Yes
Chung v. Wyndham Vacation Resorts, Inc., 3:14-cv-00490-RDM	M.D. Pa.	Robert D. Mariani	6/15/2015	Collective	No
McMaster v. Earstern Armored Services, Inc., 3:11-cv-05100-TJB	D.N.J.	Toniann J. Bongiovanni	6/24/2015	Collective	No
Valincius v. Express, Inc., No. 140702282	Phila.C.C.P.	Idee C. Fox	6/24/2015	Class	No
Hoelsworth v. New York & Company, Inc., No. 140403750	Phila.C.C.P.	Patricia A. McInerney	7/27/2015	Class	No
Puglisi v. TD Bank, N.A., 2:13-cv-00637-GRB	E.D.N.Y.	Gary R. Brown	7/30/2015	Class	Yes
Mazzarella v. Fast Rig Support, LLC et al, 3:13-cv-02844-MEM	M.D. Pa.	Malachy E. Mannion	7/31/2015	Collective	No
Lappas v. The Scotts Company, LLC, No. 140904450	Phila.C.C.P.	Idee C. Fox	8/5/2015	Class	Yes
Pew v. Finley Catering Co., Inc., 2:14-cv-04246	E.D. Pa.	Marilyn Heffley	8/10/2015	Collective	No
James v. Ann, Inc., et al, No. 140903652	Phila.C.C.P.	Gary S. Glazer	8/17/2015	Class	No
Carroll v. Guardian Home Care Holdings, Inc., 3:14-cv-01722-WJH	M.D. Tenn.	William J. Haynes, Jr.	8/31/2015	Class	Yes
Morris v. M.D. Enterprises, et al, 3:15-cv-00018-ARC	M.D. Pa.	A. Richard Caputo	10/5/2015	Class	No
Worthington v. Kymar Home Care, Inc. et al., No. 141203411	Phila.C.C.P.	Gary S. Glazer	10/9/2015	Class	No
Acevedo v. Moon Site Management, Inc., 2:13-cv-06810	E.D. Pa.	Timothy R. Rice	10/15/2015	Class	Yes
Neal v. Air Drilling Associates, Inc., 3:14-cv-01104-JMM	M.D. Pa.	James M. Munley	12/8/2015	Collective	No

**Winebrake & Santillo, LLC - Class/Collective Wage and Overtime Settlements and Judgments**

Case Name	Court	Judge	Approval/Judgment	Type	Co-Counsel?
Ross v. Baha Petroleum Consulting Corp., 4:14-cv-00147-DLH-CSM	D.N.D.	Daniel L. Hovland	1/8/2016	Collective	Yes
Pacheco v. Vantage Foods, Inc., 1:14-cv-01127-CCC	M.D. Pa.	Christopher C. Connor	2/11/2016	Class	Yes
Ford et al v. Lehigh Valley Restaurant Group, Inc., 3:14-cv-00227-JMM	M.D. Pa.	James M. Munley	3/11/2016	Class	No
LaPan v. Dick's Sporting Goods, Inc., 1:13-cv-11390-RGS	D. Mass.	Richard G. Stearns	3/25/2016	Class	Yes
Stanek v. Keane Frac NC, LLC, 3:15-cv-01005-RDM	M.D. Pa.	Robert D. Mariani	3/25/2016	Class	No
Harrison v. Flint Energy Services, Inc., 4:15-cv-00962-MWB	M.D. Pa.	Matthew W. Brann	4/15/2016	Collective	No
Tavares v. S-L Distribution Co., Inc., 1:13-cv-01313-JEJ	M.D. Pa.	John E. Jones, III	5/2/2016	Class	Yes
Eld v. TForce Energy Services, Inc., Inc., 2:15-cv-00738-CB	W.D. Pa.	Cathy Bissoon	5/17/2016	Collective	No
Metzler, et al. v. Weis Markets, Inc., CV-15-2103	Northumberland, C.C.P.	Charles H. Saylor	6/6/2016	Class	Yes
Alvarez, et al. v. KWLT, LLC, 5:14-cv-07075-JFL	E.D. Pa.	Joseph F. Leeson	6/9/2016	Collective	Yes
Hughes v. ACHIEVA Support, GD-15-003562	Allegheny C.C.P.	R. Stanton Wettick, Jr.	7/7/2016	Class	No
DiClemente v. Adams Outdoor Advertising, Inc., 3:15-cv-00596-MEM	M.D. Pa.	Malachy E. Mannion	7/8/2016	Collective	No
George Johnson v. Kestrel Engineering, Inc., 2:15-cv-02575-EAS-EPD	S.D. Ohio	Edmund A. Sargus, Jr.	9/22/2016	Collective	Yes
Iwaskow v. JLLJ, Inc., 3:15-cv-01934-ARC	M.D. Pa.	A. Richard Caputo	9/28/2016	Collective	No
Fischer et al. v. Kmart Corporation, 3:13-cv-04116-DEA	D.N.J.	Douglas E. Arpert	11/2/2016	Class	Yes
Cikra et al v. Lami Products, LLC, 2:15-cv-06166-WB	E.D. Pa.	Wendy Beeststone	11/10/2016	Class	Yes
Schaub v. Chesapeake & Delaware Brewing Company, LLC, 2:16-cv-00756-MAK	E.D. Pa.	Mark A. Kearney	11/14/2016	Class	No
Wajert v. Infocision Management Corporation, 2:15-cv-01325-DSC	W.D. Pa.	David S. Cercone	12/1/2016	Collective	No
DeLair v. CareAll Management, LLC, 3:15-cv-01095-AAI	M.D. Tenn.	Aleta A. Trauger	12/14/2016	Collective	Yes
Waggoner v. U.S. Bancorp, 5:14-cv-01626-SL	N.D. Ohio	Sara Lioi	12/26/2016	Collective	Yes
Loveland-Bowe v. National Healthcare Corporation, 3:15-cv-01084-WDC	M.D. Tenn.	Waverly D. Crenshaw, Jr.	1/5/2017	Collective	Yes
Paine v. Intrepid U.S.A., Inc., 3:14-cv-02005-WDC	M.D. Tenn.	Waverly D. Crenshaw, Jr.	1/6/2017	Collective	Yes

# Appendix B

## Winebrake &amp; Santillo, LLC Time Detail Report

*Crevatas v. Smith Management and Consulting, LLC, 23:15-cv-02307-MEM (M.D. Pa.)*

<b>Attorney/Staff</b>	<b>Date</b>	<b>Task</b>	<b>Detail</b>	<b>Time</b>
Winebrake	11/25/2015	Administrative	UPDATE CMS. (.1)	0.1
Winebrake	12/1/2015	Legal Papers/Research	REV CPL, AS DOCKETED, AND EMAIL TO COCSL RE SAME; CK CMS TO MAKE SURE ALL ENTERED. (.1)	0.1
Winebrake	12/4/2015	Legal Papers/Research	REV JUDGE MANNION INITIAL OPRDER AND MAKE VAR UPDATES TO CMS. (.1)	0.1
Winebrake	12/15/2015	Legal Papers/Research	REV VAR FILING, INCL FOTY PRO HAC MOTION AND RESULTING ORDER AND NEW CONSENT FORM; CK TO MAKE SURE NEW OPT-IN ENTERED IN SYSTEM. (.1)	0.1
Winebrake	1/4/2016	Investigation	REV NEWS ARTICLE RE THE CASE AND SAVE SAME. (.1)	0.1
Winebrake	1/7/2016	Legal Papers/Research	REV ACC EMAIL AND EOA. (.1)	0.1
Winebrake	2/9/2016	Phone Call	REV INTAKE FORM FR POTENTIAL OPT-IN HELLER AND CALL HIM AND ANSWER VAR QS. (.3)	0.3
Winebrake	2/9/2016	Outgoing Correspondence	EMAILS TO [REDACTED] (.1)	0.1
Winebrake	2/9/2016	Legal Papers/Research	REVISIONS TO STANDARD CONSENT FORM. (.2)	0.2
Winebrake	2/9/2016	Outgoing Correspondence	DRAFT REVISE AND SEND EMAIL TO HELLER ATTACHING COMPLAINT AND CONSENT FORM. (.2)	0.2
Winebrake	2/9/2016	Outgoing Correspondence	EMAIL TO COCSL RE HELLER. (.1)	0.1
Winebrake	2/15/2016	Meeting	MTG W/ RAS AND MJG RE TASKS GOING FORWARD. (.1)	0.1
Winebrake	2/24/2016	Outgoing Correspondence	REV VAR EMAILS RE ABILITY TO PAY ISSUES, ETC. (.1)	0.1
Winebrake	3/7/2016	Legal Papers/Research	REV CT ORDER GRANTING EXTENSION OF CLASS CERT DLN. (.1)	0.1
Winebrake	3/8/2016	Legal Papers/Research	REV ANSWER AND CORP DISCLOSURE STATEMENT. (.1)	0.1
Winebrake	3/28/2016	Legal Papers/Research	REV CT ORDER AND CK THAT DLNS ENTERED; MAKE CHANGE TO ICMP DLN. (.1)	0.1
Winebrake	3/31/2016	Outgoing Correspondence	LOOK AT SOME SCHEDULING ISSUES AND EMAIL TO DEF CSL RE INITIAL MEETING. (.2)	0.2
Winebrake	4/1/2016	Legal Papers/Research	REV VAR BACKGROUND DOCS AND EMAIL TO DEF CSL RE NEED TO DO JCMP. (.2)	0.2
Winebrake	4/4/2016	Legal Papers/Research	PREPARE AND EMAIL TO DEF CSL PROPOSED DRAFT OF INITIAL CASE MANAGEMENT PLAN. (1.6)	1.6
Winebrake	4/4/2016	Phone Call	PC W/ DEF CSL RE JCMP AND OTHER ISSUES; THEY WILL AMRK UP THE DOCUMENT AND CALL ME BACK (.3)	0.3
Winebrake	4/4/2016	Phone Call	FOLLOW-UP PC W/ DEF CSL [REDACTED]	0.3
Winebrake	4/5/2016	Legal Papers/Research	FINALIZE AND FILE JCMP. (.2)	0.2



Attorney/Staff	Date	Task	Detail	Time
Winebrake	4/12/2016	Legal Papers/Research	REV CT ORDER RESCHEDULING ICMC AND CK TO MAKE SURE CALENDAR CHANGED IN CMS. (.1)	0.1
Winebrake	5/2/2016	Legal Papers/Research	REV SCH ORDER AND CK TO MAKE SURE ALL DATES ENTERED. (.2)	0.2
Winebrake	5/2/2016	Discovery	REV OUR INITIAL DISCLOSURES, DEF'S INITIAL DISCLOSURES, AND PLFS' FIRST INTERROGS AND DOCUMENT REQUESTS. (.2)	0.2
Winebrake	5/3/2016	Discovery	REV DEF'S INITIAL DISCLOSURES. (.1)	0.1
Winebrake	5/9/2016	Meeting	REV RECENT EMAILS AND MTG W/ RAS RE SAME AND PLAN GOING FORWARD. (.1)	0.1
Winebrake	5/13/2016	Incoming Correspondence	REV ACC EMAILS RE POSSIBLE CONDITINAL CERT STIP AND MTG W/ RAS RE SAME. (.2)	0.2
Winebrake	6/18/2016	Legal Papers/Research	REV REVISIONS TO NOTICE AND COND CERT STIP. (.1)	0.1
Winebrake	6/28/2016	Legal Papers/Research	REV COND CERTORDER AND CK TO MAKE SURE ALL DLNS ENTERED. (.1)	0.1
Winebrake	6/28/2016	Legal Papers/Research	REV VAR CONSENT FORMS, AS DOCKETED, AND CK CMS TO MAKE SURE ALL ENTERED. (.1)	0.1
Winebrake	7/5/2016	Meeting	MTG W RAS RE STATUS AND STRATEGY GOING FORWARD. (.1)	0.1
Winebrake	7/7/2016	Phone Call	PC W/ DEF CSL RE THE CLASS LIST AND OTHER ISSUES; FOLLOW UP EMAILS RE SAME. (.2)	0.2
Winebrake	7/7/2016	Phone Call	PC W/ RAS RE MAILING LIST, ETC. (.1)	0.1
Winebrake	7/8/2016	Meeting	MTG W/ RAS AND MJG RE STATIS OF MAILING PROJECT. (.2)	0.2
Winebrake	7/11/2016	Discovery	REV FINAL VERSION OF COLLECTIVE MEMBER LIST AND VAR ACC EMAILS RE SAME. (.1)	0.1
Winebrake	7/11/2016	Legal Papers/Research	REV DECLARATION RE CLASS LIST AND OTHER ASSOCIATED EMAILS. (.1)	0.1
Winebrake	7/29/2016	Meeting	MTG W/ RAS AND MJG RE STATUS. (.1)	0.1
Winebrake	8/1/2016	Legal Papers/Research	REV CONSENF FORMS, AS DOCKETED, AND CK CMS TO MAKE SURE ALL EBING ENTERED PROPERLY. (.1)	0.1
Winebrake	8/8/2016	Legal Papers/Research	REV NEW CONSENT FORM AND CK TO AMKE SURE THAT AL ENTERED, ETC. (.1)	0.1
Winebrake	8/15/2016	Legal Papers/Research	REV VAR CONSENT FORMS, AS DOCKETED, AND CK TO MAKE SURE THAT ALL ENTERED. (.2)	0.2
Winebrake	8/19/2016	Legal Papers/Research	REV NES CONSENT FORM AND CK THAT ALL ENTERED. (.1)	0.1
Winebrake	9/6/2016	Legal Papers/Research	REV WITHDRAWAL OF STEVEN LAFOSSE AND CK TO MAKE SIURE ALL UPDATES O=IN CMS. (.1)	0.1
Winebrake	9/6/2016	Legal Papers/Research	REV PROPOSED STIP RE VAR ISSUES AND VAR ACC EMAILS. (.1)	0.1
Winebrake	9/8/2016	Legal Papers/Research	REV DRAFTS AND FINAL VERSIONS OF THE STIPULATED SCHEDULE SUBMITTED TO JUDGE FOR APPROVAL. (.1)	0.1
Winebrake	9/12/2016	Settlement	REV VAR EMAILS RE SETTLEMENT DATA AND POTENTIAL AND MTG W/ RAS RE SAME. (.2)	0.2
Winebrake	9/19/2016	Meeting	MTG W/ RAS RE CASE STATUS AND PLAN GOING FORWARD. (.1)	0.1
Winebrake	9/20/2016	Legal Papers/Research	REV NEW SCH ORDER AND CK CMS TO MAKE SURE ALL DLNS ENTERED CORRECTLY INTO CMS. (.1)	0.1

