

workers fall within the FLSA's Motor Carrier Act exemption ("MCA Exemption"), 29 U.S.C. §213(b)(1), to the overtime premium pay requirement; and

WHEREAS, a *bona fide* dispute exists between the parties as to whether Plaintiffs are entitled to overtime premium wages or if they fall within the FLSA's Motor Carrier Act exemption ("MCA Exemption"), 29 U.S.C. §213(b)(1), to the overtime premium pay requirement; and

WHEREAS, the Parties desire to enter into this Agreement to fully and finally settle, resolve, and dismiss with prejudice this entire litigation; and

NOW THEREFORE, in consideration of the mutual promises and agreements herein, the following is hereby stipulated and agreed:

1. DEFINITIONS

The terms set forth below shall have the following meanings:

1.1 "Agreement" means this "Settlement Agreement."

1.2 "Approval Date" means the date on which the Court enters an order approving this Agreement.

1.3 "Approval Conference" means that Class Counsel shall ask the Court to hold a telephone conference in which the Parties shall explain the terms of the Agreement and seek the Court's approval of this Agreement as fair and reasonable pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* In conjunction with the Approval Conference, the Parties shall ask the Court to sign and enter the Proposed Order attached as Exhibit B.

1.4 "Civil Action" means the above-captioned action.

1.5 "Class Counsel" means R. Andrew Santillo of The Winebrake Law Firm, LLC (Dresher, PA).

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

1.7 “Defendant” means Feesers. Inc.

1.8 “Defense Counsel” means Shawe Rosenthal, LLP (Baltimore, MD) and Stock and Leader, LLP (York, PA).

1.9 “Originating Plaintiff” means Jamie Cover.

1.10 “Plaintiffs” means the Originating Plaintiff plus all individuals who (i) previously joined the Civil Action by filing a consent-to-join form pursuant to FLSA Section 16(b) and (ii) have not subsequently withdrawn such form. The names of all Plaintiffs are listed in Exhibit A.

1.11 “Parties” means Plaintiffs and Defendant.

1.12 “Payment Amount” means, for each Plaintiff, the payment amount reflected in Exhibit A at Column E.

1.13 “Released Claims” means, any claim, cause of action, or demand against Defendant or the Released Parties, as defined herein, arising prior to the Approval Date and relating to the subject matter of the Civil Action.

1.14 “Released Parties” means Defendant, and any of its subsidiaries and affiliated companies, and, in the case of all such entities, their respective officers, directors, shareholders, attorneys, agents, representatives, employees, successors, assigns, and insurers.

2. RECITALS

2.1 Class Counsel has investigated this Civil Action and consulted with Originating Plaintiff concerning the risks of continued litigation and the benefits of settlement at this stage in the proceedings. Based on such investigation and consultation, Originating Plaintiff and Class Counsel have concluded that the settlement described in this Agreement is fair, reasonable, adequate, and in the best interest of Plaintiffs in light of all known facts and circumstances,

including, *inter alia*, the possibility that Defendant might prevail, in whole or in part, at trial and the prospect of significant delay if this Civil Action proceeds through trial.

2.2 Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Civil Action.

2.3 This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by Defendant the Released Parties. Neither this Agreement nor the settlement of this Civil Action shall be used to suggest an admission of liability in any dispute the Parties may have now or in the future with respect to any person or entity, and nothing herein shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, except for legal proceedings concerning the enforcement or interpretation of this Agreement.

