

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FLOYD W. THOMAS, JR., individually and on	:	
behalf of all persons similarly situated,	:	Civil Action No.: 2:10-cv-01591-RCM
	:	
Plaintiff,	:	Judge Robert C. Mitchell
	:	
v.	:	ELECTRONICALLY FILED
	:	
ALLIS-CHALMERS ENERGY, INC. and	:	
AIRCOMP, LLC,	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED  
MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 4

II. PROCEDURAL HISTORY ..... 6

    A. The Notice Provisions in the Settlement Agreement Have Been Satisfied ..... 6

    B. Response from Class Members ..... 8

III. DISCUSSION ..... 9

    A. Applicable Legal Standard ..... 9

        1. The Proposed Settlement Terms Are Fair, Reasonable and Adequate in Relation to the Strength of Plaintiff’s Case and Risks and Expense of Further Class Litigation ..... 11

        2. The Lawsuit Is At An Appropriate Point For Settlement ..... 12

        3. The Opinion of Experienced Counsel Supports Approval of the Settlement, Which Resulted from Arms’-Length Negotiations By Informed and Experienced Counsel ..... 12

        4. The Settlement Class’ Response Supports the Settlement ..... 13

    B. The Additional Service Award and Payment To Named Plaintiff Floyd Thomas, Jr. Is Justified And Should Be Approved ..... 14

    C. The Court Should Finally Certify the State Settlement Class Under Fed. R. Civ. P. 23 ..... 16

        1. The State Settlement Class Is Sufficiently Numerous ..... 17

        2. The State Settlement Class Seeks Resolution of Common Questions ..... 17

        3. The Claims of the Named Plaintiff Are Typical Of the Class ..... 18

        4. Class Counsel and Plaintiff Meet The Adequacy Requirements of the State Settlement Class ..... 18

        5. The State Settlement Class Satisfies the Predominance and Superiority Requirements of Fed. R. Civ. P. 23(b)(3) ..... 19

    D. The Notice Provisions Were Followed and Provided Adequate Notice To The Class that Satisfies Due Process ..... 20

IV. CONCLUSION ..... 20

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	14
<i>Bell Atl. Corp. v. Bolger</i> , 2 F.3d 1304 (3d Cir.1993).....	10
<i>Bredbenner v. Liberty Travel, Inc.</i> , 09-cv-905, 2011 WL 1344745 (D.N.J. Apr. 8, 2011).....	12
<i>Brumley v. Camin Cargo Control, Inc.</i> , No. 08-1798, 2012 WL 1019337 (D.N.J. Mar. 26, 2012) .....	7, 11
<i>City of Detroit v. Grinnell Corp.</i> , 356 F. Supp. 1380 (S.D.N.Y.1972), 495 F.2d 448 (2d Cir. 1974).....	7
<i>Cullen v. Whitman Med. Corp.</i> , 197 F.R.D. 136 (E.D. Pa. 2000).....	14
<i>deMunecas v. Bold Food, LLC</i> , No. 09-cv-00440, 2010 WL 3322580 (S.D.N.Y. Aug. 23, 2010).....	14, 15
<i>Eichenholtz v. Brennan</i> , 52 F.3d 478 (3d Cir. 1995).....	10
<i>General Tel. Co. of S.W. v. Falcon</i> , 457 U.S. 147 (1982).....	18
<i>Girsh v. Jepson</i> , 521 F.2d 153 (3d Cir. 1975).....	10
<i>In re Constar Int'l, Inc. Sec. Litig.</i> , 585 F.3d 774 (3d Cir. 2009).....	16
<i>In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liability Litig.</i> , 55 F.3d 768 (3d Cir.), cert. denied, 516 U.S. 824 (1995) .....	17
<i>In re Ins. Brokerage Antitrust Litig.</i> , 579 F.3d 241 (3d Cir. 2009).....	9
<i>In re Janney Montgomery Scott LLC Financial Consultant Litig.</i> , No. 06-3202, 2009 WL 2137224 (E.D. Pa. Jul. 16, 2009) .....	passim
<i>In re Processed Egg Products Antitrust Litig.</i> , No. 08-md-02002, 2012 WL 2885924 (E.D. Pa. Jul. 16, 2012) .....	passim

*In re Rent-Way Sec. Litig.*,  
305 F. Supp. 2d 491 (W.D. Pa. Dec. 22, 2003) .....13

*In re Warfarin Sodium Antitrust Litig.*,  
391 F.3d 516 (3d Cir. 2004).....16

*Knepper v. Rite Aid Corp.*,  
675 F.3d 249 (3d Cir. 2012).....19

*Lignore v. Hosp. of Univ. of Pa.*,  
No. 04-5735, 2007 WL 1300733 (E.D. Pa. May 1, 2007).....10

*Mullane v. Central Hanover Bank and Trust Co.*,  
339 U.S. 306 (1950).....20

*Sand v. Greenberg*,  
No. 08-cv-7840, 2011 WL 7842602 (S.D.N.Y. Oct. 6, 2011).....14, 15

*Stewart v. Abraham*,  
275 F.3d 220 (3d Cir. 2001).....17

*Tenuto v. Transworld Sys., Inc.*,  
No. Civ. A. 99-4228, 2002 WL 188569 (E.D. Pa. Jan. 31, 2002) .....15

*Torres v. Gristede’s Operating Corp.*,  
No. 04-cv-3316, 2010 WL 5507892 (S.D.N.Y. Dec. 21, 2010).....14, 15

*Walsh v. Great Atlantic and Pacific Tea Co.*,  
96 F.R.D. 632 (D.N.J.), *aff’d*, 726 F.2d 956 (3d Cir.1983).....10

*Weiss v. York Hosp.*,  
745 F.2d 786 (3d Cir.1984), cert. denied, 470 U.S. 1060 (1985) .....16

**STATUTES**

29 U.S.C. § 216(b) ..... passim

Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”)..... passim

**OTHER AUTHORITIES**

Fed. R. Civ. P. 23..... passim

**I. INTRODUCTION**

This class and collective action wage and hour lawsuit against Defendants Allis-Chalmers Energy, Inc. and AirComp, LLC (“Allis-Chalmers” or “Defendants”) has been settled, and Plaintiff Floyd W. Thomas, Jr. (“Plaintiff”) respectfully submits this memorandum of law in support of his Unopposed Motion for Final Approval of the Settlement Agreement. The Court granted preliminary approval of this settlement on June 21, 2012, and set a Fairness Hearing for September 11, 2012. Dkt. No. 186. Now, after Court-approved notice has been sent to the Federal and State Class Members, final approval of this settlement is appropriate.

This is a wage-and-hour case alleging a nationwide violation of the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), filed on November 30, 2010, and violation of Pennsylvania state wage and hour laws. Plaintiff alleged that Defendants had a policy and practice of failing to pay their non-exempt employees who were paid on a daily rate compensation system for any overtime pay when they worked more than forty hours in a workweek. On August 28, 2011, after this litigation was filed, Defendants changed their compensation system to pay their non-exempt employees an hourly rate and overtime pay for hours worked in excess of forty.