Attorney/Staff	Date	Task	Detail	Time
Winebrake	9/21/2016	Discovery	REV FIRST INTERROGATORIES AND DOCUMENT REQUESTS. (.1)	0.1
Winebrake	10/3/2016	Incoming Correspondence	REV ACC EMAILS RE DISCOVERY AND OTHER ISSUES AND PC W/ RAS RE SAME. (.2)	0.2
Winebrake	10/14/2016	Meeting	MTG W/ RAS AND MJG RE STATUS. (.1)	0.1
Winebrake	10/26/2016	Phone Call	PC W/ ALL COCSL RE [REDACTED] (.2)	0.2
Winebrake	11/10/2016	Meeting	REV VAR ACC EMAILS RE [REDACTED] (.2)	0.2
Winebrake	11/14/2016	Phone Call	PC W/ [REDACTED] (.3)	0.3
Winebrake	11/15/2016	Meeting	MTG W/ RAS RE LATEST CALL FR PLAINTIFF [REDACTED] (.2)	0.2
Winebrake	11/16/2016	Incoming Correspondence	REV EMAILS RE IMPROPER COMMUNICATIONS WITH PLFS. (.1)	0.1
Winebrake	11/22/2016	Incoming Correspondence	REV RAS EMAIL TO DEF CSL RE SETTLEMENT [REDACTED] (.1)	0.1
Winebrake	11/23/2016	Outgoing Correspondence	REV VAR EMAILS RE SETTLEMENT AND SEND EMAIL TO TEAM RE SAME. (.1)	0.1
Winebrake	11/29/2016	Meeting	MTG / RAS RE SETTLEMENT AND ALLOCATION ISSUES. (.2)	0.2
Winebrake	11/30/2016	Legal Papers/Research	REV VAR SPREADSHEETS RE FEES ACCUMYUULATED BY OUR FIRM AND GAVIN'S FIRM. (.1)	0.1
Winebrake	12/7/2016	Settlement	DISCUSS PLAN GOING FORWARD W/ RAS AND REV VAR EMAILS W/ BJ RE HIS REVIEW OF CORP FINANCIAL DOCS. (.1)	0.1
Winebrake	12/12/2016	Phone Call	PC W. COREY MATTHEWS [REDACTED] (.2)	0.2
Winebrake	12/26/2016	Legal Papers/Research	REV EMAILS RE EXCHANGE OF FINANCIAL DATA. (.1)	0.1
Winebrake	12/28/2016	Meeting	MTG W/ RAS RE CASE STATUS. (.1)	0.1
Winebrake	1/8/2017	Legal Papers/Research	REV FURTHER REDLINED DRAFT OF SETTLEMENT AGREEMENT AND EMAIL TO COCSL RE SAME. (.2)	0.2
Winebrake	1/26/2017	Incoming Correspondence	REV MANY ACC EMAILS RE REVISIONS TO SETTLEMENT PAPERS AND BJ REVIEW OF FINANCIALS; EMAILS W. BJ RE SAME; REV FINAL VERSION OF SETTLEMENT AGREEMENT. (.2)	0.2
Winebrake	2/1/2017	Incoming Correspondence	REV BJ REPORT RE COMPANY'S FINANCIAL POSITION. (.1)	0.1
Winebrake	2/20/2017	Administrative	REV CITRIN INVOICE AND PAY SAME. (.1)	0.1
Winebrake	2/21/2017	Meeting	MTG W/ RAS RE SETTLEMENT APPROVAL BRIEF AND OTHER ISSUES. (.2)	0.2
Winebrake	2/22/2017	Phone Call	PC W/ RAS RE THE APPROVAL PAPERS AND PLAN FOR GETTING ALL FILED. (.1)	0.1

Attorney/Staff	Date	Task	Detail	Time
Winebrake	2/22/2017	Meeting	SPEAK W/ GAVIN ABOUT THE CASE AND THE PLAN FOR GETTING APPROVAL. (.1)	0.1
Winebrake	2/23/2017	Legal Papers/Research	REV RAS DRAFT OF APPROVAL BRIEF AND ACCOMPANYING PAPERS AND DETAILED EMAIL TO HIM W/ MY COMMENTS AND PROPOSED REVISIONS. (1.2)	1.2
Santillo	10/15/2015	Incoming Correspondence	PC AND EMAILS WITH DF RE POTENTIAL CASE. RESEARCH COMPANY (.2)	0.2
Santillo	10/19/2015	Outgoing Correspondence	EMAIL EXCHAGNE [REDACTED] (.2)	0.2
Santillo	10/20/2015	Legal Papers/Research	RESEARCH AND DRAFT COMPLAINT AND CIRCULATE SAME TO CO-COUNSEL. (2.1)	2.1
Santillo	10/23/2015	Outgoing Correspondence	EMAIL TO NAMED PLAINTIFF ATTACHING DRAFT OF COMPLAINT FOR REVIEW (.2)	0.2
Santillo	11/9/2015	Phone Call	PC WITH POTENTIAL CLIENT. [REDACTED] (.2)	0.2
Santillo	11/19/2015	Phone Call	PC WITH POTENTIAL CLIENT. [REDACTED] (.2)	0.2
Santillo	11/23/2015	Legal Papers/Research	REVIEW NECESSARY DOCUMENTS, FINALIZE AND FILE COMPLAINT (.5)	0.5
Santillo	12/1/2015	Phone Call	REVIEW DOCKETED COMPLAINT. SEND SAME TO CO-COUNSEL AND NAMED PLAINTIFF. PC WITH NAMED PLAINTIFF RE [REDACTED] (.6)	0.6
Santillo	12/4/2015	Phone Call	PC WITH [REDACTED] (.4)	0.4
Santillo	12/7/2015	Phone Call	PC WITH POTENTIAL OPT-IN [REDACTED] (.1)	0.2
Santillo	12/10/2015	Incoming Correspondence	FILE CONSENT FORM AND SEND WELCOME MEMO TO SAME (.2)	0.2
Santillo	12/28/2015	Incoming Correspondence	LETTER TO [REDACTED] (.1)	0.1
Santillo	1/5/2016	Phone Call	PC WITH STEPHANIE KOSTA. SAID SHE WOULD BE REPRESENTING DEF AND ASKED FOR WAIVER OF SERVICE. GENERALLY DISCUSSED THE CASE. EMAIL TO CO-COUNSEL RE SAME (.2)	0.2
Santillo	2/10/2016	Incoming Correspondence	READ ACCUMULATED EMAILS RE NEW POTENTIAL OPT-INS (.1)	0.1

Attorney/Staff	Date	Task	Detail	Time
Santillo	2/22/2016	Phone Call	PC WITH STEPHANIE KOSTA. [REDACTED] (.2)	0.2
Santillo	2/22/2016	Outgoing Correspondence	DETAILED EMAIL TO CO-COUNSEL RE CALL WITH DEFENSE COUNSEL TODAY (.2)	0.2
Santillo	2/26/2016	Legal Papers/Research	MEET WITH PDW RE CASE AND DRAFT, EDIT, FINALIZE AND FILE MOTION TO EXTEND RULE 23.3 DEADLINE (.6)	0.6
Santillo	2/29/2016	Legal Papers/Research	EMAIL WITH COURT AND DEF COUNSEL, FILE AMENDED CERTIFICATE OF NON-CONCURRENCE (.3)	0.3
Santillo	3/8/2016	Legal Papers/Research	READ ANSWER AND DISCLOSURE STATEMENT (.1)	0.1
Santillo	3/14/2016	Legal Papers/Research	READ COURT SCHEDULING ORDER AND PUT SAME IN CMS (.2)	0.2
Santillo	3/31/2016	Phone Call	PC WITH NAMED PLAINTIFF RE STATUS OF CASE (.1)	0.1
Santillo	4/5/2016	Legal Papers/Research	READ ICMP AS DOCKETED (.1)	0.1
Santillo	4/22/2016	Phone Call	PC WITH NAMED PLAINTIFF RE STATUS (.2)	0.2
Santillo	4/26/2016	Court Appearance	PREP FOR AND PARTICIPATE IN CALL WITH THE COURT FOR RULE 16 CONF (.3)	0.3
Santillo	4/29/2016	Discovery	PC WITH NAMED PLAINTIFF, DRAFT, EDIT AND REVISE AUTO DISCLOSURES AND FIRST SET OF ROGS AND DOCUMENT REQUESTS, EMAILS WITH CO-COUNSEL RE SAME (2.3)	2.3
Santillo	5/11/2016	Phone Call	PC WITH DEF COUNSEL RE CONDITIOANL CERRT MOTION (.3)	0.3
Santillo	5/19/2016	Phone Call	PC WITH DEF COUNSEL [REDACTED] (.2)	0.2
Santillo	5/24/2016	Incoming Correspondence	EMAIL EXCHANGE RE STIP TO CONDITIONAL CERT AND VM TO NAMED PLAINTIFF (.1)	0.1
Santillo	5/27/2016	Phone Call	PC FROM [REDACTED]	0.2
Santillo	6/7/2016	Incoming Correspondence	EMAIL EXCHANGE WITH DEF COUNSEL (.1)	0.1
Santillo	6/8/2016	Legal Papers/Research	DRAFT, EDIT, REVISE AND CIRCULATE STIP TO CONDITONAL CERT AND NOTICE AND CONSENT FORM (.8)	0.8
Santillo	6/10/2016	Phone Call	PC WITH DEF COUNSEL RE STIP (.1)	0.1
Santillo	6/10/2016	Phone Call	PC TO [REDACTED] WENT STRATGHT TO VM. UNABLE TO LEAVE A VM. (.1)	0.1
Santillo	6/10/2016	Legal Papers/Research	PC WITH DEF COUNSEL AND DRAFT, EDIT, FINALIZE AND FILE CONDITIONAL CERT MOTION (.7)	0.7
Santillo	6/17/2016	Legal Papers/Research	READ DEF EDITS TO CONDITIONAL CERT STIP AND MAKE EDITS TO SAME AND CIRCULATE (.2)	0.2