3. PAYMENTS TO PLAINTIFFS

3.1 Within thirty (30) days of the Approval Date, Defendant shall mail to Class Counsel payroll checks made payable to each Plaintiff and equaling his/her Payment Amount, less applicable taxes, withholdings, and deductions normally withheld by Defendant pursuant to its ordinary payroll practices. Such withheld taxes, withholdings, and deductions shall not include payments (such as, for example, worker's compensation insurance premiums, unemployment taxes, and Defendant's share of social security taxes) that ordinarily are borne by Defendant. At the close of the 2011 tax year, Defendant shall issue to each Plaintiff an IRS Form W-2 reflecting his/her settlement payment, and, absent further instruction from Class Counsel, the W-2 Form shall be mailed directly to each Plaintiff. For those Plaintiffs currently employed by Defendant at the end of the 2011 tax year, the W-2 Forms shall be mailed to the Plaintiff's current address, as reflected in Defendant's personnel records. For those Plaintiffs no

longer employed by Defendant at the end of the 2011 tax year, the W-2 Forms shall be mailed to an address list to be provided by Class Counsel within sixty (60) days of the Approval Date.

3.2 Each settlement check must be cashed within one-hundred and twenty (120) calendar days after issuance, and the recipient shall have one-hundred and twenty (120) calendar days to cash his/her settlement checks. If any individual fails to cash his/her check within the 120-day period, the check will be void, a stop-pay notice will be placed, and the settlement proceeds shall revert to Defendant.

3.3 Within thirty (30) days of the Approval Date, Defendant shall pay to Originating Plaintiff the amount of \$2,500.00 to compensate him for his unique legal claims, which Defendant continues to dispute and deny, and in consideration for the general release described in Paragraph 7.2. This payment, if approved by the Court, shall be delivered to Class Counsel, and, at the end of the tax year, Defendant shall issue to Originating Plaintiff a 1099 tax form reflecting the payment. Originating Plaintiff's \$2,500.00 payment is subject to the approval of the Court, and neither this Agreement nor the settlement of this Civil Action is contingent upon the Court's determination as to the reasonableness of this payment. Originating Plaintiff's \$2,500.00 payment shall be in addition to his recovery of his Payout Amount, which shall be separately distributed to Originating Plaintiff in the manner described in Paragraph 3.1.

4. ADDITIONAL PAYMENT TO CLASS COUNSEL

4.1 Within thirty (30) days of the Approval Date, Defendant shall mail to Class Counsel a check payable to "The Winebrake Law Firm, LLC" in the amount of \$92,136.61. This payment to Class Counsel is subject to Court approval, and this Agreement is not contingent upon the Court's approval of any or all of this payment to Class Counsel. If the Court disapproves any portion of the \$92,136.61 payment amount, the disapproved amount shall be distributed among the Plaintiffs on a *pro rata* basis, depending on each Plaintiffs' individual

share of the total payments listed in Exhibit A. At the close of the 2011 tax year, Defendant shall cause to be issued to Class Counsel an IRS Form 1099 tax form reflecting this payment. As consideration for this payment, Plaintiffs and Class Counsel (i) agree that neither they nor any other attorneys or law firms are entitled to recover any additional attorney's fees or expenses arising out of or related to the Civil Action and (ii) waive any rights that they may have to recover any other attorney's fees or expenses in any way related to the Civil Action and (iii) agree that they have no further claim against any of the Released Parties for payment of attorney fees or costs with respect to this matter.

5. CONFIDENTIALITY

5.1 The Parties agree that the terms of this Agreement shall be strictly confidential. Originating Plaintiff and Class Counsel shall not disclose any information concerning the Settlement, including the amount of the settlement payment, to any person or entity, except where such disclosure is required by law or is necessary to comply with the terms of this Agreement. This confidentiality provision is a material term of the settlement, and, in the event of a breach, Defendant shall be entitled to seek all available and enforceable damages against the breaching party, as determined by the Court. Nothing herein shall preclude Class Counsel from communicating with Plaintiffs concerning the Civil Action or the terms and conditions of this Agreement.

6. PARTIES' AUTHORITY

6.1 All 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 hereof.

6.2 All signatories to this Agreement acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this

Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared and executed this Agreement.

7. RELEASE OF CLAIMS

7.1 As consideration for the monies paid by Defendant under this Agreement, Originating Plaintiff and all Opt-In Plaintiffs waive and release any and all Released Parties, as defined in paragraph 1.14, from any and all Released Claims, as defined in paragraph 1.13.