The terms of the parties’ settlement were set forth in a Settlement Agreement (the “Settlement Agreement” or “Agreement”) (attached to Plaintiff’s Motion for Preliminary Approval as Exhibit 1, Dkt. No. 183-2) that was negotiated after the parties engaged in extensive arms’-length settlement negotiations. The Settlement includes a gross cash payment of one million nine hundred thousand dollars (\$1,900,000.00) (the “Gross Settlement Amount”), excluding the employer’s share of applicable FICA and FUTA payroll taxes, plus any interest earned thereon. None of the funds from the Gross Settlement Amount will revert to Defendants.

In exchange, Plaintiff, FLSA Opt-In Plaintiffs who have already opted into the case or who complete and return a Claim Form, and Pennsylvania State Settlement Class Members will dismiss all claims for unpaid overtime against Defendants arising out of the allegations set forth in this case during the period that they were employed as non-exempt employees and paid pursuant to a daily rate compensation system. In addition, Named Plaintiff Floyd Thomas, Jr. will provide Defendants with a broader general release of all claims, including his separate and independent claim for his alleged misclassification as a supervisor, and will receive an additional payment of \$15,000, and a service award of \$5,000 to be approved by the Court. *See* Dkt. No. 183-2, at ¶¶ 2(l), 2(u), 2(x), 12(a), 25(a).

Consistent with the Order granting preliminary approval, the Court-approved notice was mailed to 139 Federal Class Members and 42 State Class Members. *See* Declaration of Edward Sincavage of Heffler, Radetich & Saitta L.L.P. (“Heffler Decl.”) ¶¶ 10-11. In addition, a claim form was sent to 42 State Class Members. *Id.* ¶ 10. At the conclusion of the sixty day notice period, in addition to the 139 Federal Class Members, 25 State Class Members submitted timely Claim Forms. *Id.* ¶ 16. The Claims Administrator has received no objections or requests for exclusion from the Settlement. *Id.* ¶ 15. The highest value of any individual settlement award is estimated to be \$30,216.20, and the average value of all settlement awards is currently estimated to be \$7,358.92. *Id.* ¶ 19.

Plaintiff respectfully submits that this motion should be granted because the proposed Settlement Agreement satisfies all of the criteria for final approval under federal law and is fair, reasonable and adequate, and a fair and reasonable resolution of a *bona fide* dispute. Accordingly, Plaintiff requests that the Court issue an order: 1) granting final approval of the proposed Settlement Agreement; 2) finally certifying the Pennsylvania state claims as stated in

Plaintiff's Second Amended Class and Collective Action Complaint as a Rule 23 class for purposes of settlement on behalf of "all individuals who are current or former employees of Defendants Allis-Chalmers Energy Inc. or AirComp, LLC (or its successor Archer Underbalanced Services LLC) who worked in the Commonwealth of Pennsylvania at any time between December 16, 2008 and August 28, 2011, who were classified as non-exempt and paid pursuant to a daily rate compensation system, including but not limited to Operators and those in similarly titled positions" (the "State Settlement Class"); 3) approving Heffler, Radetich & Saitta LLP as Claims Administrator and finally approving the costs of administration; 4) approving the \$5,000 incentive award to Plaintiff Thomas for his service to the class and \$15,000 payment for his individual claim for alleged misclassification during his time working as a supervisor; 5) approving Plaintiff's request for approval of Attorneys' Fees of \$633,270.00 and costs in the amount of \$22,366.47, as set forth in Plaintiffs' Motion for Attorneys Fees and Costs, filed on August 2, 2012 (Dkt. No. 187); and 6) dismissing this case with prejudice. Defendants do not oppose this Motion, and Plaintiff has submitted a proposed order for the Court's consideration.

## **II. PROCEDURAL HISTORY**

Plaintiff incorporates by reference the Procedural History and Terms of Settlement Sections, as set forth in the Memorandum of Law in Support of Plaintiff's Unopposed Motion for Preliminary Approval. *See* Dkt. No. 184 at 3-12.

### **A. The Notice Provisions in the Settlement Agreement Have Been Satisfied**

Since the Court granted preliminary approval of the Settlement Agreement on June 21, 2012, the parties and the Claims Administrator have fully complied with the notice provisions detailed in the Settlement Agreement. *See* Settlement Agreement, Dkt. No. 183-2.

Per the terms of the Settlement Agreement, the Claims Administrator obtained a mailing address and toll-free telephone number for Class Members to submit Claim Forms, Requests for

Exclusion or Objections and undeliverable Class Notices, and to call with questions regarding the Settlement. *See* Heffler Decl. ¶ 5.

On or about July 3, 2012, Heffler received text for the Class Notice from Counsel for Plaintiff. A draft of the Class Notice was prepared by Heffler and approved by the Parties. *Id.* ¶¶ 3-4. On or about June 25, 2012, Counsel for Defense provided Heffler with a mailing list (the “Class List”) containing the Federal and State Class Members names, last known addresses, Social Security Numbers, phone numbers, dates of employment, employment history, Opt-In Consent Form filing date, and the number of weeks worked during each Class Member’s Claim Period. *Id.* ¶ 6. The Class List contained data for 138 Federal Class Members (who had already opted in to the case after the parties stipulated to conditional certification and send notice) and 42 State Class Members. *Id.* In addition, on July 5, 2012, an additional Federal Class Member’s information was provided to the Claims Administrator bringing the total number of Federal Class Members to 139. *Id.* ¶ 11.

The Claims Administrator processed and updated the mailing addresses contained in the Class List utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. *Id.* ¶ 9. NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Class Notice.

Class Notices were mailed to 139 Federal and State Class Members contained in the Class List via First Class mail, and Claim Forms were also mailed to 42 State Class Members. *Id.* ¶¶ 10-11. The Class Notice advised Class Members that they could submit a Claim Form if they had not already opted-in to the case, object to the settlement, or submit a written request for



exclusion postmarked by September 1, 2012. *Id.* ¶ 14. On July 24, 2012, the Claims Administrator sent a reminder postcard and duplicate notice to 29 State Settlement Class Members who had not yet submitted Claim Forms. *Id.* ¶ 12.

In total, 34 Class Notices were returned as undeliverable by the Post Office without forwarding addresses attached. *Id.* ¶ 13. The Claims Administrator promptly re-mailed Class Notices to those Class Members via First Class mail. *Id.* Of the 34 undeliverable Class Notices, Heffler performed address traces on 34 undeliverable Class Notices. *Id.* The address trace utilizes the Class Member's name, previous address and Social Security Number for locating a current address. *Id.* Of the 34 traces performed, 32 updated addresses were obtained and Class Notices were promptly re-mailed to those Class Members via First Class mail. *Id.* Of the 32 Class Notices mailed to updated addresses obtained from trace, 2 were returned as undeliverable. *Id.*

**B. Response from Class Members**

Per the terms of the Settlement Agreement, the Claims Administrator is responsible for receipt of all Claim Forms for the Settlement. As of September 5, 2012, the Claims Administrator received a total of 25 timely Claim Forms from State Settlement Class Members in addition to the 139 Federal Class Members who had already opted-in to the case, for a total of 164 Class Members. Heffler Decl. ¶ 16.

