

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Defendant Seven Point Energy Services, Inc. (“Defendant”) and Named Plaintiff William Crigler and the putative collective action members comprised of all other similarly situated hourly employees employed by Defendant (collectively “Plaintiffs”) in the civil action entitled *Crigler v. Seven Point Energy Services, Inc.*, Case No. 2:19-cv-00604-MJH (W.D. Pa) (the “Lawsuit”) as grounds for dismissal with prejudice. Plaintiffs and Defendant shall together be referred to as the “Parties.”

I. RECITALS

WHEREAS, Plaintiff has filed the Lawsuit in the United States District Court for the Western District of Pennsylvania (the “Court”) on behalf of herself and similarly situated employees, in which Plaintiff alleges that Defendant failed to pay Plaintiff properly and all similarly situated employees overtime wages for hours worked over 40 hours per workweek in violation of the Fair Labor Standards Act (“FLSA”), the Pennsylvania Minimum Wage Act (“PMWA”), and the Ohio Minimum Wage Standards Act (“OMFWSA”).

WHEREAS, to avoid the expense and burden of further litigation, the Parties desire to resolve the claims based on putative violations of the FLSA and of any state and local law pertaining to the payment of overtime wages;

WHEREAS, the Parties have engaged in arms-length comprehensive negotiations, including mediation on January 14, 2020, with Carole Katz, an experienced mediator in the area of labor and employment law, which led to the Parties’ agreement on the terms herein; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

CERTIFICATION OF A COLLECTIVE AND CLASS ACTION FOR SETTLEMENT PURPOSES ONLY

A. For settlement purposes only, the parties stipulate to the certification of a Settlement Class and a Settlement Collective.

B. Defendant agrees not to object to Plaintiff’s request that Migliaccio & Rathod LLP and Robert Peirce & Associates, P.C. be appointed “Class Counsel” for purposes of this Agreement.

C. The certification of the Settlement Class and Settlement Collective, the appointment of Plaintiff as “Class Representative,” and the appointment of Class Counsel by the Court will be binding on the parties with respect to settlement of the Action only.

II. SETTLEMENT PLAINTIFFS

For purposes of this Agreement, the Settlement encompasses the claims of William Crigler and all similarly situated current and former non-exempt hourly employees employed by Defendant (“Settlement Class Members”).

III. TERMS OF SETTLEMENT AGREEMENT

1. **Settlement Payment.** The settlement payment by Defendant shall comprise of an all-in payment of \$100,000 (the "Settlement Payment"). The Settlement Payment shall be divided as follows

- a. Plaintiffs' Settlement Payments, allocated as described in Section 5 of this Agreement: \$47,930;
- b. Incentive Award for William Crigler: \$2,500; and
- c. Attorneys' Fees, Costs, and Expenses: \$49,570.

2. **Employer Data.** The computation of the Individual Settlement Amounts to Plaintiff and Settlement Class Members will be based on data provided by Defendant. Defendant represents and warrants that to the best of its knowledge and belief, the data to be supplied will accurately reflect the dates of employment and compensation paid to the Plaintiffs, and Defendant further understands this representation is a material term of this Agreement.

3. **Attorneys' Fees and Costs.** Defendant will not oppose an application for attorneys' fees and costs by Plaintiffs' counsel that does not exceed \$49,570.

4. **Service Award to Plaintiff.** Defendant will not oppose the request for an additional service award to William Crigler in the amount of \$2,500.

5. **Settlement Administration.** Defendant will issue payments directly to Settlement Class Members and Plaintiff's counsel. Plaintiff's counsel will be responsible for: sending notice to Plaintiffs; resolving any settlement payment dispute, in concert with the counsel for Defendant; and calculating individual settlement payments to Plaintiffs.

- a. **Individual Settlement Amounts.** Plaintiff's counsel will use Defendant's payroll records to determine the individual settlement amount for each Plaintiff. Plaintiff's counsel has calculated unpaid overtime wages for each hourly employee under the FLSA and state law by adding an additional \$.625 for each overtime hour worked during which the hourly employee received the safety surge bonus.
- b. **Disputes.** All disputes relating to the settlement administration shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

6. **Tax Liabilities.** For income and payroll tax purposes, Plaintiffs shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income or other taxes on payments received under this Settlement. Defendant will be responsible for the employer's share of payroll taxes. Defendant will provide an IRS Form 1099 for the service payments. Defendant and Plaintiffs' counsel make no representations as to the tax treatment or legal effect of the payments called for under this Agreement, and Plaintiffs are not relying on any statement or representation by Defendant or Plaintiffs' counsel in this regard.