7.2 In addition to the Released Claims, Originating Plaintiff also releases and waives any and all claims, whether known or unknown, relating to or arising from his employment relationship with the Released Parties, as defined in paragraph 1.14, including claims for wrongful discharge, unjust termination, breach of contract (whether express or implied), any and all claims of any form of employment discrimination (whether on the basis of race, color, religion, national origin, sex, handicap or disability and/or any other status protected by law), employment retaliation, and any and all suits in tort (including but not limited to claims for defamation, misrepresentation, fraud, interference with contract or with prospective economic advantage, intentional infliction of emotional distress, assault, battery, conversion and/or negligence).

8. PLAINTIFFS' COVENANT NOT TO SUE

8.1 As consideration for the monies paid by Defendant under this Agreement, Plaintiffs covenant and agree never to commence, aid in any way, prosecute or permit to be commenced against Released Parties, and all persons acting by, through, under or in concert with any of them, any action, lawsuit or other proceeding, on either their behalf or behalf of anyone else, based upon any Released Claims.

9. MUTUAL FULL COOPERATION

9.1 The Parties shall use their best efforts and fully cooperate with each other to accomplish the terms of this Agreement and to take such other actions as may reasonably be necessary to implement and effect the terms of this Agreement.

10. SETTLEMENT OF DISPUTES

10.1 All disputes relating to this Agreement and its implementation shall be within the continuing jurisdiction of the Court.

11. MODIFICATION

11.1 This Agreement and its attachments may not be changed, altered, or modified, unless such modification is manifested in a written document duly executed by the Parties. Any material modifications shall be approved by the Court in its continuing jurisdiction.

12. ENTIRE AGREEMENT

12.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement. In the event of any conflict between this Agreement and its attachments and any other settlement-related document, the Parties intend that this Agreement and its attachments shall be controlling.

13. CHOICE OF LAW/JURISDICTION

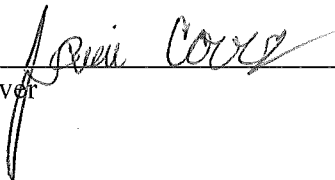
13.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of Pennsylvania, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the Court. This Agreement shall be construed as a whole according to its fair meaning and intent and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

14. COUNTERPARTS

14.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

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

Dated: September 30, 2011



Jamie Cover

Dated: September __, 2011

R. Andrew Santillo, Esq.
The Winebrake Law Firm, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Dated: September __, 2011

For Defendant Feesers, Inc.

Dated: September __, 2011

Patrick M. Pilachowski, Esq.
Shawe Rosenthal, LLP
20 South Charles Street
11th Floor
Baltimore, MD 21201
(410) 843-3473

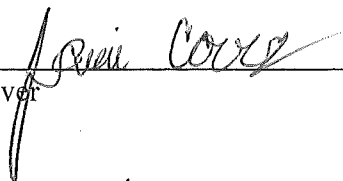
Dated: September __, 2011

Walter A. Tilley, III, Esq.
Stock and Leader, LLP
221 West Philadelphia Street

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

Dated: September 30, 2011



Jamie Cover

Dated: ~~September~~ October 5, 2011



R. Andrew Santillo, Esq.
The Winebrake Law Firm, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Dated: September __, 2011

For Defendant Feesers, Inc.