The total Claim Forms received by the Claims Administrator represents approximately 59.5% of State Class Members. *Id.* In addition, the total Federal and State Class Members represent approximately 90.6% of the total number of individuals who were eligible to participate in the Settlement.<sup>1</sup> Based on an estimated Net Settlement Amount of \$1,206,863.53,

---

<sup>1</sup> The 17 State Class Members who did not submit Claim Forms or opt-in to this case will not release their Fair Labor Standards Act claims against Defendants.

the highest value of any individual settlement award is estimated to be \$30,216.20, and the average value of all settlement awards is currently estimated to be \$7,358.92. *Id.* ¶ 19.

The Claims Administrator is also responsible for receiving objections and requests for exclusion from the Settlement. As of September 5, 2012, the Claims Administrator did not receive any objections or requests for exclusion from the Settlement. *Id.* ¶ 15.

Pursuant to the terms of the Settlement Agreement, payment of settlement awards will be made 15 business days after the Effective Date.<sup>2</sup> Settlement checks will be valid and negotiable for a period of 180-days. Pursuant to the terms of the Settlement Agreement, any amounts from uncashed Settlement checks after the 180 day period will be paid to the United Way of Allegheny County, the *cy pres* recipient designated by the parties.

### **III. DISCUSSION**

Plaintiff respectfully requests that the Court enter the accompanying proposed order finally approving the class and collective action settlement.

#### **A. Applicable Legal Standard**

To grant final approval, the Court must conclude that the proposed settlement is fair, reasonable and adequate. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 258 (3d Cir. 2009); Fed. R. Civ. P. 23(e).<sup>3</sup> Trial courts generally are afforded broad discretion in determining

---

<sup>2</sup> The Effective Date is defined in the Settlement Agreement as “Effective Date” as the date of final approval of this Settlement Agreement by the Court (the “Final Approval Order”) and expiration of the time for filing or noticing any appeal of the Final Approval Order (i.e., 30 days from the Final Approval Order or any extension of the time for appeal); or if an appeal is filed, the date of final affirmation of the Final Approval Order on any appeal; the expiration of the time for petitions for allowance of appeal; and, if the petition is granted, the date of final affirmation of the Final Approval Order following review pursuant to that grant or the date of final dismissal of any appeal or proceedings under appeal. *See* Section 2(k).

<sup>3</sup> This case is also brought pursuant to Section 216(b) of the FLSA. When employees bring a private action under the FLSA, and present to the district court a proposed settlement pursuant to Section 216(b) of the FLSA, the district court may enter a stipulated judgment if it determines that the compromise reached “is a fair and reasonable resolution of a *bona fide* dispute over

whether to approve a proposed class action settlement. *Eichenholtz v. Brennan*, 52 F.3d 478, 482 (3d Cir. 1995). This discretion is conferred in recognition that “[the] evaluation of [a] proposed settlement in this type of litigation ... requires an amalgam of delicate balancing, gross approximations and rough justice.” *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1385 (S.D.N.Y.1972), *aff'd in part and rev'd in part on other grounds*, 495 F.2d 448 (2d Cir. 1974). Thus, the Court considers whether the proposed settlement is within a “range of reasonableness” that experienced attorneys could accept in light of the relevant risks of the litigation. *See Walsh v. Great Atlantic and Pacific Tea Co.*, 96 F.R.D. 632, 642 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir.1983).

The Third Circuit Court of Appeals has set forth nine factors to be considered when determining the fairness of a proposed settlement:

(1) the complexity, expense and likely duration of the litigation;(2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation ...

*Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) (internal quotations and punctuation marks omitted).

Here, the *Girsh* factors support settlement.

---

FLSA provisions.” *See Brumley v. Camin Cargo Control, Inc.*, No. 08-1798, 2012 WL 1019337, at \*2 (D.N.J. Mar. 26, 2012) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982). Because Rule 23’s two-step final approval process is more stringent than approval of an FLSA collective action settlement, *see, e.g., Lignore v. Hosp. of Univ. of Pa.*, No. 04-5735, 2007 WL 1300733, at \*3, n.7 (E.D. Pa. May 1, 2007) (noting that the Third Circuit’s prior opinions suggest that court approval may not be necessary in context of private settlements under FLSA), satisfaction of the Rule 23 requirements here will be sufficient for approval of the FLSA collective action as well.

**1. The Proposed Settlement Terms Are Fair, Reasonable and Adequate in Relation to the Strength of Plaintiff's Case and Risks and Expense of Further Class Litigation**

Defendants have agreed to pay a large gross settlement amount -- \$1,900,000.00 -- in settlement of the claims of the Class. Federal and State Class Members will receive an average recovery of approximately \$7,358.92, even after attorneys' fees and costs are deducted, with the highest award at approximately \$30,216.20. *See* Heffler Decl. ¶ 19. The Settlement represents a high percentage of the maximum expected recovery if Plaintiff prevailed. More specifically, the Gross Settlement Amount is based on an analysis of each work-week that each Class Member worked for Defendants during the relevant time period, using the assumption that the Class Member worked at least twelve hours per day each day that they worked. While Defendants agreed to use the twelve hour per day assumption for settlement purposes only, it would not agree to that assumption for litigation purposes. **The Gross Settlement Amount represents more than 100% of the unpaid overtime damages owed to Federal and State Class Members, based on the above stated assumptions.** Moreover, the entirety of the net Settlement Fund will be disbursed to all Eligible Class Members, and there will be no reversion of funds to Defendants.

Plaintiff believes that the settlement is an excellent result for the members of the Settlement Class. Defendants were prepared to vigorously defend this action by asserting a number of defenses to liability, and disputing that the claims presented were appropriate for final certification. Defendants also disputed the number of hours that the Class Members worked. Moreover, in a class action proceeding, complex procedural issues may frequently arise, offering constant challenges to the propriety of the Class. Accordingly, the risks and costs of continued litigation are likely to be much higher than those of a typical single party case.

Given the substantial monetary settlement proposal, those risks do not seem warranted here. Thus, the *Gish* factors (the complexity, expense and likely duration of the litigation; the risks of establishing liability and damages; and the range of reasonableness of the settlement fund in light of the best possible recovery given the attendant risks of litigation) strongly support final approval of this Settlement.

## **2. The Lawsuit Is At An Appropriate Point For Settlement**

The parties in this case engaged in substantial investigation and discovery of the claims, both before and after the lawsuits were filed. There was sufficient investigation and discovery conducted in this matter to allow counsel and the Court to act intelligently concerning the settlement of the claims. *See In re Processed Egg Products Antitrust Litig.*, No. 08-md-02002, 2012 WL 2885924, at \*20 (E.D. Pa. Jul. 16, 2012) (noting that informal discovery prior to negotiations provided counsel with the information regarding the merits of the case necessary to make an informed settlement determination).

Notably, the parties exchanged documentation, records and information that allowed them to determine the losses that the Class Members suffered as a result of the alleged improprieties at issue in this case. Defendants produced critical payroll records that informed the parties' decision to settle. Once these documents were analyzed by the parties, along with the other discovery provided and interviews undertaken, additional discovery would not likely have changed the outcome of the Settlement. The state of the proceedings supports final approval of the Settlement.