7. Release of Claims. Upon the entry of the Final Approval Order by the Court, Plaintiffs shall, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to release and forever discharge all applicable claims for unpaid wages, overtime, fees/costs, liquidated damages, penalties, and all other relief under the FLSA, OMFWSA, and PMWA arising or accruing prior to January 14, 2020, against Defendant concerning their work as employees for Defendant.

8. No Retaliation. Consistent with its legal obligations, Defendant will not retaliate against any Settlement Class Member for participating in the Settlement.

9. Process for Plaintiffs to Obtain an Award. Defendant agrees that a settlement notice will be sent to all individuals who worked for Defendant as hourly non-exempt employees. Except for individuals who opt-out of the Settlement, all Settlement Class Members will be sent a check, without the need to submit a claim.

- a. Notice Form. Plaintiffs' counsel will draft a Notice Form to be submitted to putative Settlement Class Members by both first-class mail and e-mail where available. The notice shall include, among other things, the formula that will be used to calculate his/her individual settlement payment and an example of the calculation. Any disputes regarding the contents of the Notice that cannot be resolved by the parties shall be submitted to the Court.
- b. Website Postings. Plaintiffs' counsel shall post information about the settlement on their firms' websites, including but not limited to all applicable deadlines, the Agreement, Collective Action Settlement Notice, all papers filed by the Parties in support of this Agreement (including Plaintiff's anticipated motion for Attorneys' Fees and Expenses), and orders of the Court pertaining to this Agreement.

10. No Admission of Liability. This Agreement shall not in any way be construed as an admission by Defendant that it has acted wrongfully with respect to Plaintiffs, collectively or individually or to any other person, or that those individuals have any rights whatsoever against Defendant, and Defendant specifically disclaims any liability or wrongful acts against Plaintiffs. This Agreement shall not in any way be construed as an admission by Plaintiffs that their case lacked merit, nor that Defendant is not liable for wrongful acts against Plaintiffs. Furthermore, the Parties agree that this Settlement does not constitute an adjudication of the merits of the action or any other matters released in this Settlement.

11. Settlement Agreement and Court Approval. All terms of this Agreement are contingent upon the approval of the Court, and this Agreement is entered into voluntarily by the Parties for settlement purposes only. This Agreement will become final and effective upon occurrence of the following events:

- a. Preliminary Approval and Notice to Class Members
 - i. The Parties will ask the Court to adjourn all pending deadlines;

- ii. The parties agree to submit a joint motion for preliminary approval of the settlement and proposed order granting preliminary approval by March 5, 2020.
- iii. Within 15 days after the Court enters an order preliminarily approving the terms of this Agreement, Defendant shall provide Class Counsel with the final list of Settlement Class members agreed to by the parties. The list shall include the name, last known address, social security number, and qualifying weeks worked for each member of the Settlement Class.
- iv. Within 30 days after preliminary approval of this Agreement, the Class Counsel shall mail via first class U.S. mail and email where email addresses are available a notice of preliminary approval to each Settlement Class member. Prior to sending the notice by first-class mail, Plaintiffs' Counsel shall run an NCOA search for the addresses and make any necessary updates.
- v. The notice of preliminary approval sent to Settlement Class Members shall instruct them that in order to participate in the settlement and receive payment under the settlement, they must either (1) complete and sign an enclosed Claim Form and Release Agreement and return it to the third-party administrator postmarked no later than 90 days after the date the notice was initially mailed (the "Notice Period"); or (2) electronically sign the claim form and release agreement according to the procedures established by the third-party administrator no later than the date the Notice Period expires. The third-party administrator shall be solely responsible for deciding if Claim Form and Release Agreements were timely returned and whether a Settlement Class Member is a Claimant.
- vi. During the Notice Period, Plaintiffs' counsel shall host a webpage that will allow Settlement Class Members that will contain information relevant to Settlement Class Members, as approved by the Parties, including but not limited to all applicable deadlines, Class Notice, and contact information for reaching Class Counsel via telephone, e-mail and U.S. mail.
- vii. For any notices returned "undeliverable," Plaintiffs' Counsel will use available databases in an effort to find Settlement Class Members whose preliminary approval notices were returned and will re-mail the notice within five days of obtaining a more current address.
- viii. The notice of preliminary approval sent to Settlement Class Members shall also explain that any Settlement Class Member may object to the settlement by submitting objections to the Court and serving them upon counsel of record, no later than 45 days after the initial mailing of the notice of preliminary approval. Objections must state the basis and, if the objector intends to appear at the final approval hearing, he or she must state such fact and state the purpose of the appearance. The parties shall be permitted to respond in writing to objections within the time period set by the Court in its order granting preliminary approval. Settlement Class Members who fail to file and serve timely objections shall be deemed to

have waived objections to the settlement and shall be foreclosed from making any objections. By failing to make timely objections to the settlement, Settlement Class Members also shall be foreclosed from appealing any aspect of the settlement after the Court's final approval.