Dated: September __, 2011

Patrick M. Pilachowski, Esq.
Shawe Rosenthal, LLP
20 South Charles Street
11th Floor
Baltimore, MD 21201
(410) 843-3473

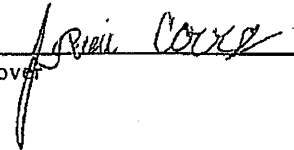
Dated: September __, 2011

Walter A. Tilley, III, Esq.
Stock and Leader, LLP
221 West Philadelphia Street

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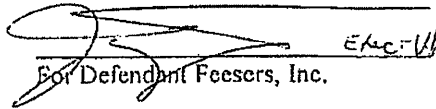


Jamie Cover

Dated: September __, 2011


R. Andrew Santillo, Esq.
The Winebrake Law Firm, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Dated: ^{October} ~~September~~ 7, 2011



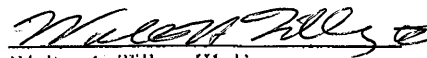
Etc. - VP.
For Defendant Feesers, Inc.

Dated: ^{Oct. 10} ~~September~~ __, 2011



Patrick M. Pilachowski, Esq.
Shawe Rosenthal, LLP
20 South Charles Street
11th Floor
Baltimore, MD 21201
(410) 843-3473

Dated: ^{Oct} ~~September~~ 10, 2011



Walter A. Tilley, III, Esq.
Stock and Leader, LLP
221 West Philadelphia Street

Suite E600
York, PA 17401
(717) 846-9800

Exhibit A

<u>Column A</u> <u>First Name</u>	<u>Column B</u> <u>Last Name</u>	<u>Column C</u> <u>Total Unpaid "Half-Time" During</u> <u>the Statutory Period</u>	<u>Column D</u> <u>Percentage of</u> <u>Recovery</u>	<u>Column E</u> <u>Gross Settlement</u> <u>Payment Amount</u>
Michael	Alvarado	\$2,729.57	72.50%	\$1,978.94
Earl	Anderson	\$942.65	72.50%	\$683.42
Eric	Anderson	\$606.16	72.50%	\$439.47
Michael	Archie	\$11,081.01	72.50%	\$8,033.73
Luis	Arroyo	\$951.43	72.50%	\$689.79
Keath	Bennetch	\$480.36	72.50%	\$348.26
Christian	Bordner	\$2,165.65	72.50%	\$1,570.10
Debra	Brown	\$4,532.59	72.50%	\$3,286.13
Jamie	Campbell	\$3,856.20	72.50%	\$2,795.75
Justin	Ciesnolevicz	\$7,336.99	72.50%	\$5,319.32
Jamie	Cover	\$1,989.97	72.50%	\$1,442.73
Jason	DeBerry	\$5,997.05	72.50%	\$4,347.86
Orlando	Diaz	\$251.68	72.50%	\$182.47
Anthony	Drye	\$1,865.48	72.50%	\$1,352.47
Orlando	Duarte	\$3,984.80	72.50%	\$2,888.98
Darnail	Eden	\$5,245.34	72.50%	\$3,802.87
Nathan	Fishel	\$505.19	72.50%	\$366.26
Jason	Fulton	\$1,454.47	72.50%	\$1,054.49
Gregory	Harrison	\$1,167.92	72.50%	\$846.74
Michael	Heaney	\$5,597.97	72.50%	\$4,058.52
Michael	Henry	\$3,634.65	72.50%	\$2,635.12
Alejandro	Heredia	\$3,323.13	72.50%	\$2,409.27
Nicholas	Herigan	\$954.96	72.50%	\$692.35
James	Hoch	\$1,837.76	72.50%	\$1,332.38
Jason	Hoffman	\$503.80	72.50%	\$365.26
Brett	Hoke	\$353.07	72.50%	\$255.98
Randall	Hooker	\$3,092.28	72.50%	\$2,241.90
Jonathan	Hoover	\$1,040.46	72.50%	\$754.33
Richard	Huggins	\$1,643.89	72.50%	\$1,191.82
Juan	Irizarry	\$97.84	72.50%	\$70.93
Michael	Jackson	\$2,892.20	72.50%	\$2,096.84
George	Johnson-Hair	\$3,444.12	72.50%	\$2,496.99
George	Klinger	\$203.01	72.50%	\$147.18
Timothy	Koch	\$1,509.40	72.50%	\$1,094.32
Michael	Lane	\$519.43	72.50%	\$376.58
Matthew	Lebo	\$3,206.84	72.50%	\$2,324.96
Michael	Lebo	\$964.35	72.50%	\$699.15