Attorney/Staff	Date	Task	Detail	Time
Santillo	6/22/2016	Phone Call	PC WITH DEF COUNSEL RE STIP AND NOTICE, RECEIVE ADDITIONAL EDITS AND ACCEPT SAME AND RECIRCULATE "FINAL VERSIONS" (.3)	0.3
Santillo	6/23/2016	Legal Papers/Research	FINALIZE AND FILE FINAL VERSIONS OF STIP (.1)	0.1
Santillo	6/28/2016	Legal Papers/Research	READ COURT ORDER ON CONDITIONAL CERT AND ENTER DEADLINES INTO CMS (.1)	0.1
Santillo	7/6/2016	Outgoing Correspondence	EMAIL TO DEF RE NAMES FOR MAILING (.1)	0.1
Santillo	7/8/2016	Outgoing Correspondence	OVERSEE MAILING OF NOTICE AND CONSENT FORMS (.4)	0.4
Santillo	7/18/2016	Outgoing Correspondence	ENVELOPES RETURNED WITH FORWARDING ADDRESS FOR [REDACTED]	0.1
Santillo	7/18/2016	Outgoing Correspondence	ENVELOPES RETURNED WITH FORWARDING ADDRESS FOR [REDACTED]	0.1
Santillo	7/25/2016	Outgoing Correspondence	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
Santillo	8/31/2016	Legal Papers/Research	REVIEW DEADLINES AND MEET WITH PDW RE PROPOSED SCHEDULING ORDER. DRAFT AND CIRCULATE SAME TO CO-COUNSEL (.6)	0.6
Santillo	9/1/2016	Legal Papers/Research	SEND PROPOSED SCHEDULING ORDER TO DEF (.1)	0.1
Santillo	9/1/2016	Legal Papers/Research	DRAFT NEW DISCOVERY TO SEND TO DEF (.3)	0.3
Santillo	9/2/2016	Meeting	MEET WITH MJG RE WITHDRAW OF OPT-IN AND EDIT STIPULATION AND CIRCULATE SAME TO DEF COUNSEL (.2)	0.2
Santillo	9/7/2016	Phone Call	PC WITH DEF COUNSEL STEPHANIE KOSTA. [REDACTED]	0.3
Santillo	9/7/2016	Phone Call	FILE STIP TO PROPOSED SCHEDULING ORDER. EMAIL CO-COUNSEL ABOUT TODAY'S CALL WITH DEF COUNSEL AND PC WITH NAMED PLAINTIFF. NAMED PLAINTIFF SAID [REDACTED]	0.3
Santillo	9/12/2016	Incoming Correspondence	EMAIL EXCHANGE WITH DEF RE CONSENT FORMS (.1)	0.1
Santillo	9/16/2016	Legal Papers/Research	REVIEW DATA AND CREATE DAMAGES SPREADSHEET (1.9)	1.9

Attorney/Staff	Date	Task	Detail	Time
Santillo	9/16/2016	Legal Papers/Research	READ COURT ORDER AND ENTER DEADLINES IN CMS (.1)	0.1
Santillo	9/20/2016	Outgoing Correspondence	SENT LETTER TO [REDACTED] THAT HIS FORM WAS TO LATE AND MISSED OPT-IN DEADLINE SO COULD NOT PARTICIPATE IN CASE. SAVED TO T-DRIVE. (.2)	0.2
Santillo	9/20/2016	Legal Papers/Research	WORK ON DAMAGES MODEL AND MEET WITH PDW RE SAME. SEND EMAIL TO CO-COUNSEL RE SAME (4.1)	4.1
Santillo	9/20/2016	Legal Papers/Research	DRAFT DETAILED SETTLEMENT DEMAND AND FINALIZE AND SERVE WRITTEN DISCOVERY (.3)	0.3
Santillo	10/3/2016	Incoming Correspondence	EMAIL EXCHANGE WITH DEF COUNSEL (.1)	0.1
Santillo	10/4/2016	Phone Call	PC WITH DEF COUNSEL. WILL GET RESPONSE TO DEMAND LATER THIS WEEK (.1)	0.1
Santillo	10/11/2016	Phone Call	PC FROM DEF COUNSEL. [REDACTED]	0.2
Santillo	10/11/2016	Meeting	MEET WITH PDW RE SETTLEMENT OFFER. PC WITH DON FOTY - [REDACTED] (.4)	0.4
Santillo	10/24/2016	Phone Call	PC WITH DEF COUNSEL WITH SETTLEMENT RESPONSE (.2)	0.2
Santillo	10/26/2016	Phone Call	PC WITH CO-COUNSEL RE RESPONSE (.2)	0.2
Santillo	10/27/2016	Legal Papers/Research	RESEARCH CASELAW FOR DEF CANCELLATION OF MASTER SERVICE AGREEMENT RPROPOSAL AND DRAFT DETAILED EMAIL RESPONSE TO SETTLEMENT (1.3)	1.3
Santillo	11/4/2016	Legal Papers/Research	READ LETTER FROM DEF AND MEET WITH PDW RE SAME (.2)	0.2
Santillo	11/8/2016	Outgoing Correspondence	DETAILED EMAIL TO DEF RE LETTER OF 10/31 (.1)	0.1
Santillo	11/11/2016	Phone Call	PC WITH DEF COUNSEL. [REDACTED] (.3)	0.3
Santillo	11/15/2016	Phone Call	PC FROM OPT-IN [REDACTED]	0.3
Santillo	11/15/2016	Meeting	MEET WITH PDW, VM TO DEF COUNSEL AND DRAFT DETAILED EMAIL TO DEF COUNSEL RE SAME (.3)	0.3
Santillo	11/18/2016	Phone Call	DRAFT DETAILED EMAIL TO DEF WITH SETTLEMENT PROPOSAL. PC FROM DEF COUNSEL RE SAME. [REDACTED]	0.3

Attorney/Staff	Date	Task	Detail	Time
Santillo	11/22/2016	Phone Call	PC WITH DEF COUNSEL. [REDACTED]	0.3
Santillo	11/22/2016	Incoming Correspondence	EMAIL FROM DEF COUNSEL. MEET WITH PDW RE SAME, PC WITH NAMED PLAINTIFF AND HE IS OK WITH SETTLEMENT AND EMAIL TO CO-COUNSEL (.3)	0.3
Santillo	11/23/2016	Phone Call	PC WITH [REDACTED]	0.2
Santillo	11/23/2016	Phone Call	PC WITH OPT-IN AND CONFIRMED ADDRESS. (.1)	0.1
Santillo	11/23/2016	Phone Call	PC WITH FRANK. [REDACTED]	0.2
Santillo	11/28/2016	Phone Call	PC WITH CHRIS BICE. [REDACTED] (.2)	0.2
Santillo	11/28/2016	Legal Papers/Research	WORK ON SETTLEMENT ALLOCATION AND FIRST DRAFT OF SETTLEMENT AGREEMENT. MEET WITH PDW RE SAME AND CIRCULATE TO CO-COUNSEL (4.1)	4.1
Santillo	12/1/2016	Meeting	MEET WITH PDW RE SETTLEMENT DOCUMENTS AND PC WITH JOHN NEUMAN RE SAME (.4)	0.4
Santillo	12/1/2016	Phone Call	MULTIPLE PCS WITH NAMED PLAINTIFF. [REDACTED]	0.4
Santillo	12/1/2016	Phone Call	PC WITH ZACHARY ZIMMERS. [REDACTED] (.2)	0.2
Santillo	12/7/2016	Phone Call	PC WITH DEF COUNSEL. [REDACTED] END DETAILED EMAIL TO DEF COUNSEL RE SAME. FOLLOW-UP EMAILS WITH BJ RE CONFLICTS CHECKS (.9)	0.9
Santillo	12/8/2016	Outgoing Correspondence	DRAFT, CHECK AND SEND MEMOS WITH PROPOSED SETTLEMENT AMOUNTS TO 28 OPT-INS (1.5)	1.5
Santillo	12/12/2016	Phone Call	FOLLOW-UP PC WITH COREY MATTHEWS. [REDACTED] (.2)	0.2

<b>Attorney/Staff</b>	<b>Date</b>	<b>Task</b>	<b>Detail</b>	<b>Time</b>
Santillo	12/19/2016	Phone Call	CHRISTOPHER BICE CALLED AND [REDACTED] (.)2	0.2
Santillo	12/19/2016	Outgoing Correspondence	LETTER RETURNED FOR [REDACTED] (.)1	0.1
Santillo	12/23/2016	Outgoing Correspondence	SEND EMAIL TO DEF COUNSEL ABOUT SETTLEMENT AGREEMENT REVIEW AND SCHEDULING BJ TO LOOK AT FINANCIALS (.)1	0.1
Santillo	12/29/2016	Phone Call	PC FROM JASON HALE. [REDACTED] (.)2	0.2
Santillo	1/2/2017	Phone Call	VM AND PC FROM BRANDON WILLIAMS. [REDACTED] (.)2	0.2
Santillo	1/3/2017	Phone Call	PC WITH JAMES JONES - [REDACTED] (.)2	0.2
Santillo	1/6/2017	Legal Papers/Research	REVIEW DEFENDANT'S EDITS TO SETTLEMENT AGREEMENT, MAKE ADDITIONAL EDITS AND CIRCULATE TO CO-COUNSEL. PC WITH NAMED PLAINTIFF RE SAME (1.3)	1.3
Santillo	1/9/2017	Legal Papers/Research	ADDITIONAL EDITS TO SETTLEMENT AGREEMENT AND DETAILED EMAIL TO DEF COUNSEL RE SAME (.)3	0.3
Santillo	1/11/2017	Phone Call	PC FROM OPT-INS WIFE ASKING FOR UPDATE (.)1	0.1
Santillo	1/12/2017	Phone Call	PC FROM OPT-IN ASKING FOR STATUS - MCCARLEY (.)1	0.1
Santillo	1/13/2017	Phone Call	PC FROM MARK HARISH. [REDACTED] (.)2	0.2
Santillo	1/18/2017	Phone Call	VM FROM BLANE HURLER [REDACTED] (.)3	0.3
Santillo	1/18/2017	Phone Call	PC WITH DEF COUNSEL RE SETTLEMENT AGREEMENT AND PC WITH BJ RE ACCOUNTING REVIEW (.)6	0.6
Santillo	1/18/2017	Legal Papers/Research	REVIEW NON-DISCLOSURE AGREEMENT AND SEND EMAIL TO BJ RE SAME AND EMAIL SEPARATELY TO DEF RE PAYMENT SCHEDULE (.)2	0.2



Attorney/Staff	Date	Task	Detail	Time
Santillo	1/23/2017	Settlement	MEET WITH PDW RE SETTLEMENT PAYMENTS AND EDIT SETTLEMENT AGREEMENT RE SAME AND CIRCULATE FINAL VERSION. PC WITH NAMED PLAINTIFF AND SENT HIM SETTLEMENT AGREEMENT. [REDACTED]	0.8
Santillo	1/23/2017	Phone Call	PC WITH NAMED PLAINTIFF AND ANSWERED VARIOUS QUESTIONS. HE SIGNED AGREEMENT AND SENT IT TO ME. (.3)	0.3
Santillo	1/25/2017	Legal Papers/Research	READ VARIOUS EMAILS AND COMPIE EXECUTED SETTLEMENT AGREEMENT (.2)	0.2
Santillo	1/25/2017	Incoming Correspondence	VARIOUS EMAILS WITH BJ RE FINANCIAL REVIEW (.1)	0.1
Santillo	2/2/2017	Incoming Correspondence	READ BJ'S REPORT ON FINANCIAL CONDITION AND EMAIL TO DEF COUNSEL RE GOING FORARD WITH SETTLEMENT (.2)	0.2
Santillo	2/16/2017	Incoming Correspondence	EMAIL EXCHANGE WITH NAMED PLAINTIFF (.1)	0.1
Santillo	2/20/2017	Legal Papers/Research	BEGIN RESEARCHING AND WORKING ON MOTION FOR SETTLEMENT APPROVAL (9.9)	9.9
Santillo	2/21/2017	Legal Papers/Research	CONTINUED WORK ON APPROVAL PAPERS (8.1)	8.1
Santillo	2/22/2017	Legal Papers/Research	ADDITIONAL WORK ON SETTLEMENT APPROVAL PAPERS TO FINALIZE SAME (4.2)	4.2
Gottesfeld	12/1/2015	Legal Papers/Research	REV'D COMPLAINT AS DOCKETED. UPDATED CASE MANAGEMENT SYSTEM. (.2)	0.2
Gottesfeld	12/1/2015	Legal Papers/Research	ARRANGED FOR SERVICE OF SUMMONS AND COMPLAINT W/ PROCESS SERVER. (.1)	0.1
Gottesfeld	12/16/2015	Outgoing Correspondence	EMAIL EXCHANGE W/ PROCESS SERVER RE: ATTEMPT TO SERVCE SUMMONS AND COMPLAINTS. ADDRESS WE HAD WAS RESIDENTIAL ADDRESS AND IT WAS NOT SUCCESSFUL. THEY SUGGESTED ANOTHER LOCATION WHICH I TOLD THEM TO TRY. (.1)	0.1
Gottesfeld	12/18/2015	Incoming Correspondence	DEC. 10TH MEMO RETURNED AS UNDELIVERABLE TO [REDACTED]	0.1
Gottesfeld	12/18/2015	Phone Call	LEFT VM FOR CHRISTOPHER BICE ASKING HIM TO CALL ME BACK. (.0)	0
Gottesfeld	12/18/2015	Phone Call	PC W/ CHRISTOPHER BICE. [REDACTED] [REDACTED] (.1)	0.1
Gottesfeld	12/18/2015	Outgoing Correspondence	EMAIL TO CHRISTOPHER BICE [REDACTED] [REDACTED] (.1)	0.1
Gottesfeld	1/4/2016	Incoming Correspondence	READ MULTIPLE EMAILS FROM PROCESS SERVER RE: SERVICE ATTEMPTS. (.2)	0.2