- ix. Pursuant to 28 U.S.C. § 1715(b), within ten days after the parties file their motion for preliminary approval, Defendant shall serve a notice of the proposed settlement on the appropriate federal and state officials.
- x. The Parties will ask the Court to enter an Order granting preliminary approval of this settlement.

b. Final Approval

- a. Following the end of the Notice Period, the parties shall, at the earliest possible date, file a joint motion for final approval of the settlement. The parties shall take all necessary actions to secure final approval of the Agreement.
- b. In the event this Agreement is not approved by the Court, the Agreement shall be null and void in its entirety unless expressly agreed to in writing by the parties.
- c. Within ten days of the Order granting final approval of the Settlement Defendant shall tender to the Settlement Class Members and Plaintiff's Counsel the Settlement Payment as described in Section 16.

12. Inadmissibility in Other Proceedings. This Settlement Agreement shall be inadmissible in evidence in any proceeding, except in an action or proceeding to approve, interpret, or enforce its terms.

13. Dismissal of Actions. The Approval Order shall provide for dismissal with prejudice of Plaintiff's Collective and Class actions upon the conclusion of the settlement process but to retain jurisdiction to resolve any disputes pertaining to the enforcement of the Settlement.

14. Cooperation of Parties. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of the Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. To that end, the Parties agree to cooperate fully and reasonably to prepare and execute a Settlement Agreement that will be filed with the Court.

15. Disputes Related to the Settlement Agreement. The Parties agree that if any disputes arise out of the finalization of the settlement documentation or of the settlement itself, those disputes are to be decided by the Court.

16. Distribution. Within ten days after the Court's entry of an Approval Order dismissing the case with prejudice, (1) Defendant shall directly send checks of the Individual Settlement Amounts to the Settlement Class Members as calculated in Section 5 and (2) send the Court approved Attorneys' fees and costs to Plaintiffs' counsel. The mailing to Settlement Class Members will also enclose a notice of a settlement document ("Notice") that shall inform the Settlement Plaintiffs that in order to participate in the settlement and receive payment under the Settlement, they must negotiate the checks in a timely manner. If a Plaintiff does not negotiate their check within 180 days of mailing, the amount shall join a fund of Unclaimed Amounts. All Unclaimed Amounts shall escheat to the applicable State's Unclaimed Property Unit.

17. Agreement Form and Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, carefully considered, arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Agreement.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No extrinsic evidence of any kind shall modify or contradict the terms of this Agreement.

19. Modification. This Agreement may not be changed, altered or modified, except in writing and signed by counsel for the Parties, and, if material, approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

20. Voiding the Agreement. In the event this Agreement is not approved by the Court, the Agreement shall be null and void in its entirety. If judicial approval of the Agreement is denied, the parties shall attempt to reach agreement on provisions rejected by the Court for a period not less than 45 days after the date on which approval is denied. The parties shall file a joint motion for a stay of the action during the 45-day period.

21. Binding on Assigns and Successors. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, trustees, executors, successors, legal administrators, and assigns.

22. Authority. The signatories to this Agreement represent that they are fully authorized to enter into this Agreement and to bind the parties hereto to the terms and conditions of the Agreement.

23. Counterparts. This Agreement may be executed in counterparts, and when each party has executed at least one counterpart, the counterpart will be deemed an original, and when taken together, the counterparts will constitute one Agreement, which shall be binding and effective as to all parties. Facsimile, Portable Document Format (pdf), or other electronic signatures shall be considered valid signatures. Delivery of an executed signature page of this

Agreement by facsimile, pdf, or other electronic means shall be effective as delivery of a manually executed counterpart hereof.

In witness hereof, the parties' duly authorized representatives have executed this Agreement below.

Dated: _____

Nicholas A. Migliaccio
Jason S. Rathod
MIGLIACCIO & RATHOD LLP

D. Aaron Rihn, Esquire
ROBERT PEIRCE & ASSOCIATES, P.C.

Counsel for Plaintiff and the Settlement Class

Dated: 3/2/2020

DocuSigned by:
Kimberly J. Kisner

Kimberly Kisner
LEECH TISHMAN FUSCALDO & LAMPL,
LLC

Counsel for Defendant

Dated: _____

William Crigler
Plaintiff

Dated: 3/2/2020

DocuSigned by:
Joe Giordano

Seven Point Energy Services, Inc
Defendant