<u>Column A</u> <u>First Name</u>	<u>Column B</u> <u>Last Name</u>	<u>Column C</u> <u>Total Unpaid "Half-Time" During</u> <u>the Statutory Period</u>	<u>Column D</u> <u>Percentage of</u> <u>Recovery</u>	<u>Column E</u> <u>Gross Settlement</u> <u>Payment Amount</u>
Walter	Leitzell	\$640.83	72.50%	\$464.60
Michael	Leshner	\$183.38	72.50%	\$132.95
Daniel	Lukens	\$774.14	72.50%	\$561.25
Phillip	Macedonio Huertas	\$8,322.36	72.50%	\$6,033.71
Mark	Mahady	\$599.00	72.50%	\$434.28
Arnoldo	Manresa	\$2,859.70	72.50%	\$2,073.28
Ian	McCorts	\$4,303.77	72.50%	\$3,120.23
Michael	McCullough	\$280.95	72.50%	\$203.69
Lewis	McDowell	\$1,487.40	72.50%	\$1,078.37
Quentin	Morrison	\$353.50	72.50%	\$256.29
Enrique	Nieves	\$479.69	72.50%	\$347.78
Joseph	Pagano	\$232.00	72.50%	\$168.20
Jason	Parsons	\$38.70	72.50%	\$28.06
Martin	Powell	\$1,429.57	72.50%	\$1,036.44
Charles	Russell	\$219.08	72.50%	\$158.83
Jeff	Schreiner	\$660.82	72.50%	\$479.09
Stephen	Shetzline	\$3,990.91	72.50%	\$2,893.41
Mike	Siluk III	\$365.77	72.50%	\$265.18
Eric	Staley	\$41.14	72.50%	\$29.83
Chad	Sweigard	\$4,897.05	72.50%	\$3,550.36
Timothy	Travitz	\$4,607.15	72.50%	\$3,340.18
Amon	Vaughn	\$3,647.70	72.50%	\$2,644.58
Ryan	Wetzel	\$6,906.46	72.50%	\$5,007.19
Alex	White	\$473.55	72.50%	\$343.32
Charlotte	Wileman	\$1,234.27	72.50%	\$894.84
Darwin	Wileman	\$1,299.04	72.50%	\$941.81
Nelson	Wilson	\$5,964.72	72.50%	\$4,324.42
Jason	Young	\$5,383.32	72.50%	\$3,902.90
Michael	Zabriskie	\$138.89	72.50%	\$100.70
Bryan	Zeigler	\$1,760.99	72.50%	\$1,276.72
Scott	Ziegler	\$823.80	72.50%	\$597.26
TOTALS		\$156,363.30		\$113,363.39

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

JAMIE COVER, on behalf of himself :
and others similarly situated, :
v. : 1:10-cv-00282-JEJ
FEESERS, INC., :
:

ORDER

AND NOW, this ____ day of October, 2011, upon consideration of Originating Plaintiff Jamie Cover’s “Unopposed Motion for Approval of an FLSA Collective Action Settlement” (“Approval Motion”) (Doc. 73), the accompanying and fully executed “Settlement Agreement” (“Agreement”) (Doc. 73 at Attachment #1), and all other papers and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Settlement Agreement is **APPROVED** because it represents a fair, reasonable, and adequate resolution of a *bona fide* dispute under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*;
2. Attorney R. Andrew Santillo of The Winebrake Law Firm, LLC is appointed to serve as counsel for purposes of representing all settlement participants during any and all further proceedings relating to the settlement; and

3. This action is **DISMISSED AS SETTLED**, although this Court shall retain jurisdiction over this action for purposes of overseeing any disputes arising from the implementation, administration, or enforcement of the settlement terms.

HON. JOHN E. JONES, III