Attorney/Staff	Date	Task	Detail	Time
Gottesfeld	1/4/2016	Phone Call	PC W/ PROCESS SERVER. THEY HAVE CORRECT ADDRESS BUT NO ONE IS OPENING DOOR. HE WILL SEND ME QUOTE OF HOW MUCH IT WOULD TO RUN SURVEILLANCE AND THEN SERVE THEM ONCE SOMEONE ENTERS HOUSE. (.1)	0.1
Gottesfeld	1/5/2016	Incoming Correspondence	12/10/15 MEMO RETURNED AS UNDELIVERABLE TO OPT-IN CHRISTOPHER BICE AT [REDACTED] (.1)	0.1
Gottesfeld	1/5/2016	Phone Call	LEFT VM FOR OPT-IN CHRISTOPHER BICE ASKING HIM TO CALL ME BACK. (.1)	0.1
Gottesfeld	1/5/2016	Incoming Correspondence	READ EMAIL FROM PROCESS SERVER RE: PCS MADE TO OWNER OF COMPANY. (.1)	0.1
Gottesfeld	1/5/2016	Meeting	MEETING W/ RAS RE: WAIVER OF SERVICE TO SEND TO STEPHANIE KOSTA. (.1)	0.1
Gottesfeld	1/5/2016	Outgoing Correspondence	EMAIL TO PROCESS SERVER TELLING HIM NOT NECESSARY TO SERVE SUMMONS AND COMPLAINT. (.1)	0.1
Gottesfeld	1/5/2016	Legal Papers/Research	DRAFTED REQUEST FOR WAIVER OF SERVICE AND SENT TO STEPHANIE KOSTA. (.2)	0.2
Gottesfeld	1/5/2016	Incoming Correspondence	EMAIL FROM DEF. CSL. ATTACHING WAIVER OF SERVICE FORM. (.1)	0.1
Gottesfeld	1/5/2016	Legal Papers/Research	FILED REUTRN WAIVER OF SERVICE FORM. (.1)	0.1
Gottesfeld	1/5/2016	Legal Papers/Research	REV'D RETURN WAIVER OF SERVICE FORM AS DOCKETED. (.1)	0.1
Gottesfeld	1/6/2016	Phone Call	PC W/ CHRISTOPHER BICE AND UPDATED HIS ADDRESS. [REDACTED] (.1)	0.1
Gottesfeld	1/6/2016	Outgoing Correspondence	RESENT MEMO TO CHRISTOPHER BICE. (.1)	0.1
Gottesfeld	2/11/2016	Phone Call	PC W/ CHRISTOPHER BICE AND UPDATED HIS ADDRESS IN NEEDLES TO RUAH STREET. UPDATED HIM RE: CASE. (.1)	0.1
Gottesfeld	3/7/2016	Legal Papers/Research	REV'D DEF'S CORPORATE DISCLOSURE STATEMENT AS DOCKETED. (.1)	0.1
Gottesfeld	3/7/2016	Legal Papers/Research	REV'D DEF'S ANSWER AS DOCKETED. (.1)	0.1
Gottesfeld	7/7/2016	Phone Call	PC FROM STEPHANIE KOSTA APOLOGIZING FOR DELAY IN GETTING US CLASS LIST. (.1)	0.1
Gottesfeld	7/14/2016	Phone Call	PC FROM JASON HALE ASKING QUESTIONS ABOUT LAWSUIT. (.2)	0.2
Gottesfeld	7/26/2016	Outgoing Correspondence	WORKED ON OBTAINING ACCURINT ADDRESSES FOR UNDELIVERABLE NOTICE FORMS. (.8)	0.8
Gottesfeld	8/19/2016	Legal Papers/Research	FILED CONSENT FORM FOR RADHAMES TATIS. (.1)	0.1
Gottesfeld	8/19/2016	Administrative	ADDED CONTACT INFO FOR RADHAMES TATIS INTO CMS. (.1)	0.1
Gottesfeld	9/2/2016	Phone Call	PC FROM OPT-IN STEPHEN LaFOSSE [REDACTED] (.1)	0.2

Attorney/Staff	Date	Task	Detail	Time
Gottesfeld	9/2/2016	Outgoing Correspondence	SENT EMAIL TO OPT-IN STEPHEN LaFOSSE [REDACTED] (.3)	0.3
Gottesfeld	9/2/2016	Incoming Correspondence	EMAIL FROM OPT-IN STEPHEN LaFOSSE [REDACTED] (.1)	0.1
Gottesfeld	9/2/2016	Legal Papers/Research	DRAFTED AND FILED CONSENT FORM FOR STEPHEN LaFOSSE WITHDRAWING HIS APPEARANCE. (.2)	0.2
Gottesfeld	1/23/2017	Phone Call	PC FROM JUSTIN ROY [REDACTED] (.1)	0.1
Gottesfeld	2/23/2017	Phone Call	PC FROM OPT-IN CHRISTOPHER BICE ASKING FOR UPDATE. (.1)	0.1
Gottesfeld	2/23/2017	Legal Papers/Research	PROOFREAD APPROVAL BRIEF. (.4)	0.4
Gottesfeld	2/23/2017	Legal Papers/Research	CREATED TABLE OF AUTHORITIES AND MEETING W/ MEG RE: CREATING TABLE OF CONTENTS. (1.2)	1.2
CLERICAL	7/8/2016	Administrative	WORKED ON MAILING TO CLIENTS. (.2)	0.2
CLERICAL	7/26/2016	Administrative	WORKED ON MAILING TO CLIENTS AND SCANNED 15 DOCUMENTS. (.6)	0.6
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] )	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.6)	0.6
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR AARON MCCOY: OLD ADDRESS: 318 VZ CR 4702 [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] (.1)	0.1

<u>Attorney/Staff</u>	<u>Date</u>	<u>Task</u>	<u>Detail</u>	<u>Time</u>
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] [REDACTED] (.1)	0.1
CLERICAL	7/27/2016	Administrative	ENVELOPE RETURNED FOR [REDACTED] [REDACTED] (.1)	0.1
CLERICAL	8/11/2016	Outgoing Correspondence	SEND WELCOME MEMOS TO NEW OPT-INS (.4)	0.4
CLERICAL	9/20/2016	Administrative	INPUT DATA INTO SPREADSHEET (6.3)	6.3

<u>Attorney/Staff</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Winebrake	\$590.00	12.7	\$7,493.00
Santillo	\$375.00	63.6	\$23,850.00
Gottesfeld	\$275.00	6.4	\$1,760.00
CLERICAL	\$100.00	9.0	\$900.00
<b>TOTAL</b>		<b>91.7</b>	<b>\$34,003.00</b>

# Appendix C

**IMPORTANT – NOTICE OF SETTLEMENT  
PLEASE READ THIS DOCUMENT CAREFULLY**

To: [INSERT NAME] (via first class mail)

From: Andy Santillo, Esq.

Date: December 8, 2016

Re: **Crevatas v. Smith Management and Consulting, LLC, 3:15-cv-2307-MEM**

You are one of 28 day-rate workers for Defendant Smith Management and Consulting, LLC (“Smith”) who joined this collective action lawsuit. I write to report that this lawsuit has been **SETTLED**. Importantly, however, the settlement will not become final unless the assigned Federal Judge (Malachy E. Mannion) approves the settlement as fair and reasonable.

If the Judge approves the settlement, Smith will be required to pay a total of \$137,500. This total amount will be distributed as follows: (i) \$90,000 will be distributed to you and the other 27 individuals who joined the case; (ii) \$45,000 will be paid to law firms that have represented you to date to compensate us for attorney’s fees and litigation expenses; and (iii) \$2,500 will be paid to Francis Crevatas as a “service award” for his initiative in starting the lawsuit and obtaining a recovery for the 28 individuals who are covered by the settlement.

The lawsuit is limited to the time period after November 2012. Under the settlement, the 28 individuals who joined the case will receive a base payment of \$200.00 plus an additional amount based on the number of weeks he/she worked after November 2012 compared to the total number of weeks worked by all 28 plaintiffs during this same period. Under this analysis, your proposed settlement payment is approximately \$\_\_\_\_\_. This payment will constitute taxable income that must be reported to appropriate taxing authorities. We recommend that you speak with a tax professional regarding this payment should the settlement ultimately be approved by the Judge.

A settlement is a compromise. If this case proceeded to trial, you may possibly win an amount greater than your settlement payment. However, it also is possible that: (i) Smith would win at trial; (ii) you would win an amount less than your settlement payment; or (iii) the Judge would not allow the legal claims of all 28 of you to be decided in a single trial. Furthermore, even if you won at trial and were awarded an amount great than your settlement payment, you may not be able to collect that amount if Smith were to declare bankruptcy or go out of business. These are all “litigation risks” that are avoided by settling this lawsuit prior to trial.

As previously explained, the Judge must decide whether to approve this settlement as fair and reasonable. In this regard, you have the right to inform the Judge of your views regarding the settlement. For example, you might believe the settlement is unfair because it does not provide enough money or because too much money is going to the lawyers. Or you might be happy with the settlement. Regardless of your views, I encourage you to make your feelings known.

If you want the Judge to consider your viewpoint, you should do the following **before January 9, 2017**: (i) mail me a letter expressing your views; **or** (ii) call us at (215) 884-2491; **or** (iii) send an e-mail expressing your views to [asantillo@winebrakelaw.com](mailto:asantillo@winebrakelaw.com). If you take one of these steps, I will provide your feedback to the Judge so that he can consider your viewpoint in deciding whether to approve the settlement.

Finally, please do not hesitate to call me at (215) 884-2491 with any questions.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, *et al.*

v.

SMITH MANAGEMENT AND  
CONSULTING, LLC.

---

:  
:  
: 3:15-cv-02307-MEM  
:  
:  
:  
:  
:  
:  
:  
:

**DECLARATION OF DON J. FOTY, ESQ**

1. I am a partner at Kennedy Hodges, LLP (“KH”) located in Houston, Texas. KH has represented Plaintiff in the above-caption action since its inception.

2. I submit this declaration in order to apprise the Court of (i) the qualifications of KH and its attorneys and the hourly rates sought in this class action lawsuit; (ii) the total hours expended by KH in connection with this litigation and (iii) the total out-of-pocket litigation expenses incurred by KH in connection with this litigation.

**KH’s Experience in the Field of Wage and Hour Litigation**

3. Since its founding in 2002, KH has exclusively represented plaintiffs in employment litigation and personal injury litigation. For the past three years, approximately 80% of our cases have been employment cases under the Fair Labor Standards Act or the equivalent state law. KH is a pure contingency fee law firm and is “at risk” in every matter it handles. KH never requires a client to pay an hourly fee or retainer. If a matter does not result in a money recovery, KH recovers no attorney’s fees and is not reimbursed for any of its out-of-pocket

expenditures. KH also provides an interest free loan for case expenses to its clients.

4. Since January 2002, KH has served as class counsel in 41 class/collective actions in courts throughout the United States. These actions are listed in Attachment 1. As indicated, in Attachment 1, KH has litigated class/collective actions across the United States, including in Texas, Colorado, Illinois, New York, Pennsylvania, and Ohio. Additionally, KH currently serves as class counsel against Scotts in a nationwide Fair Labor Standards Act collective action involving approximately 1,200 class members which is currently proceeding in New York.