## **3. The Opinion of Experienced Counsel Supports Approval of the Settlement, Which Resulted from Arms'-Length Negotiations By Informed and Experienced Counsel**

The Settlement was the result of intense mediation and negotiation sessions between the parties with the assistance of skilled mediator and former U.S. Magistrate Judge Kenneth

Benson. The participation by a neutral facilitator, and the adversarial nature of those negotiations illustrates that this case was resolved and settled only after sufficient “arms’-length” bargaining. Counsel for both sides are highly experienced in wage and hour class action litigation. The Declarations of Class Counsel filed in Support of the Motion for Attorneys’ Fees and Costs describes Class Counsel’s experience in this area. These experienced wage and hour attorneys believe that this case is ripe for settlement, and that the substantial sum of \$1,900,000.00 will provide significant relief to the Plaintiff and members of the Settlement Classes. *See In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. Dec. 22, 2003) (“settlement negotiations took place at arms length between highly experience[d] and competent counsel. Their assessment of the settlement as fair and reasonable is entitled to considerable weight”).

#### 4. The Settlement Class’ Response Supports the Settlement

Finally, the Class Members’ responses to the Settlement, overwhelmingly supports final approval. With the deadline for making objections and opting out of the Settlement passed, it is highly significant that the Claims Administrator has received 25 Claim Forms (representing 59.5% of State Settlement Class Members) and has sent notice to 139 Federal Settlement Class Members who have already opted into the case, but *zero objections and zero requests for exclusion* to the proposed Settlement were received. Heffler Decl. ¶¶ 11 & 16. This response from the Settlement Class demonstrates the fairness and adequacy of the Settlement’s terms. Nothing in the response of Class Members warrants denial of the final approval of the settlement. Given the Court’s preliminary approval and the complete absence of any objections by Class Members, final approval of the settlement is warranted. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n. 15 (3d Cir.1993) (noting that it is generally appropriate to assume that “silence constitutes tacit consent to the agreement” in the class settlement context); *In re Processed Egg*

*Products Antitrust Litig.*, 2012 WL 2885924, at \*18 (holding that no objections supports final approval of settlement).

**B. The Additional Service Award and Payment To Named Plaintiff Floyd Thomas, Jr. Is Justified And Should Be Approved**

Pursuant to the Settlement Agreement, Defendant has agreed to pay Named Plaintiff Thomas a service award in the amount of Five Thousand Dollars (\$5,000.00) for his efforts in bringing and prosecuting this matter, plus, separately and independently, Fifteen Thousand Dollars (\$15,000.00) in exchange for his Claims Released executed in favor of Defendants, which includes the Named Plaintiff's claim he is releasing under the FLSA for his alleged misclassification as a supervisor (a claim not here asserted on behalf of the Classes). *See* Settlement Agreement at ¶ 25(a). This amount will be paid in addition to his recovery of unpaid overtime for the time when he worked as an Operator and was paid a daily rate.

Courts have approved separate payments to Named Plaintiffs for individual claims and the release of those claims as part of a larger wage and hour class or collective action settlement. *See, e.g., Sand v. Greenberg*, No. 08-cv-7840, 2011 WL 7842602, at \*3 (S.D.N.Y. Oct. 6, 2011); *Torres v. Gristede's Operating Corp.*, No. 04-cv-3316, 2010 WL 5507892, at \*8 (S.D.N.Y. Dec. 21, 2010); *deMunecas v. Bold Food, LLC*, No. 09-cv-00440, 2010 WL 3322580, at \*11 (S.D.N.Y. Aug. 23, 2010); *Brumley*, 2012 WL 1019337, at \*9 (approving service payments and payments for plaintiffs' retaliation claims in collective action wage and hour settlement as fair and reasonable).

In addition, “[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.” *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000). It is particularly appropriate to compensate named representative plaintiffs with incentive awards

where they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of a class. *Tenuto v. Transworld Sys., Inc.*, No. Civ. A. 99-4228, 2002 WL 188569, at \*5 (E.D. Pa. Jan. 31, 2002).

Here, the proposed additional payment is justified by the benefits that the Named Plaintiff's diligent efforts have brought to the potential Federal and State Class Members. As described in Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement, Plaintiff Thomas took the significant risk of coming forward to represent the interests of his fellow employees. He has worked with Plaintiff's Counsel, providing background information about his employment, about Defendants' policies and practices and about the allegations in this lawsuit. He has risked his reputation in the community and in his place of employment in order to participate in this case on behalf of the Classes. *See also Sand*, 2011 WL 7842602, at \*3 (approving service awards in FLSA case as reasonable and finding that plaintiffs "took risks by putting their names on this lawsuit," including the risk of "blacklisting and other more subtle forms of retaliation").

The additional payment requested in this case is also in line with those approved in wage and hour collective and class actions throughout the country. *See, e.g., Sand*, 2011 WL 7842602, at \*3 (approving service award of \$10,000 and additional retaliation payment of \$7,500 in FLSA case); *Torres*, 2010 WL 5507892, at \*8 (approving service award of \$15,000 and retaliation payments of \$20,000 in FLSA and wage and hour case); *deMunecas*, 2010 WL 3322580, at \*11 (approving service award of \$5,000 and retaliation payment of \$15,000); *Bredbenner v. Liberty Travel, Inc.*, 09-cv-905, 2011 WL 1344745, at \*22-24 (D.N.J. Apr. 8, 2011) (approving service payments of \$10,000 to each of eight named plaintiffs in wage and hour case, and citing 2006 empirical study that found average award per class representative to be \$16,000); *In re Janney*



*Montgomery Scott LLC Financial Consultant Litig.*, No. 06-3202, 2009 WL 2137224, at \*12 (E.D. Pa. Jul. 16, 2009) (approving \$20,000 enhancement awards for each of three named plaintiffs in wage and hour settlement).

For these reasons, the additional payments to Named Plaintiff Thomas should be finally approved as fair and reasonable.

**C. The Court Should Finally Certify the State Settlement Class Under Fed. R. Civ. P. 23<sup>4</sup>**

In addition, the State Settlement Class should be finally certified. A case may be certified as a class action under Rule 23 only when:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *Weiss v. York Hosp.*, 745 F.2d 786, 807 (3d Cir.1984), cert. denied, 470 U.S. 1060 (1985). These four threshold requirements are commonly referred to as “numerosity,” “commonality,” “typicality,” and “adequacy of representation,” respectively. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527 (3d Cir. 2004).

Federal Rule of Civil Procedure 23(b)(3) permits the court to certify a class in cases where “questions of law or fact common to class members predominate over any questions affecting only individual members,” and “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). These dual requirements are commonly referred to as “predominance” and “superiority,” respectively. *See, e.g., In re Constar Int'l, Inc. Sec. Litig.*, 585 F.3d 774, 780 (3d Cir. 2009).

---

<sup>4</sup> The parties already agreed to stipulate to conditionally certify the FLSA class and send out a Court-approved notice, and the Court approved a joint Stipulation and Order Regarding Notice Pursuant to 29 U.S.C. § 216(b) on August 16, 2011. *See* Dkt No. 41.

A party that seeks to certify a settlement class must satisfy the same requirements necessary to maintain a litigation class. *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 778 (3d Cir.), cert. denied, 516 U.S. 824 (1995) (discussing and approving use of settlement-only classes). The substantive terms of the settlement agreement may factor into certain aspects of the certification calculus. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997).