5. In addition to the class/collective actions described above, KH has successfully resolved well over 350 “individual” actions in which a single plaintiff (or a small group of named plaintiffs) alleges violations of federal or state wage/overtime laws.

6. Moreover, KH’s current case inventory includes over 85 unresolved actions that allege violations of federal or state wage/overtime laws. These active cases include both class/collective actions as well as individual actions.

#### **KH Attorneys’ Individual Experience**

7. Attorney **Don J. Foty** (“Foty”) graduated in 2003 from the University of Texas at Austin and in 2006 from the University of Houston Law Center. Foty has been a member of the Texas bar since 2006. Foty is admitted to the following federal courts: the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; the United States District Courts for the Eastern District of Michigan; the United States District



Court for the District of Colorado; the United States District Court for the Northern District of Illinois; the United States District Court for the District of North Dakota, and the United States Courts of Appeals for the Fifth Circuit.

8. Since 2006, Foty has handled through conclusion at least 200 civil actions in state and federal courts and has tried 9 cases to verdict. In addition, Foty has been recognized each year since 2012 as a “Rising Star” in the annual survey of Texas attorneys published by Thompson Reuters. Foty is also listed as one of the top 40 lawyers under 40 by the National Trial Lawyers’ Association and one of the top 100 employment lawyers in the country by the National Advocates. Foty has spoken before the Houston Bar Association on the Fair Labor Standards Act and has served as a contributing author to the American Bar Association FLSA Midwinter Report in 2016 and 2017.

9. Additionally, since he became licensed as an attorney, he has regularly litigated unpaid overtime compensation and minimum wage claims, including claims involving employee misclassification, regular rate miscalculation, off-the-clock work, preparatory and concluding work, fluctuating workweek disputes, on-duty meal periods, and waiting time and travel time.

**Hours Spent by KH and the Resulting Fee Lodestar**

10. KH attorneys use the firm’s case management system to contemporaneously record each case-related activity and the amount of time spent performing the activity in six minute increments.

11. The time spent in this litigation by KH through March 1, 2017 totals **13.32 hours** which results in a total fee lodestar of **\$3,437.00** when using

the hourly rates described in the fee schedule developed by Philadelphia Community Legal Services (“CLS”) at <https://clsphila.org/about-cls/attorney-fees>:

<b>NAME</b>	<b>TITLE</b>	<b>TOTAL HOURS</b>	<b>HOURLY RATE</b>	<b>TOTAL</b>
Don Foty	Partner	8.42	\$350.00	\$2,947.00
Gary Wohn	Office Manager	1.7	\$100.00	\$170.00
Marta Ponce	Paralegal	3.2	\$100.00	\$320.00
<b>TOTALS</b>		<b>13.32</b>		<b>\$3,437.00</b>

**Out-of-Pocket Litigation Expenses of KH**

12. KH incurred a total of \$52.70 in un-reimbursed costs and expenses in connection with this litigation. These expenses are summarized below:

10/07/15	PACER Service Center		0.20
12/10/15	US District Court - Middle Dist. of PA	PHV admission of DJF	50.00
01/07/16	PACER Service Center		2.00
04/13/16	PACER Service Center		0.50
<b>Total</b>			<b>\$52.70</b>

The above expenses are reflected on the books and records of KH, and are available for the Court's review upon request. These books and records are prepared from expense vouchers, receipts, and check records, and are accurate regarding all the expenses incurred.

**I HEREBY DECLARE, SUBJECT TO PENALTY OF PERJURY, THAT  
THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE, INFORMATION, AND BELIEF.**

DATE: March 1, 2017

/s/ Don Foty  
Don J. Foty\*  
Texas Bar No. 24050022  
Kennedy Hodges, LLP  
4409 Montrose Blvd.  
Suite 200  
Houston, Texas 77006

\*admitted *pro hac vice*

**ATTACHMENT 1**

1. Case No. 1:13-cv-01363-AKH; *Larkin, et al. v. EG Systems, Inc. and Scotts Lawn Service*; In the United States District Court for the Southern District of New York (Judge Hellerstein certified a national class on behalf of more than 4,500 lawn technician service representatives).
2. Case No. 3:11-cv-02743-O; *Erica Jones, et al v. JGC Dallas LLC, et al*; In the United States District Court for the Northern District of Texas, Dallas Division (Judge Reed O'Connor)(certified collective action on behalf of 4,000 exotic dancers working at 8 different clubs in two states).
3. Case No. 1:14-cv-00121; *Ryan May, et al. v. E & J Well Service, Inc., et al.*; In the United States District Court for Colorado (Judge Brooke Jackson); 2014 WL 2922655 (certifying national class of oil and gas workers misclassified as independent contractors).
4. Case No. 3:13-cv-00455; *Mario Valenzuela, et al. v. Fisher Commercial Construction, Inc., et al.*; In the United States District Court for the Southern District of Texas, Galveston Division (Magistrate Judge Froeschner) (certifying national class of commercial construction workers whose were denied overtime pay).
5. Civil Action No. 4:10-cv-00986; *John Glass, et al. v. Konica Minolta Business Solutions*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Lake)(national class certified as to over 2,000 service repair technicians).
6. Civil Action No. 4:13-cv-02179; *Paulita Coronad, et al. v. D N.W. Houston, Inc. d/b/a Gold Cup, et al*; In the United States District Court for the Southern District of Texas, Houston Division, (Judge Rosenthal)(certified class of over 2,000 workers misclassified as independent contractors);
7. Case No. 1:13-cv-00223-LY; *Emma Sanders, et al. v. Extreme Cuisine III, LLC d/b/a Piranha Killer Sushi, et al*; In the United States District Court for the Western District of Texas, Austin Division, (Judge Yeakel) (certifying class of wait staff throughout Texas who worked at chain of five high end sushi restaurants).
8. Case No. 3:14-cv-00019; *David Lopez, et al. v. Total Waste Management Alliance, Inc.*; In the United States District Court for the Southern District of Texas, Galveston Division, (Judge Froeschner) (certifying class of waste management workers state wide who were paid a day rate).
9. Arbitration 14 160 01482 12; *Baer, et al v. TruGreen Limited, et al*; American Arbitration Association (Arbitrator Alfred Feliu certified hundreds of technicians and lawn specialists).
10. Case No. 6:13-cv-00180-WSS; *Jackson v. Examination Management Services, Inc.*; In the United States District Court for the Western District of Texas (Judge Walter S.

Smith)(national collective action certified as to remote underwriters who created systematic summaries of medical records).

11. Case No. 7:12-cv-00375; *Vargas et al v. Bramble Restaurants, LTD. d/b/a Dennys et al*; In the United States District Court for the Southern District of Texas (Judge Ricardo H. Hinojosa) (Texas class of 3 restaurants certified; notice mailed to over 600 servers).
12. Case No. 3:13-cv-00158; *Schlink v. Crowley Marine Services, Inc.*; In the United States District Court for the Southern District of Texas (Judge Gregg Costa certified collective action of more than 40 tankerman).
13. Case No. 4:13-cv-01441; *Wright et al v. WT3 LLC et al*; In the United States District Court for the Southern District of Texas (Judge Melinda Harmon certified collective action of more than 300 field technicians).
14. Case No. 3:12-cv-00374; *Epps et al v. Great White Pressure Control LLC*; In the United States District Court for the Southern District of Texas (Judge Gregg Costa certified collective action of more than 300 pump operators who worked in the oil industry).
15. Case No. 12-cv-2987-WJM-MJW; *Buck Howard, et al. v. J&A Services, Inc., et al*; In the United States District Court for the District of Colorado (Judge Martinez)(certified a national class of over 300 oil/gas flow testers allegedly misclassified as independent contractors).
16. Case No. 3:13-cv-0211; *Condiff v. Genesis Energy, LLC, et al.* (Judge Costa certified a class of over 140 tankerman in a national collective action lawsuit).
17. Case No. 4:13-cv-0027; *Hanson, et al. v. Camin Cargo*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Smith certified a class of hundreds of oil and gas inspectors, including approximately half of whom had signed arbitration agreements).
18. Case No. 4:12-cv-01307; *Green-Johnson v. Fircroft, Inc. et al*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Rosenthal certified a class who performed seismic sourcing work whose primary duties were to prepare documentation associated with drilling projects).
19. Case No. 11-2186 c/w 12-359; *Dale Robert White, et al. v. Dish Network Service, LLC and Integrated Electronic Technologies*; In the United States District Court Eastern District of Louisiana (Judge Susie Morgan)(Judge Morgan certified a class of over 400 DISH cable installers in three states).
20. Civil Action No. H-12-1446; *Kimberly Long, et al. v. BDP International, Inc. et al.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge N. Atlas certified collective action on behalf of more than 200 logistic coordinators claiming off the clock time worked.)
21. Civil Action Civil Action No. 1:12-cv-00243; *Holly A. Villarreal, et al. v. Source Refrigeration & HVAC, Inc.*; In the United States District Court for the Southern District

- of Texas, Houston Division (Judge Sparks)(certified collective action of more than 500 industrial refrigeration repair technicians in eleven states).
22. Civil Action No. 6:11-cv-00255; *Jeanette Wallace, et al. v Examination Management Services, Inc.*; In the United States District Court for the Western District of Texas, Waco Division (Judge W. Smith)(national collective action certified as to virtual case workers ordering medical records from home).
  23. Civil Action No. 4:11-cv-712; *Cherie Turner, et al. v. NTFN, Inc. and Nationwide Home Lending*; In the United States District Court for the Eastern District of Texas, Sherman Division (Judge Bush)(multi-state collective action certified as to loan officers).
  24. Civil Action No. 4:11-cv-02198; *Robert Barnard, et al. v. Intertek, et al.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Lake) (national class certified adversely as to oil and gas inspectors; later expanded to dispatchers).
  25. Civil action No. 3:11-CV-02110; *Michael Shackelford, et al. v. Time Warner NY Cable LLC, et al.*; In the United States District Court for the Northern District of Texas, Dallas Division (Judge Solis)(Texas class certified adversely as to cable TV installers).
  26. Civil Action No. 4:08-cv-00486 *Alvaro Albanil, et al. v. Coast 2 Coast*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Miller)(national class certified adversely as to cement workers).
  27. Civil Action No. 4:06-cv-01721; *Casandra Fuentes, et al. v. Target Corporation*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Gilmore)(multi-state class certified with hundreds of janitors).
  28. Civil Action No. 4:08-cv-01692; *Tomas Ruiz, et al. v. GVMS, Inc., GVHC, Inc., GV Marine Services, etc.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Rosenthal)(Multistate class certified with hundreds of metal workers).
  29. Civil Action No. 4:08-cv-00212; *Brett Smith, et al. v. CBS Mechanical Inc.*; In the United States District Court for the Eastern District of Texas, Sherman Division (Judge Schneider)(Texas class certified of technical field workers).
  30. Civil action No. H-12-1003; *Hector Cabrera, et al. v. A&A Cable Contractors, Inc., et al.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Solis)(Texas class certified).
  31. Civil Action No. 1:12-cv-00111 *Aaron Covey, et al. v. Iron Cactus, et al.*; In the United States District Court for the Western District of Texas, Austin Division (Judge Sparks)(Texas class of 5 restaurants certified; notice mailed to over 900 servers).
  32. Civil Action No. 4:05-cv-03924; *Javier Garcia, et al. v. Maintenance, Inc.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Gilmore)(multi-state class certified adversely).

33. Civil Action No. 1:12-CV-77; *Samantha Patrick, et al. v. Madison Restaurants of Texas, Inc., et al.*; In the United States District Court for the Eastern District of Texas, Beaumont Division (Judge Clark) (Texas class certified).
34. Civil Action No. 4:05-cv-03620; *Cynthia Guerrero, et al. v. Habla Communications, Inc.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Hittner)(Texas class certified as to hundreds of employees working at call center).
35. Civil Action No. 4:11-cv-01007; *Samuel Puac, et al. v. Qin Dynasty*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Hughes)(Houston class certified).
36. Civil Action No. 4:11-cv-01160 *Jorge Viveros, et al. v. Nit Noi, et al.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Hughes) (Houston class certified).
37. Civil Action No. 4:09-cv-03981 *Ricardo Vargas v. The Richardson Trident Co.* In the United States District Court for the Southern District of Texas, Houston Division (Judge Harmon) (multi-state class certified adversely).
38. Civil Action No. 08-511; *Liliana Mendoza, et al. v. BK 6341, Burger King, et al.*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Miller)(Texas class certified).
39. Civil Action No. 4:05-cv-01240; *Gregoria Lopez, et al. v. Churrascos and Cordua Restaurants*; In the United States District Court for the Southern District of Texas, Houston Division (Judge Lake)(Texas class certified via arbitration).
40. Civil Action No. 1:13-cv-01219; *Randall Lee et al v. Dish Network LLC et al*; In the United States District Court for the District of New Mexico (Judge Molzen)(New Mexico class certified).
41. Civil Action No. 1:13-cv-00223; *Emma Sanders et al v. Xtreme Cuisine, LLC et al*; In the United States District Court for the Western District of Texas, Austin Division (Judge Yeakel)(Texas class certified).

**CERTIFICATION OF CONCURRENCE**

The undersigned has obtained defendant's concurrence in this motion pursuant to Local Civil Rule 7.1.

Date: March 1, 2017

/s/ R. Andrew Santillo  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Ph: (215) 884-2491



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, *et al.*

v.

SMITH MANAGEMENT AND  
CONSULTING, LLC.

---

:  
:  
: 3:15-cv-02307-MEM  
:  
:  
:  
:  
:  
:  
:

**ORDER**

NOW, this \_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of Plaintiffs’ “Unopposed Motion for Approval of Collective Action Settlement” (Doc. 35), the accompanying “Settlement Agreement and Release” (“Agreement”) (Doc. 35-1), and all other papers and proceedings herein, it is hereby **ORDERED** that the settlement of this collective action is **APPROVED** because it represents a fair and reasonable settlement of a *bona fide* dispute under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* This action is **DISMISSED WITH PREJUDICE**, although the Court will retain jurisdiction over any disputes pertaining to the enforcement of the settlement.

---

Hon. Malachy E. Mannion  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

---

FRANCIS CREVATAS, *et al.*

v.

SMITH MANAGEMENT AND  
CONSULTING, LLC.

---

:  
:  
: 3:15-cv-02307-MEM  
:  
:  
:  
:  
:  
:

**BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR APPROVAL OF THE FLSA SETTLEMENT**

Date: March 1, 2017

Peter Winebrake  
R. Andrew Santillo  
Mark J. Gottesfeld  
WINEBRAKE & SANTILLO, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025

Don J. Foty\*  
KENNEDY HODGES, L.L.P.  
711 W. Alabama Street  
Houston, Texas 77006

*\*admitted pro hac vice*

*Plaintiffs' Counsel*

**TABLE OF CONTENTS**

I. BACKGROUND ..... 1

    A. Plaintiffs’ Legal Claims and Pertinent Procedural History..... 1

    B. Basic Settlement Terms ..... 4

    C. Third-Party Review of Defendant’s Financial Condition ..... 6

    D. Major Litigation Risks..... 6

        1. *Smith’s “Independent Contractors” Defense* ..... 7

        2. *Plaintiffs’ Ability to Demonstrate Hours Worked* ..... 8

        3. *Ability to Collect a Judgment* ..... 8

    E. Decertification is Not Warranted ..... 9

II. ARGUMENT..... 10

    A. General Principles Pertaining to Judicial Review of FLSA Settlements..... 10

        1. *A Bona Fide Dispute Exists Between the Parties*..... 11

        2. *The Settlement is Fair and Reasonable to Plaintiffs* ..... 12

        3. *The Settlement Does Not Impermissibly Frustrate the Implementation of the FLSA* ..... 15

    B. The Service Award Warrants Approval ..... 16

    C. The Fees and Expenses Warrant Approval ..... 18

III. CONCLUSION..... 22

**TABLE OF AUTHORITIES**

**CASES**

*Anderson v. Mount Clemens Pottery*,  
328 U.S. 680 (1946)..... 8

*Benjamin v. Dept. of Public Welfare*,  
2014 U.S. Dist. LEXIS 135309 (M.D. Pa. Sept. 25, 2014)..... 21

*Bettger v. Crossmark, Inc.*,  
2015 U.S. Dist. LEXIS 7213 (M.D. Pa. Jan. 22, 2015) ..... 11, 15

*Brown v. Trueblue*,  
2013 U.S. dist. LEXIS 158476 (M.D. Pa. Nov. 5, 2013) ..... 21

*Calarco v. Healthcare Services Group, Inc.*,  
2015 U.S. Dist. LEXIS 46950 (M.D. Pa. Apr. 7, 2015)..... 12, 18

*Creed v. Benco Dental Supply Co.*,  
2013 U.S. Dist. LEXIS 132911(M.D. Pa. Sept. 17, 2013)..... 12, 18, 21

*DiClemente v. Adams Outdoor Advertising, Inc.*,  
2016 U.S. Dist. LEXIS 88394 (M.D. Pa. July 8, 2016)..... 10-12, 18-19, 21

*deMunecas v. Bold Food, LLC*,  
2010 U.S. Dist. LEXIS 87644 (S.D.N.Y. Aug. 23, 2010) ..... 11

*Edelen v. Am. Residential Servs., LLC*,  
2013 U.S. Dist. LEXIS 102373 (D. Md. July 22, 2013) ..... 17

*Ford v. Lehigh Valley Restaurant Group, Inc.*,  
2016 U.S. Dist. LEXIS 31732 (M.D. Pa. Mar. 10, 2016) ..... 19, 21

*Frank v. Eastman Kodak Co.*,  
228 F.R.D. 174, 187-188 (W.D.N.Y. 2005)..... 17

*Girsh v. New America Fund, Inc.*,  
521 F.2d 153 (3d Cir. 1975) ..... 12-15

*Gunter v. Ridgewood Energy Corp.*,  
223 F.3d 190 (3d Cir. 2000) ..... 19-22

*In re: Cendant Corp. Litig.*,  
264 F.3d 201 (3d Cir. 2001) ..... 13

*In re NFL Players Concussion Injury Litig.*,  
821 F.3d 410 (3d Cir. 2016) ..... 13

*In re Lucent Technologies, Inc.*,  
327 F. Supp. 2d 426 (D.N.J. 2004)..... 20

*In re Warfarin Sodium Antitrust Litig.*,  
391 F.3d 516 (3d Cir. 2004) ..... 14-15

*Lightstyles, Ltd. V. Marvin Lumber & Cedar Co.*,  
2015 U.S. Dist. LEXIS 87049 (M.D. Pa. July 6, 2015) ..... 21

*Lynn’s Food Stores, Inc. v. United States*,  
679 F.2d 1350 (11th Cir. 1982) ..... 10

*Martin v. Selker Brothers, Inc.*,  
949 F.2d 1286 (3d Cir. 1991) ..... 8

*Paulus v. Cordero*,  
2013 U.S. Dist. LEXIS 20198 (M.D. Pa. Feb. 1, 2013)..... 21

*Scovil v. FedEx Ground Package Sys.*,  
2014 U.S. Dist. LEXIS 33361 (D. Me. Mar. 14, 2014) ..... 16

*Sherman v. Am. Eagle Express, Inc.*,  
2012 U.S. Dist. LEXIS 30728 (E.D. Pa. Mar. 8, 2012) ..... 7

*Stockport Mountain Corp., LLC v. Norcross Wildlife Foundation, Inc.*,  
2014 U.S. Dist. LEXIS 3694 (M.D. Pa. Jan. 13, 2014) ..... 21

*Stoetzner v. U.S. Steel Corp.*,  
897 F.2d 115 (3d Cir. 1990) ..... 13

*Sullivan v. DB Invs., Inc.*,  
667 F.3d 273, 333 n.65 (3d Cir. 2011) ..... 16

*Tavares v. S-L Distribution Co., Inc.*,  
2016 U.S. Dist. LEXIS 57689 (M.D. Pa. May 2, 2016) ..... 18

*Zavala v. Wal-Mart Stores, Inc.*,  
691 F.3d 527, 536-37 (3d Cir. 2012) ..... 9

**STATUTES AND RULES**

29 U.S.C. §§ 201, *et seq.* ..... 5

29 U.S.C. § 216(b) ..... *Passim*

29 C.F.R. § 778.112 ..... 2

*Fed. R. Civ. P. 23* ..... *Passim*

43 P.S. § 333.101, *et seq.* ..... 5

43 P.S. §§ 260.1, *et seq.* ..... 5

34 Pa. Code § 231.43(b) ..... 2

This Fair Labor Standards Act (“FLSA”) lawsuit has been settled, and Originating Plaintiff Francis Crevatas and twenty-seven (27) other opt-in plaintiffs (collectively “Plaintiffs”) submit this brief in support of their motion for approval of the settlement with Defendant Smith Management and Consulting, LLC (“Smith”). The fully executed “Settlement Agreement and Release of Claims” (“Agreement”) is attached to Plaintiffs’ approval motion. *See* Doc. 35-1. As discussed herein, the settlement warrants judicial approval.

**I. BACKGROUND**

**A. Plaintiffs’ Legal Claims and Pertinent Procedural History.**

Originating Plaintiff Francis Crevatas (“Crevatas”) initiated this lawsuit on December 1, 2015 by filing a class and collective action complaint against Smith asserting claims under the Fair Labor Standards Act (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”). *See* Complaint (Doc. 1). Crevatas asserted his FLSA claim as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b). *Id.* His PMWA claim was plead as a class action pursuant to Civil Rule 23. *Id.*

Smith is an oil and gas field services company that provides “consultants” to perform work on oil and gas rigs for clients in Pennsylvania and beyond. *Id.* at ¶ 9; Answer (Doc. 14) at ¶ 9. Smith paid its consultants on a “day-rate” basis. *Id.* For example, Crevatas was paid a day-rate of \$350 for each full-day he worked for

Smith. *Id.* at ¶ 13. Crevatas alleged that he and other consultants were scheduled for shifts lasting at least twelve (12) hours and regularly worked over 40 hours per week. However, when Crevatas and other consultants worked overtime hours, Smith failed to pay them overtime premium compensation. *See* Complaint (Doc. 1) at ¶¶ 15-16. Instead, Smith just paid them their day-rate multiplied by the number of days they worked that week. *Id.*

Under FLSA and PMWA regulations, overtime-eligible day-rate employees are entitled to extra half-time pay for all hours worked over 40 per week. *See* 29 C.F.R. § 778.112; 34 Pa. Code § 231.43(b). The extra overtime premium pay is calculated through a three-step methodology: (1) all day-rate payments received by an employee during the week are totaled; (2) the total payments are then divided to determine the “regular rate” paid for the week; and (3) for every hour worked over 40, the employee receives an extra overtime premium payment equaling 50% of the regular rate. *See id.* For example, if, during a particular week, if an employee earning \$1,000 per day worked 6 days for a total of 75 hours, he would be entitled to extra overtime premium pay of \$1,400, calculated as follows:  $[(6 \text{ days} \times \$1,000) \div 75 \text{ hours}] \times [.5] \times [35 \text{ overtime hours}]$ . *See id.*

Smith acknowledged that Crevatas and other consultants “may have elected to work over 40 hours in a week.” *See* Answer (Doc. 14) at ¶ 15. However, Smith denied that they were entitled to overtime premium compensation. *Id.* at



Affirmative Defense 3. According to Smith, Crevatas and other consultants were non-employee “independent contractors” who were not covered by the FLSA and the PMWA. *Id.* Smith also asserted that Crevatas and other consultants “did not ‘work’ 12 hour shifts.” *Id.* at ¶ 14

Soon after the pleadings were closed, Crevetas filed a motion for conditional certification pursuant to 29 U.S.C. § 216(b) asking that a court-approved notice be sent to the following FLSA collective: All individuals who during any workweek since November 30, 2012, were paid (in-whole or in-part) on a day-rate basis by Defendant Smith Management and Consulting, LLC. *See* Doc. 20. In response, Smith agreed to stipulate to conditional certification of Crevetas’ proposed collective. *See* Doc. 21. In return, Crevetas withdrew his class action claim under Civil Rule 23. *Id.* at ¶ 3. However, any individuals who opted-in to the FLSA collective would be able to assert all claims in the Complaint. *Id.*

Following the Court’s approval of the parties’ stipulation, a copy of the Court-approved notice and consent to join form was mailed to the approximately 109 individuals who fit within the collective definition. As a result of the notice process, a total of twenty-eight (28) Plaintiffs were ultimately covered by this collective action.<sup>1</sup>

Shortly after the close of the notice period, the parties began discussing the

---

<sup>1</sup> One individual, Stephen LaFosse Jr., who submitted and later withdrew his consent to join form, is not covered by the settlement. *See* Docs. 25, 32.

possibility of engaging in early settlement discussions to see if this case could be resolved before either party was required to expend significant resources litigating the case. In advance of these settlement discussions, Smith produced timekeeping and payroll data for each of the Plaintiffs. Based on this data, Plaintiffs' counsel created a damages model that calculated potential unpaid overtime premium wages of approximately \$218,148.34 under the methodology described above. It is important to note that this damages model assumes that Plaintiffs worked 12 full hours each day on their assigned rigs. As discussed above, this is a fact that Smith vigorously disputes.