The Court preliminarily certified the State Settlement Class under Rule 23(b)(3) for settlement purposes, and Plaintiff now moves for final certification of a the State Settlement Class under Rule 23(b)(3). Pursuant to the terms of the Settlement Agreement, Defendants have stipulated that, for settlement purposes only, the requisites for establishing class certification pursuant to Fed. R. Civ. P. 23 with respect to the State Settlement Class Members, have been and are met. *See* Settlement Agreement at ¶ 10.

**1. The State Settlement Class Is Sufficiently Numerous**

To meet the numerosity requirement of Fed. R. Civ. P. 23(a)(1), “the class size only need be large enough that it makes joinder impracticable.” *Fry*, 198 F.R.D. at 467. The proposed State Settlement Class here easily meets the numerosity requirement because approximately 113 State Settlement Class Members have been identified through Defendants’ payroll records. Of the State Settlement Class Members, only 17 have not filed an Opt-In Consent Form or a Claim Form to participate in the Settlement. *See* Heffler Dec. ¶ 16.

**2. The State Settlement Class Seeks Resolution of Common Questions**

The commonality requirement of Fed. R. Civ. P. 23(a)(2) is satisfied if the named plaintiff shares at least one question of fact or law with the grievances of the prospective class. *See Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001). Here, Plaintiff and the State Settlement Class Members’ claims arise from Defendants’ common pay policies. The alleged

common issues include, for example: (1) whether State Settlement Class members were entitled to overtime compensation for their hours worked; (2) whether State Settlement Class members were similarly denied compensation for all hours worked; and (3) whether Defendants' policy of paying a daily rate to State Settlement Class Members violated Pennsylvania state law. These sample common questions of law and fact, which Plaintiff contends apply uniformly to all members of the proposed State Settlement Class, are sufficient to satisfy the commonality requirement.

**3. The Claims of the Named Plaintiff Are Typical Of the Class**

The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied for purposes of finally approving the settlement, because Plaintiff's claims are reasonably coextensive with those of absent class members, and because Plaintiff possesses the same interest and suffered the same injury as the absent class members. *See Fry*, 198 F.R.D. at 468; *General Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 156 (1982). Plaintiff's claims for unpaid overtime compensation during weeks when he worked as a non-exempt Operator are typical of the claims of the Class.

**4. Class Counsel and Plaintiff Meet The Adequacy Requirements of the State Settlement Class**

To meet the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4), Plaintiff must show: 1) that the potential Named Plaintiff has the ability and the incentive to represent the claims of the class vigorously; 2) that he or she has obtained adequate counsel; and 3) that there is no conflict between the individual's claims and those asserted on behalf of the class. *Fry*, 198 F.R.D. at 469.

The adequacy of representation requirement is met here because the Named Plaintiff has the same interests as the State Settlement Class Members. There is no conflict between Plaintiff and the State Settlement Class in this case, and Plaintiff's claims are in line with the claims of

the class. Plaintiff has aggressively and competently asserted the interests of the State Settlement Class, and Plaintiff's Counsel is skilled and experienced in wage and hour class action litigation, as set forth in the declarations of Class Counsel submitted with Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement, and Plaintiff's Unopposed Motion for Attorney's Fees and Costs.

**5. The State Settlement Class Satisfies the Predominance and Superiority Requirements of Fed. R. Civ. P. 23(b)(3).**

Under Federal Rule of Civil Procedure 23(b)(3), class certification is appropriate if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

For the reasons discussed above, Plaintiff submits that the State Settlement Class satisfies the predominance requirement. Moreover, Plaintiff contends that allowing the State Settlement Class Members the opportunity to participate in a class settlement that yields an immediate and substantial benefit is highly superior to having a multiplicity of individual and duplicative proceedings in this Court. It is also superior to the alternative of leaving these important labor rights unaddressed due to the difficulty of finding legal representation and filing claims on an individual basis. Moreover, the Third Circuit has ruled that there is no reason to preclude federal jurisdiction over class actions asserting claims under state statutory wage and overtime laws paralleling the FLSA. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012).

Accordingly, Plaintiff respectfully requests that the Court finally certify the State Settlement Class for settlement purposes only.

**D. The Notice Provisions Were Followed and Provided Adequate Notice To The Class that Satisfies Due Process**

The United States Supreme Court has held that notice of a class action settlement must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950).

Here, the proposed Notice and manner of distribution negotiated and agreed upon by the parties was “the best notice practicable,” as required under Fed. R. Civ. P. 23(c)(2)(B).

As described above, the Notice provisions of the Settlement Agreement were all followed by the Claims Administrator. State Settlement Class Members (who were previously sent opt-in consent forms when the notice was sent for litigation purposes) have had an additional opportunity to participate in the Settlement. 59.5% of the 42 State Settlement Class Members (who had not already submitted an Opt-In consent form) have returned Claim Forms, in addition to the 139 Federal Settlement Class Members who have already opted into the case. *See* Heffler Decl. ¶ 16. A total of 164 out of the 181 Class Members eligible to participate in the Settlement will receive substantial benefits from the Settlement. *Id.* Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court. CONTE & NEWBERG at §§ 8.21 and 8.39; MANUAL FOR COMPLEX LITIG. at § 21.311 and 21.312.

**IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court enter a final order approving this Settlement as fair, reasonable and adequate, and dismissing this case with prejudice.

Dated: September 6, 2012

Respectfully submitted,

s/ Sarah R. Schalman-Bergen  
Shanon J. Carson (PA 85957)  
Sarah R. Schalman-Bergen (PA 206211)  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (215) 875-4656  
Facsimile: (215) 875-4604  
scarson@bm.net  
sschalman-bergen@bm.net

David A. Hughes (*pro hac vice*)  
HARDIN & HUGHES, LLP  
2121 14th Street  
Tuscaloosa, AL 35401  
(205) 344-6690  
(205) 344-6188 (Facsimile)  
[dhughes@hardinhughes.com](mailto:dhughes@hardinhughes.com)

*Attorneys for Plaintiff and the Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FLOYD W. THOMAS, JR., individually and on  
behalf of all persons similarly situated,

Plaintiff,

v.

ALLIS-CHALMERS ENERGY, INC. and  
AIRCOMP, LLC,

Defendants.

Civil Action No.: 2:10-cv-01591-RCM

Judge Robert C. Mitchell

ELECTRONICALLY FILED

**DECLARATION OF EDWARD J. SINCAVAGE**

I, EDWARD J. SINCAVAGE, being first duly sworn according to law, depose and say as follows:

1. I am a partner in the firm of Heffler, Radetich & Saitta L.L.P. ("HR&S"), the main offices of which are located at 1515 Market Street, Suite 1700, Philadelphia, Pennsylvania 19102. HR&S was appointed as the Settlement Administrator in the matter. I have personal knowledge of the matters set forth in this affidavit and, if called upon as a witness, I could and would competently testify to these matters under penalty of perjury.

2. HR&S has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, employment and labor, consumer and government enforcement matters. HR&S provided notification and/or claims administration services in more than 700 cases. Of these, more than 30 were labor and employment law cases.

3. HR&S was engaged by counsel for the parties to provide notification and other services in connection with the settlement reached in the above-captioned matter (the

“Settlement”). The services provided or to be provided by HR&S included or will include: a) preparing, printing and mailing of the Notice and Claim Form to members of the Federal and State Settlement Classes (collectively known as the “Class Notice”); b) receiving and reviewing Claim Forms submitted by members of the State Settlement Class (“State Settlement Class Members”); c) tracking of requests for exclusion and objections; d) drafting and mailing Settlement Award checks to Class Members; and for such other tasks as the parties mutually agree or the Court orders HR&S to perform.

4. HR&S performed the services listed herein under my supervision relating to the dissemination of the Class Notice, dated July 3, 2012. A copy of the Class Notice is attached as Exhibit A.

5. HR&S used the mailing address of Allis-Chalmers Class Action Settlement, Heffler, Radetich & Saitta, LLP, 1515 Market Street, Suite 1700, Philadelphia, PA 19102 to receive Claim Forms, objections, and undeliverable Class Notices, and set up a toll-free telephone number of 1-888-665-1125 for Class Members to call with questions regarding the Settlement.

6. On June 25, 2012, HR&S received a mailing list from counsel for the Defendants containing a total of 138 names, last known addresses, last known telephone numbers and Social Security numbers for Federal Class Members, and a total of 42 names, last known addresses, last known telephone numbers and Social Security numbers for State Class Members.

7. On June 25, 2012, HR&S received payroll data from counsel for Defendants necessary to calculate Settlement awards to Federal and State Class Members.

8. HR&S compiled the listings into a database containing 180 records.



9. In order to provide the best notice practicable, HR&S ran the class list through the USPS National Change of Address database and also performed address searches using the public and proprietary resources of Lexis/Nexis and Equifax.

10. HR&S printed and mailed 138 Notices to Federal Class Members and 42 Notice and Claim Forms to State Class Members via postage pre-paid, first-class USPS mail on July 3, 2012. State Class Members also received an enclosed self-addressed stamped envelope.

11. On July 5, 2012, Counsel provided HR&S with an additional name and address for one Federal Class Member to be mailed a Notice. HR&S mailed a Notice via first class mail on July 5, 2012 to this one additional Class Member.

12. HR&S mailed a reminder postcard with a duplicate copy of the Claim Form to 29 State Settlement Class Members on July 24, 2012 (twenty-one days after the initial mailing), who had not yet submitted Claim Forms.

13. As of this date, 34 Class Notices have been returned by the post office with no forwarding address attached. HR&S has performed address traces on all 34 undeliverable Class Notices returned without a forwarding address. The address trace (often called a "skip trace") utilized the Class Member's name, previous address and Social Security number for locating a current address. Of the traces performed, 32 updated addresses were obtained. The Class Notices for these individuals were promptly re-mailed to those Class Members via First Class mail at the updated addresses. After these processes, a total of only two Class Notices were ultimately deemed undeliverable.

14. As of September 5, 2012, a total of 25 State Settlement Class Members returned Claim Forms, postmarked by the September 1, 2012 deadline. As of September 5, 2012, no

State Settlement Class Members returned Claim Forms, postmarked after the September 1, 2012 deadline.

15. HR&S is responsible for receipt of all objections to the Settlement, and requests for exclusion from the Settlement. As of September 5, 2012, HR&S has not received any objections or requests for exclusion from the Settlement.

16. The total Claim Forms from State Settlement Class Members received by HR&S represent approximately 59.5 percent of the 42 State Settlement Class Members. Out of the total 181 individuals who were eligible to participate in the Settlement, 164 have either returned Opt-In Consent Forms (Federal Settlement Class Members) or have returned Claim Forms for the Settlement (State Settlement Class Members) (90.6 %).

17. As of this date, and assuming approval by the Court of the settlement and Plaintiff's Unopposed Motion for Approval of Attorneys' Fees and Costs, it is estimated that the Net Settlement Amount to be distributed to the Class will be \$1,206,863.53.

18. HR&S is responsible for calculating Settlement Payments in this case. Based on the terms of the Settlement Agreement, as to Federal Settlement Class members, the Claims Administrator as per the Settlement Agreement will calculate an award for each Federal Class Member based on the total number of weeks that the respective Federal Class Member worked for Defendants in a day rate job during the time period which is three years prior to his/her opt-in date and August 28, 2011. As to State Settlement Class Members who submit a valid and timely Claim Form, the Claims Administrator will calculate an award for each class member based on the total number of weeks that the respective class member worked for Defendants in a day rate job during the time period between December 16, 2008 and August 28, 2011. Each week shall equal one settlement share, and the total number of settlement shares for all Eligible Class

Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Eligible Class Member's number of settlement shares to determine the Eligible Class Member's Settlement Award. Each Eligible Class Member will receive a minimum amount of \$250, regardless of the number of settlement shares allocated to that Eligible Class Member.

19. Based on initial calculations, the highest value of any individual claim is currently estimated to be \$30,216.20, and the average value of all claims submitted is currently estimated to be \$7,358.92.

20. As provided for in the Settlement Agreement, HR&S shall provide counsel for all Parties with copies of all completed Claim Forms and a final report listing all State Settlement Class Members who submitted a timely and valid Claim Form, and the Settlement Award to be paid to each Federal and State Settlement Class Member, at least five (5) business days before the Settlement Awards are mailed.

  
EDWARD J. SINCAVAGE

Sworn to and subscribed before me  
this 6<sup>th</sup> day of September 2012.

# **EXHIBIT A**

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

FLOYD W. THOMAS, JR., individually and on behalf of all persons similarly situated,	:	
	:	Civil Action No.: 2:10-cv-01591-RCM
Plaintiff,	:	
	:	Judge Robert C. Mitchell
v.	:	
ALLIS-CHALMERS ENERGY, INC. and AIRCOMP, LLC,	:	
	:	
Defendants.	:	
	:	

**NOTICE OF PROPOSED FLSA COLLECTIVE AND CLASS ACTION SETTLEMENT**

**IMPORTANT: Please Read This Notice Carefully. This Notice Could Affect Your Legal Rights. You Are Entitled To Money From This Settlement.**

**TO: All individuals who are current or former employees of Defendants Allis-Chalmers Energy Inc. or AirComp, LLC (or its successor Archer Underbalanced Services LLC), and who previously opted in to the above-captioned matter as an FLSA Opt-In Plaintiff (the “FLSA Class”);**

**and**

**All individuals who are current or former employees of Defendants Allis-Chalmers Energy Inc. or AirComp, LLC (or its successor Archer Underbalanced Services LLC) who worked in the Commonwealth of Pennsylvania at any time between December 16, 2008 and August 28, 2011, who were classified as non-exempt and paid pursuant to a daily rate compensation system, including but not limited to Operators and those in similarly titled positions, and who did not previously file an Opt-In Consent Form in the above-referenced matter (the “Pennsylvania Class”).**

**RE: Proposed class and collective action settlement for claims of unpaid overtime compensation**

**INTRODUCTION**

The purpose of this Notice is to inform you of a proposed settlement in the above-captioned matter, entitled *Thomas v. Allis-Chalmers Energy, Inc., et al.*, pending in the United States District Court for the Western District of Pennsylvania, Civil Action No. 2:10-cv-01591-RCM (the “Lawsuit”), against Defendants Allis-Chalmers Energy, Inc. and Aircomp, LLC (“Defendants”). The Lawsuit is brought by Plaintiff Floyd W. Thomas, Jr. on behalf of current and former employees who fit the definition of the FLSA Class and Pennsylvania Class set forth above. The Lawsuit claims that Defendants violated federal law and Pennsylvania law by failing to properly pay overtime compensation to its non-exempt daily rate employees. The Lawsuit claims that daily rate compensation systems are illegal when employees are not paid an overtime premium for all hours worked over forty (40) in a work week.