Plaintiffs and Smith exchanged approximately five rounds of settlement proposals over the course of eight weeks in the fall of 2016. Finally on November 23, 2016, the parties reached an agreement in principle to settle this case.

**B. Basic Settlement Terms.**

If approved, the **\$137,500.00** settlement fund will be distributed as follows: (i) \$90,000.00 will be paid to the 28 Plaintiffs, *see* Agreement (Doc. 35-1) at ¶¶ 2, 5; Exhibit A; (ii) \$2,500.00 will be paid to Crevatas as a service award, *id.* at ¶¶ 2, 6; and (iii) \$45,000.00 will be paid to Plaintiffs' counsel for attorney's fees and costs, *id.* at ¶¶ 2, 7.<sup>2</sup>

The payments to Plaintiffs under the settlement average \$3,214.29

---

<sup>2</sup> Any disapproved portion of the requested service award, fees, or expenses will be reallocated to the Plaintiffs. *See id.* at p. 2 n.1-2.

(\$90,000.00 / 28). They also represent approximately **41%** of the original \$218,148.34 in unpaid overtime premium wages calculated by Plaintiffs' counsel *after* reductions for the proposed service award and attorney's fees and costs.

In consideration for the above payments, Plaintiffs release Defendant from "all federal, state or local legal or equitable claims arising prior to the Approval Date and alleging unpaid wages, liquidated damages/penalties, interest, attorneys' fees and costs, and any other damages available under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101, *et seq.*, the Pennsylvania Wage Payment & Collection Law, 43 P.S. §§ 260.1, *et seq.*, or any other federal, state, or local statute, regulation, rule, or common law theory, including, but not limited to, all claims asserted in the Action or that could have been asserted in this Action based on the facts alleged." *See* Agreement (Doc. 35-1) at ¶ 4. This limited release excludes any non-wage and overtime claims.

In addition, because Smith's ability to pay was a major factor in the settlement negotiations, Smith agreed to allow an independent review of its internal records to confirm Smith's financial circumstances. *Id.* at ¶ 8. Plaintiffs reserved the right to cancel the settlement if, based upon this review, it determined that Smith was misrepresenting its financial difficulties. *Id.* at ¶ 9.

If the settlement is approved, Defendant will fund the settlement in two

installment payments of \$68,750.00. *Id.* at ¶¶ 5-7. The first payment will occur within forty-five (45) days of the Court's approval of the settlement. *Id.* The second installment payment is due ninety (90) days after the first payment. *Id.*

**C. Third-Party Review of Defendant's Financial Condition.**

As discussed above, one of the material terms of the settlement was Smith agreeing to allow a third-party review of the company's internal records to confirm representations about its current financial condition resulting from the recent downturn in the oil and gas industry. Plaintiffs' Counsel retained BJ Hoffman, CPA, CFE from the accounting firm of Citrin Cooperman & Company LLP to perform this analysis.

Mr. Hoffman worked with Smith's counsel to obtain documents he needed to perform this analysis in late January. Through this process, Plaintiffs' counsel was able to confirm that Smith was not misrepresenting its financial difficulties. On February 2, 2017, Plaintiffs' counsel informed Smith's counsel that it would be going forward with the settlement and would not be exercising Plaintiffs' right to cancel pursuant to paragraph 9 of the Agreement.

**D. Major Litigation Risks.**

Absent settlement, Plaintiffs would have faced significant litigation risks. The three most prominent risks are summarized below:

**1. Smith's "Independent Contractors" Defense.**

Had this case not been resolved, the parties would have continued to vigorously litigate Smith's independent contractor defense and the various requirements for an individual to demonstrate employment status. *See Sherman v. Am. Eagle Express, Inc.*, 2012 U.S. Dist. LEXIS 30728, at \*26-28 and \*33-37 (E.D. Pa. Mar. 8, 2012) (describing the tests for employment status under the PMWA and FLSA). The FLSA and PMWA utilize an economic realities test to determine if an employee-employer relationship exists that would trigger the statutes' overtime premium pay requirements. *Id.* This test examines:

(1) the degree of control exercised by the employer over the workers; (2) the worker's opportunity for profit or loss depending upon managerial skill; (3) the alleged worker's investment in equipment or material required for the tasks or the employment of helpers; (4) whether the service rendered requires special skill; (5) the degree of permanence of the working relationship; and (6) the extent to which the work is an integral part of the employer's business.

*Id.* at \*34-35.<sup>3</sup>

Had this matter proceeded, it is anticipated that Smith would have vigorously argued that Plaintiffs cannot satisfy this test because, *inter alia*, it did not exercise significant control over Plaintiffs' work. While Plaintiffs believe that they ultimately would have been able to rebut such an assertion, a finding in

---

<sup>3</sup> "Courts applying the economic realities test 'look[] at the totality of the circumstances and a single factor, by itself, is not necessarily determinative.'" *Id.* at \*35-36.

Plaintiffs' favor was not guaranteed and represented a significant risk going forward.

**2. *Plaintiffs' Ability to Demonstrate Hours Worked.***

Even if Plaintiffs were able to overcome Smith's independent contractor defense, they still would have faced the challenge of demonstrating: (i) that they worked over 40 hours in a week; and (ii) the number of overtime hours they did work. At trial, Plaintiffs may have been allowed to approximate their work days and hours at their various rig assignments across the country "as a matter of just and reasonable inference" for purposes of calculating their potential damages. *See Martin v. Selker Brothers, Inc.*, 949 F.2d 1286, 1297 (3d Cir. 1991) (*quoting Anderson v. Mount Clemens Pottery*, 328 U.S. 680, 687-88 (1946)). However, absent settlement, the parties would have spent substantial time litigating the credibility of Plaintiffs' estimates. *See, e.g.*, Answer (Doc. 14) at ¶ 14 ("consultants did not 'work' 12 hour shifts"). Such a finding in Smith's favor would drastically reduce Plaintiffs' potential recovery in this case.

**3. *Ability to Collect a Judgment.***

Even if Plaintiffs prevailed on the merits of their claims and were fortunate to obtain a significantly higher judgment than what is provided in this settlement, there is a real question as to whether Smith would be able to satisfy the judgment. Smith's current financial condition caused by the recent downturn in the oil and

gas industry was ever-present throughout this litigation and the settlement discussions. As discussed above, Plaintiffs' counsel retained a third-party to review internal records and confirm Smith's financial circumstances. Plaintiffs only agreed to go forward with the settlement after this review was completed. Thus, the risk of non-payment would continue to hover over this case if it were not settled.

**E. Decertification is Not Warranted.**

The parties agree that for purposes of settlement, decertification of the conditionally certified collective is not warranted because Plaintiffs are "similarly situated" under the factors listed in *Zavala v. Wal-Mart Stores, Inc.*, 691 F.3d 527, 536-37 (3d Cir. 2012) (identifying relevant factors to consider at the decertification stage to include, *inter alia*, "whether the plaintiffs are employed in the same corporate department, division, and location; whether they advance similar claims; whether they seek substantially the same form of relief; and whether they have similar salaries and circumstances of employment"). For example, Plaintiffs each: (i) were classified by Smith as non-employee independent contractors; (ii) were paid on a day-rate basis; (iii) worked as consultants at Smith's oil and gas rig-operating clients located throughout the United States; and (iv) asserted the same claims for unpaid overtime premium wages under the FLSA. Moreover, the parties recognize that requiring Plaintiffs to pursue their legal claims through

individual trials would be inefficient and unduly expensive.

## II. ARGUMENT

As discussed below, the settlement is fair, reasonable, and adequate and warrants Court approval.

### A. General Principles Pertaining to Judicial Review of FLSA Settlements.

Although the Third Circuit Court of Appeals has never specifically addressed the standards to be applied in evaluating the fairness of FLSA settlements, this Court has held that it should review a FLSA settlement to ensure it “is a ‘fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.’” *DiClemente v. Adams Outdoor Advertising, Inc.*, 2016 U.S. Dist. LEXIS 88394, \*5 (M.D. Pa. July 8, 2016) (Mannion, J.). Courts within this jurisdiction frequently rely on the Eleventh Circuit’s decision in *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982) as part of this analysis:

Under *Lynn’s Food Stores*, a proposed compromise may satisfy judicial review if it is a “fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.” An agreement resolves a *bona fide* dispute when there is some doubt as to whether the plaintiff would succeed on the merits at trial. Disputed issues may include, for example, “FLSA coverage or computation of back wages.” If a reviewing court is satisfied that an agreement does in fact decide a *bona fide* dispute, it proceeds in two phases: first, the court assesses whether the agreement is fair and reasonable to the plaintiff employee; second, it determines whether the settlement furthers or “impermissibly frustrates” the implementation of the FLSA in the workplace.



*Bettger v. Crossmark, Inc.*, 2015 U.S. Dist. LEXIS 7213, \*9-10 (M.D. Pa. Jan. 22, 2015) (internal citations omitted); *see also DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*5-6.

As discussed below, the Agreement satisfies each of these elements and warrants the Court's approval.

***1. A Bona Fide Dispute Exists Between the Parties.***

Plaintiffs allege that Smith willfully violated the FLSA by failing to pay them premium compensation for their overtime hours. *See* Section I.A., *supra*. Smith continues to deny that its pay practices violated any laws. Had this matter proceeded to trial, Smith would have continued to assert that its classification of Plaintiffs as non-employee independent contractors was proper and challenge Plaintiffs' estimates of their overtime hours worked. As this Court previously observed, these types of disputed factual issues qualify as *bona fide* disputes for purpose of the *Lynn's Food* analysis. *See DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*6.

Furthermore, as one district court observed, the adversarial nature of contested litigation in FLSA matters alone can demonstrate a *bona fide* dispute between the parties. *See deMunecas v. Bold Food, LLC*, 2010 U.S. Dist. LEXIS 87644, \*17 (S.D.N.Y. Aug. 23, 2010). Thus, the *bona fide* dispute factor is satisfied here.

**2. *The Settlement is Fair and Reasonable to Plaintiffs.***

To determine whether an FLSA settlement is fair and reasonable, this Court and other district courts within the Third Circuit have relied on the “*Girsh* factors” used to review Civil Rule 23 class action settlements. *See e.g., DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*6-9; *Calarco v. Healthcare Services Group, Inc.*, 2015 U.S. Dist. LEXIS 46950 (M.D. Pa. Apr. 7, 2015); *see generally Girsh v. New America Fund, Inc.*, 521 F.2d 153, 157 (3d Cir. 1975).

Here, each of the *Girsh* factors favor approval:

***Factor 1- Complexity, Expense and Likely Duration of the Litigation:***

This factor favors approval because, absent settlement, this litigation would require significant additional discovery concerning Plaintiffs’ employee status and the determination of Plaintiffs’ work hours and damages. Each of these issues would require significant time and resources going forward.

***Factor 2 – Reaction of the Collective to the Settlement:*** This factor favors approval. As discussed in the attached declaration, each of the Plaintiffs were sent a notice describing the terms of the settlement and encouraging them to provide any feedback that they wanted submitted to the Court. *See* Declaration of R. Andrew Santillo (“Santillo Dcl.”) (Doc. 35-2) at ¶ 22. While a large portion of the 28 Plaintiffs called to inquire about how soon the settlement payments would be made, only three provided any feedback. *Id.* Two individuals indicated that they

were happy with the settlement, while the third said he thought his individual settlement amount was too small. *Id.* This response by the collective weighs in favor of final approval of the settlement. *See Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d Cir. 1990) (“only” 29 objections in a 281 member Civil Rule 23 class action settlement “strongly favors settlement”); *see also In re NFL Players Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016) (upholding approval of a Civil Rule 23 class action settlement where 95 out of over 20,000 class members objected to the settlement).

***Factor 3 – The Stage of the Proceeding and the Amount of Discovery***

***Completed:*** This factor – which addresses “whether counsel had an adequate appreciation of the merits of the case before negotiating,” *see In re: Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) – favors approval. As discussed above, the settlement discussions occurred after Smith provided complete payroll data for each of the Plaintiffs allowing Plaintiffs’ counsel to create a detailed damages model. Thus, the parties had a clear understanding of the potential unpaid wages that were at issue had this case not resolved.