You received this Notice either because you already joined this litigation as an Opt-In Plaintiff (*i.e.*, you are an FLSA Class Member), or because Defendants' records indicate that you are a Pennsylvania Class Member as defined above. All persons receiving this Notice may be affected by the legal proceedings in this action.

**THIS NOTICE IS TO INFORM YOU ABOUT:**

1. THE STATUS OF THE LAWSUIT, INCLUDING A STATEMENT OF YOUR RIGHTS WITH RESPECT TO THE PROPOSED SETTLEMENT OF THE CASE;
2. HOW YOU CAN RECEIVE YOUR SHARE OF THE SETTLEMENT FUNDS;
3. YOUR OPTION TO FILE WITH THE COURT ANY OBJECTIONS YOU MAY HAVE TO THE SETTLEMENT;
4. IF YOU ARE A PENNSYLVANIA CLASS MEMBER, YOUR OPTION TO EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT BY "OPTING OUT"; AND
5. THE ATTORNEYS' FEES AND COSTS THAT WILL BE REQUESTED BY CLASS COUNSEL.

**1. Why Should You Read This Notice?**

This Notice tells of your rights to share in the monetary proceeds of this Settlement, exclude yourself or "opt-out" of the Settlement if you are a Pennsylvania Class Member, or object to the Settlement. The United States District Court for the Western District of Pennsylvania has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Settlement Fairness Hearing concerning the proposed Settlement on September 11, 2012 at 1:00 PM., before the Honorable Judge Mitchell of the United States District Court for the Western District of Pennsylvania, located at 700 Grant Street, Pittsburgh, PA 15219.

**2. What Is This Case About? Description of the Lawsuit.**

Plaintiff Floyd W. Thomas, Jr. originally filed the Lawsuit in the United States District Court for the Western District of Pennsylvania on November 30, 2010 (the "Federal Case"), and originally filed *Thomas v. Allis Chalmers Energy, Inc., et al.*, No. 11-26253, in the Pennsylvania Court of Common Pleas, Allegheny County, on December 16, 2011 (the "State Case"). The Federal Case and State Case are jointly referred to as the Lawsuit below.

Plaintiff retained Class Counsel to pursue his legal claims in this Lawsuit. Plaintiff alleged that Defendants failed to properly pay overtime compensation to those it classified as non-exempt, daily rate employees. The Federal Case alleged claims under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA"), and the State Case alleged claims under the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, and for unjust enrichment under Pennsylvania law. Defendants deny that they have any liability for failing to pay overtime compensation to their non-exempt, daily rate employees. The Settlement and all related documents are not and shall not be construed as an admission by Defendants of any fault, liability or wrongdoing.

Plaintiff's FLSA claims were alleged as a collective action pursuant to 29 U.S.C. § 216(b). Plaintiff's Pennsylvania state law claims were alleged as a class action. The Federal Case and the State Case have now been combined in federal court as a result of the filing of a Second Amended Complaint that consolidates all claims in the United States District Court for the Western District of Pennsylvania.

On February 28, 2012, following a period of discovery, the Parties participated in mediation in Pittsburgh, Pennsylvania, overseen by an experienced mediator. As a result of the mediation, and subsequent negotiations, the Parties have agreed to settle this Lawsuit. The Court has now preliminarily approved the Settlement as fair and reasonable and authorized this Notice to be sent to you.

### **3. Who Are the Attorneys Representing Plaintiff and the Class?**

Plaintiff and the Class are represented by the following attorneys:

Shanon J. Carson, Esq.  
Sarah R. Schalman-Bergen, Esq.  
**BERGER & MONTAGUE, P.C.**  
1622 Locust Street  
Philadelphia, Philadelphia 19103  
Telephone: (215) 875-3053  
Facsimile: (215) 875-4604  
Email: scarson@bm.net  
Email: sshalman-bergen@bm.net  
Website: www.bergermontague.com

David A. Hughes, Esq.  
**HARDIN & HUGHES, LLP**  
2121 14th Street  
Tuscaloosa, AL 35401  
Telephone: (205) 344-6690  
Facsimile: (205) 344-6188  
Email: dhughes@hardinhughes.com

### **4. What Are My Rights?**

- If you already opted into the Lawsuit at an earlier date (*i.e.*, you are a member of the FLSA Class), you will automatically get money from the Settlement. Specifically, if you previously filled out and returned an Opt-In Consent Form, then you do not have to do anything to receive your share of the settlement proceeds, and there is no Claim Form enclosed because you are already recognized as having made a claim.
- If you are a member of the Pennsylvania Class and you did not previously fill out and return an Opt-In Consent Form, **then you will only get money from the Settlement if you now timely fill out and mail the enclosed Class Member Claim and Opt-In Form to the Claims Administrator at:** Attn: Allis-Chalmers Class Action Settlement, Heffler, Radetich & Saitta LLP, 1515 Market Street, Suite 1700, Philadelphia, PA 19102.

- If you worked for Defendants in the Commonwealth of Pennsylvania and you do not wish to be bound by the Settlement, you must submit a written exclusion from the settlement (“opt-out”), postmarked by September 1, 2012 (60 days from the date this Notice was mailed). The written request for exclusion from the settlement must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Claims Administrator at: Attn: Allis-Chalmers Class Action Settlement, Heffler, Radetich & Saitta LLP, 1515 Market Street, Suite 1700, Philadelphia, PA 19102. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- If you received this Notice, and you wish to object to the Settlement, you must submit an objection, postmarked by September 1, 2012 (60 days from the date this Notice was mailed), stating why you object to the settlement. Your objection must state your full name, address and telephone number, and must be signed by you. Any objection should be mailed to the Claims Administrator at: Attn: Allis-Chalmers Class Action Settlement, Heffler, Radetich & Saitta LLP, 1515 Market Street, Suite 1700, Philadelphia, PA 19102. If you submit a written objection, you may also, if you wish, appear at the Final Settlement Fairness Hearing set for September 11, 2012 at 1:00 PM before the Honorable Judge Mitchell of the United States District Court for the Western District of Pennsylvania located at 700 Grant Street, Pittsburgh, PA 15219, to discuss your objection with the Court and the parties to the Lawsuit.