***Factors 4-5 – Risk of Establishing Liability and Proving Damages:*** These factors also favor approval. As discussed above, absent settlement, Smith could continue to argue that Plaintiffs were not “employees” entitled to overtime premium pay. *See* Section I.D, *supra*. Moreover, even if Plaintiffs were able to

defeat Smith's merits defense, they still must prove their estimated overtime work hours based on a just and reasonable inference. *Id.* Adverse findings on either of these issues would have severe impacts on Plaintiffs' potential unpaid wage recovery in this case.

***Factor 6 – Risks of Maintaining the Collective Through Trial:*** This factor favors approval because, absent settlement, Smith could argue that a collective trial of this case is inappropriate because determining whether any particular Plaintiff is overtime-exempt turns on an individualized inquiry of his specific work location and circumstances. Plaintiffs' Counsel disagrees with this argument. However, it cannot be denied that the argument carries some litigation risk.

***Factor 7 – Ability of Defendant to Withstand a Greater Judgment:*** This factor favors approval because, as discussed in Section I.D.3, *supra*, Plaintiffs' counsel hired its accounting firm to perform an independent review of Smith's internal financial records. This review confirmed Smith's representations throughout the litigation that it was experiencing severe financial difficulties. These difficulties make it unlikely that Plaintiffs would be able to collect a larger judgment from Smith if they were fortunate to prevail at trial.

***Factors 8-9 – The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation:*** The eighth and ninth *Girsh* factors "test two sides of the same coin: reasonableness in

light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004). The question is whether, in light of these risks, Plaintiffs are getting “good value.” *Id.* Here, these factors favor approval because, even after deductions for the proposed attorney’s fees/expenses and the service award, Plaintiffs’ net settlement payouts average \$3,214.29 (\$90,000.00 / 28), representing approximately **41%** of the original unpaid wage calculation which assumes that Plaintiffs worked 12 hours each day. This recovery also assumes that Plaintiffs overcame each of the major litigation risks discussed in Section 1.D, *supra*.

***Summary of the Girsh Factors:*** To sum up, each of the *Girsh* factors favor approval of the settlement payments to Plaintiffs.

**3. *The Settlement Does Not Impermissibly Frustrate the Implementation of the FLSA.***

In addition to being a fair and reasonable resolution, the settlement is free of any terms that would frustrate the implementation of the FLSA. For example, the settlement does not contain a confidentiality clause that has previously prevented this Court from approving other individual FLSA settlements. *See, e.g., Bettger*, 2015 U.S. Dist. LEXIS 7213, at \*22-28. In addition, under the settlement, the release for Plaintiffs is limited to wage and hour claims and does not exceed the

scope of this litigation.<sup>4</sup> Thus, this factor weighs in favor of approval.

**B. The Service Award Warrants Approval.**

Subject to Court approval, Crevatas will receive a service award of \$2,500. See Agreement at ¶ 6. This award is in recognition of Crevatas's courage to step forward and publically challenge Smith's compensation practices and seek a recovery on behalf of 27 other Plaintiffs.

The requested service award is not unusual in similar wage and hour class/collective actions. As the District of Maine observed: "The reason commonly given for the higher awards in these cases is the fear and risk of retaliation and embarrassment in the workplace, on top of the time and administrative commitment that is commonly shared in all cases, employment or not." *Scovil v. FedEx Ground Package Sys.*, 2014 U.S. Dist. LEXIS 33361, \*26 (D. Me. Mar. 14, 2014); see also *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) ("The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred ruing the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws."). This is especially true in employment class/collective actions such as this where there are potential real life risks and ramifications for individuals asserting such claims. As the Western District of

---

<sup>4</sup> As discussed below, Crevetas has agreed to an additional general release of claims against Smith in consideration for his service award under the settlement.

New York observed:

While the majority of reported decisions granting incentive awards arise out of securities litigation, . . . such awards are particularly appropriate in the employment context. 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. *See 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”).

\* \* \*

Although this Court has no reason to believe that [the defendant] has or will take retaliatory action towards either [Plaintiff] or any of the plaintiffs in this case, the fear of adverse consequences or lost opportunities cannot be dismissed as insincere or unfounded. Indeed, those plaintiffs who have opted out of this class and have explained their reasons for that decision expressed concern that the guaranteed recovery was not worth potential discrimination by local employers.

*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187-188 (W.D.N.Y. 2005); *see also Edelen v. Am. Residential Servs., LLC*, 2013 U.S. Dist. LEXIS 102373, \*46-47 (D. Md. July 22, 2013) (“although there is no indication that [the named plaintiff] faces any specific challenges in his current or future job prospects as a result of his participation in this lawsuit, there clearly is a risk that he could”). Thus, it is not unusual for initiating plaintiffs in employment lawsuits, such as this, to receive

significant enhancement awards in recognition of their service to the entire class/collective. *See, e.g., Tavares v. S-L Distribution Co., Inc.*, 2016 U.S. Dist. LEXIS 57689, \*35 (M.D. Pa. May 2, 2016) (approving enhancement awards of \$15,000 each); *Calarco*, 2015 U.S. Dist. LEXIS 46950, at \*6 (approving \$7,500 service award).

Here, the requested \$2,500 service award is justified and extremely reasonable based on Crevatas's efforts to achieve a recovery on behalf of 27 other Plaintiffs. Furthermore, Crevatas has agreed to a general release of claims as part of the settlement that is broader than the limited release for the other Plaintiffs. *Compare* Agreement at ¶ 4 *with id.* at ¶ 6. Thus, the proposed service award is appropriate and warrants approval.

**C. The Fees and Expenses Warrant Approval.**

The settlement contemplates \$45,000.00 in attorney's fees and expenses. *See* Agreement at ¶ 7. Since Plaintiffs' Counsel has incurred \$1,875.26 in expenses, *see* Santillo Dcl. (Doc. 35-2) at ¶ 21; Declaration of Don J. Foty, Esq. ("Foty Dcl.") (Doc. 35-3) at ¶ 12, the settlement results in an attorney's fee payment of **\$43,124.74**.

"Percentage of recovery is the prevailing method used by courts in the Third Circuit for wage and hour cases." *DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*11. Here, a "percentage of the fund" analysis favors approval because



the \$43,124.74 fee equals 31.4% of the \$137,500.00 common settlement fund. This is less than the fee awards commonly approved in similar class/collective actions. *See DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*11 (observing that courts have approved attorney’s fees representing approximately “20-45%” of the FLSA settlement fund.); *Creed v. Benco Dental Supply Co.*, 2013 U.S. Dist. LEXIS 132911, \*17 (M.D. Pa. Sept. 17, 2013) (“an award of one-third of the settlement is consistent with similar settlements throughout the Third Circuit”).

Pennsylvania district courts rely on the seven factors described in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 193 n. 1 (3d Cir. 2000) to assess the reasonableness of a fee award under the percentage-of-recovery method. *See, e.g., DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*12; *Ford v. Lehigh Valley Restaurant Group, Inc.*, 2016 U.S. Dist. LEXIS 31732, \*3-4 (M.D. Pa. Mar. 10, 2016). “These factors do not have to be ‘applied in a formulaic way’ and, ‘[e]ach case is different, and in certain cases, one factor may outweigh the rest.’” *DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*12 (quoting *Gunter*, 223 F.3d at 195 n.1). As discussed below, each *Gunter* factors supports approval of the requested fee:

***Factor 1 – The Size of the Fund Created and the Number of Persons***

***Benefited:*** This factor favors approval because, after reduction for fees and expenses, Plaintiffs will receive average payments equaling approximately 41% of

their potential unpaid wage recovery assuming Plaintiffs overcame the litigation risks discussed in Section I.D. *supra*. As already discussed in addressing the *Girsh* factors, this constitutes a good result for Plaintiffs when weighed against these litigation risks.

***Factor 2 – The Presence or Absence of Substantial Objections by Members of the Class:*** This factor, which is identical to the second *Girsh* factor. As discussed above, this factor favors approval because only one of the twenty-eight Plaintiffs expressed any displeasure with the settlement.

***Factor 3 – The Skill and Efficiency of the Attorneys Involved:*** This factor favors approval because Plaintiffs’ counsel has substantial experience litigating overtime rights collective actions, *see* Santillo Dcl. (Doc. 35-2) at ¶¶ 1-17; Foty Dcl. (Doc. 35-3) at ¶¶ 1-9, and has efficiently brought this matter to a fair and favorable resolution.

***Factor 4 – The Complexity and Duration of the Litigation:*** This factor, which is identical to the first *Girsh* factor, favors approval.

***Factor 5 – The Risk of Nonpayment:*** This factor favors approval because Plaintiffs’ counsel exclusively represents workers on a pure contingency fee basis. *See* Santillo Dcl. (Doc. 35-2) at ¶ 3; Foty Dcl. (Doc. 35-3) at ¶ 3. This makes non-payment a risk in every case the firm handles. *See In re Lucent Technologies, Inc.*, 327 F. Supp. 2d 426, 438 (D.N.J. 2004).

**Factor 6 – The Amount of Time Devoted to the Case:** Plaintiffs’ counsel has invested 105 attorney and staff hours working on this litigation to date. *See* Santillo Dcl. (Doc. 35-2) at ¶ 20; Foty Dcl. (Doc. 35-3) at ¶ 11. This amount does not include any additional work finalizing and administering the settlement. Utilizing hourly rates described in the fee schedule developed by Philadelphia Community Legal Services (“CLS”), this represents a total lodestar of \$37,440.00. *See* Santillo Dcl. (Doc. 35-2) at ¶ 20; Foty Dcl. (Doc. 35-3) at ¶ 11.<sup>5</sup> Such a substantial time investment favors approval.

**Factor 7 – The Awards in Similar Cases:** This factor favors approval because the requested fee equals 31.4% of the total settlement fund, which is consistent with fee awards in other class/collective actions within the Middle District of Pennsylvania. *See DiClemente*, 2016 U.S. Dist. LEXIS 88394, at \*11 (observing that courts have approved attorney’s fees representing approximately

---

<sup>5</sup> Courts within this district frequently rely on the CLS fee schedule in determining reasonable hourly rates of lawyers seeking fees under federal civil and employment rights laws. *See, e.g., Lightstyles, Ltd. V. Marvin Lumber & Cedar Co.*, 2015 U.S. Dist. LEXIS 87049, \*9-10 (M.D. Pa. July 6, 2015) (Caldwell, J.); *Benjamin v. Dept. of Public Welfare*, 2014 U.S. Dist. LEXIS 135309, \*22-23 (M.D. Pa. Sept. 25, 2014) (Jones, J.); *Stockport Mountain Corp., LLC v. Norcross Wildlife Foundation, Inc.*, 2014 U.S. Dist. LEXIS 3694, \*10-11 (M.D. Pa. Jan. 13, 2014) (Munley, J.); *Brown v. Trueblue*, 2013 U.S. dist. LEXIS 158476, \*6-7 (M.D. Pa. Nov. 5, 2013) (Kane, J.); *Paulus v. Cordero*, 2013 U.S. Dist. LEXIS 20198, \*21-22 (M.D. Pa. Feb. 1, 2013) (Caputo, J.). CLS rates are slightly lower than those that have been used to approve attorney’s fees for the undersigned counsel in similar class/collective actions. *See, e.g., Ford v. Lehigh Valley Restaurant Group, Inc.*, 2016 U.S. Dist. LEXIS 31732, \*3 n.2 (M.D. Pa. Mar. 10, 2016) (Munley, J.).

“20-45%” of the FLSA settlement fund.); *Creed*, 2013 U.S. Dist. LEXIS 132911, at \*17 (“an award of one-third of the settlement is consistent with similar settlements throughout the Third Circuit”).

*Summary of the Gunter Factors:* In sum, all of the *Gunter* factors favor approval of the requested attorney’s fee.

### III. CONCLUSION

For the above reasons, Plaintiffs respectfully request that the Court sign and enter the accompanying proposed order approving the settlement of this FLSA action.

Date: March 1, 2017

Respectfully,

/s/ R. Andrew Santillo

Peter Winebrake

R. Andrew Santillo

Mark J. Gottesfeld

WINEBRAKE & SANTILLO, LLC

715 Twining Road, Suite 211

Dresher, PA 19025

Don J. Foty\*

KENNEDY HODGES, L.L.P.

711 W. Alabama Street

Houston, Texas 77006

\*admitted *pro hac vice*

*Plaintiffs’ Counsel*