If the proposed Settlement is approved by the Court at the Final Settlement Fairness Hearing on September 11, 2012, and you do not exclude yourself from the Settlement as discussed above, a Judgment will be entered by the Court that will dismiss your “Settled Claims” for unpaid overtime compensation against Defendants, as defined below:

any and all state, local or federal claims, obligations, demands, actions, rights, causes of action and liabilities for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), premium pay, interest, attorneys’ fees, litigation costs, restitution or other compensation and relief arising under the FLSA, the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, Pennsylvania common law or any other law applicable to the payment of wages, overtime or compensation, whether known or unknown, which were asserted, or could have been asserted in this Class and Collective Action against the Released Parties, based upon the same facts set forth in the Class and Collective Action on behalf of the Federal Settlement Class Members and State Settlement Class Members (or their agents, successors, assigns, heirs, executors or administrators) with respect to the time that they were employed and classified by Allis-Chalmers Energy, Inc. and Aircomp, LLC as non-exempt, daily rate Operators or other non-exempt, daily rate positions. However, no State Settlement Class Member shall be deemed to release claims under the FLSA unless they return a timely Class Member Claim and Opt-In Form.



The Judgment will resolve the “Settled Claims” to the extent provided in the Settlement Agreement and will permanently bar all Pennsylvania Class Members from prosecuting any and all such Pennsylvania claims against Defendants. However, if you did not previously submit an Opt-In Consent Form and you do not now submit a Class Member Claim and Opt-In Form, then any and all claims that you may have under the Fair Labor Standards Act are not released.

**5. Can Defendants Retaliate Against Me for Participating in this Lawsuit?**

No. If you are a current employee of Defendants (or any successor of Defendants), your decision as to whether or not to participate in this Lawsuit will in no way affect your employment with Defendants. It is illegal for Defendants to take any adverse employment action against you as a result of your participating in this Lawsuit. In fact, Defendants encourage you to participate in this settlement and receive your share of the monetary proceeds.

**6. How Much Can I Expect To Receive?**

Defendants have agreed to pay One Million, Nine Hundred Thousand Dollars (\$1,900,000.00) to settle the Lawsuit. Deductions from this amount will be made to cover the attorneys’ fees and costs for Class Counsel (see below), settlement administration costs estimated at \$17,500.00, an enhancement payment of \$5,000.00 to the Named Plaintiff (Floyd W. Thomas, Jr.) for his service to the Class, and a payment of \$15,000.00 to the Named Plaintiff to resolve his individual claims. After deductions of these amounts, what remains of the Settlement (the “Net Settlement Amount”) will be available to pay all monetary Settlement Awards to persons who returned an Opt-In Consent Form or Class Member Claim and Opt-In Form (collectively, “Eligible Class Members”).

Specifically, each Eligible Class Member’s share of the Net Settlement Amount will be determined based on the total number of weeks that the respective Eligible Class Member worked for Defendants during a specified time period. Awards to Federal Class Members will be based on the total number of weeks that the respective Federal Class Member worked for Defendants during the time period which is three years prior to his/her opt in date and August 2011. Awards to State Settlement Class Members will be based on the total number of weeks the respective State Class Member worked for Defendants during the time period between December 16, 2008 and August 28, 2011. Each week shall equal one settlement share, and the total number of settlement shares for all Eligible Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Eligible Class Member’s number of settlement shares to determine the Eligible Class Member’s Settlement Award. Each Eligible Class Member will receive a minimum amount of \$250, regardless of the number of settlement shares allocated to that Eligible Class Member. All Settlement Award determinations shall be based on Defendants’ personnel and payroll records. All valid and timely claims will be paid from the Net Settlement Amount. The Claims Administrator also will deduct applicable employee payroll taxes and withholdings from the Settlement payments.

**NOTE: YOU WILL ONLY GET MONEY FROM THE SETTLEMENT IF YOU PREVIOUSLY SIGNED AND RETURNED AN OPT-IN CONSENT FORM OR IF YOU NOW SUBMIT A VALID AND TIMELY CLASS MEMBER CLAIM AND OPT-IN FORM.**

**It is your responsibility to ensure that the Claims Administrator has timely received your claim. You may contact the Claims Administrator at the toll-free number listed below to ensure that your claim has been received. It is also your responsibility to keep a current address on file with the Claims Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.**

**7. How Will the Attorneys for the Class Be Paid?**

Class Counsel will be paid from the settlement amount of \$1,900,000.00. You do not have to pay the attorneys who represent the Class separately. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of the total value of the settlement (or \$633,270.00), plus their out-of-pocket costs, which are presently \$21,139.81. Class Counsel will file with the Court a Motion for Attorneys' Fees and Costs. The actual amount awarded will be determined by the Court. The Court will hold a hearing on that Motion on the same day as the Final Settlement Fairness Hearing, on September 11, 2012 at 1:00 PM.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact Class Counsel as listed above or the Claims Administrator at the toll-free telephone number listed at the end of this Notice or by email. Please refer to the Allis-Chalmers Class Action Settlement.

Attn: Allis-Chalmers Class Action Settlement  
Heffler, Radetich & Saitta LLP  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102  
Toll-Free Telephone Number: 1-888-665-1125  
Facsimile Number: 215-665-0613  
Email Address: [claimsadministrator@heffler.com](mailto:claimsadministrator@heffler.com)

**ADDITIONAL INFORMATION**

This Notice only summarizes the Lawsuit, the Settlement and related matters. For more information, you may inspect the Court files at the Office of the Clerk, United States District Court located at 700 Grant Street, Pittsburgh, PA 15219, from 9:00 a.m. to 5:00 p.m., Monday through Friday. **PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

Dated: July 3, 2012

**Must be Postmarked No Later Than September 1, 2012**

**MAIL TO:**

Attn: Allis-Chalmers Class Action Settlement  
Heffler, Radetich & Saitta LLP  
1515 Market Street, Suite 1700  
Philadelphia, PA 19102  
Toll-Free Telephone Number: 1-888-665-1125  
Facsimile Number: 215-665-0613  
Email Address: claimsadministrator@heffler.com

**CLASS ACTION CLAIM AND OPT-IN FORM**

**CLAIMANT INFORMATION:**

Label No.:

If different than the preprinted data to the left, please print your correct legal name, current address and Social Security Number here:

Telephone No.:

Email Address:

Social Security No.:

*Thomas v. Allis-Chalmers Energy, Inc. and Aircomp, LLC*  
Case No. 2:10-cv-01591-RCM (W.D. Pa.)

**TO SHARE IN THE MONETARY RECOVERY FOR THE ALLIS-CHALMERS OVERTIME SETTLEMENT, YOU MUST COMPLETE, SIGN AND RETURN THIS “CLASS MEMBER CLAIM AND OPT-IN FORM” AND IT MUST BE POSTMARKED NO LATER THAN SEPTEMBER 1, 2012.**

If your address changes, you must send the Claims Administrator your new address. It is your responsibility to keep your address on file and up-to-date with the Claims Administrator so that you can be sure to receive your monetary settlement award.

By signing below, I certify that I was employed by Allis-Chalmers Energy, Inc. and/or Aircomp, LLC and was classified as a non-exempt, daily rate employee between December 16, 2008 and August 28, 2011; that my name, address, telephone number and Social Security Number or Tax Identification Number written above are correct; and that all other information that I have provided in this document is correct.

I also hereby consent and agree to join this lawsuit, and I hereby opt in to become a plaintiff in this lawsuit and consent to be bound by the collective action settlement of all “Settled Claims” as set forth in the Notice of Fair Labor Standards Act Settlement and the Settlement Agreement.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature