

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

-----X		
ERIC MAAR and LINDIANE WESS, individually :	:	
and on behalf of all others similarly situated, :	:	
	:	
Plaintiffs, :	:	Case No: 2:16-cv-14121-DMM
	:	
-against- :	:	
	:	
BEALL’S, INC., :	:	
	:	
Defendant. :	:	
-----X		

JOINT STIPULATION AND RELEASE

This Joint Stipulation of Settlement and Release (the “Agreement”) is entered into by and between Eric Maar and Lindiane Wess (collectively, the “Named Plaintiffs”), individually and on behalf of the collective of individuals that they seek to represent (collectively with Named Plaintiffs, “Plaintiffs”), and Defendant Beall’s, Inc. (“Defendant” or “Beall’s”) (together with Plaintiffs, the “Parties”).

RECITALS

WHEREAS, the Named Plaintiffs have filed a Collective Action Complaint (“Complaint”) in this action asserting claims against Defendant under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, for the alleged failure to pay overtime compensation to Named Plaintiffs and those Area Managers (“AMs”) similarly situated (the “Litigation”); and

WHEREAS, by Order dated December 15, 2016, the Court granted Named Plaintiffs’ motion and authorized the mailing of notice to a conditionally certified collective of AMs employed by Beall’s, and pursuant to which notice 115 AMs opted-into the Litigation, in addition to the two Named Plaintiffs and two other AMs who joined the Litigation prior to notice, for a total of 120 AMs participating in this case as Plaintiffs; and

WHEREAS, on March 8, 2017, the Parties participated in a mediation session of this matter in Tampa, Florida, which was conducted by experienced wage-and-hour class action mediator Mark Hanley, Esq., and shortly thereafter reached an accord resulting in this Agreement; and

WHEREAS, the purpose of this Agreement is to settle fully and finally all claims as set forth in Section 4 of this Agreement, including all claims asserted in the Litigation and those claims that could have been so asserted under the FLSA or state law based on the allegations in the Complaint, relating to the non-payment of overtime to individuals employed as exempt AMs at

Beall's who have filed a consent to join this lawsuit and have not been dismissed from the lawsuit or withdrawn their consent to join; and

WHEREAS, Beall's denies all of the allegations made by Named Plaintiffs in the Litigation and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation; and

WHEREAS, Plaintiffs' Counsel analyzed and evaluated the merits of the claims made against Beall's in the Litigation, conducted interviews with Named Plaintiffs and collective members, deposed Beall's' corporate representative, defended the depositions of the Named Plaintiffs, exchanged written discovery with Defendant, obtained and reviewed documents relating to Beall's' compensation policies and practices, and analyzed payroll data, and, based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery or might result in a recovery less favorable, and that any recovery would not occur for several years, Plaintiffs' Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Plaintiffs.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions.

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1** "Acceptance Period" means the 120-day period that an Eligible Settlement Class Member has to sign and cash a Settlement Check after it is received as defined in Section 2.9.
- 1.2** "Area Manager" or "AM" means those persons employed by Beall's as an Area Manager in the United States, as that term was commonly used by Beall's.
- 1.3** "Court" means the United States District Court for the Southern District of Florida.
- 1.4** "Defendant" or "Beall's" means Beall's, Inc.
- 1.5** "Defendant's Counsel" means Johnson Jackson, LLC.
- 1.6** "Eligible Settlement Class Member" means the 120 current and former employees employed by Beall's who have filed a consent to join this lawsuit, have not been dismissed from the lawsuit or withdrawn their consent to join, and worked as an exempt AM between April 5, 2013 through present.

- 1.7** “Eligible Workweek” means any and all weeks during which an Eligible Settlement Class Member performed any compensable work (excluding, for example, vacation, sick days, and leaves of absence) for Beall’s in the position of exempt AM during the period from April 5, 2013 through present; and
- 1.8** “Employer Payroll Taxes” means all taxes and withholdings an employer is required to make arising out of or based upon the payment of employment/wage compensation in this Litigation, including FICA, FUTA, and SUTA obligations.
- 1.9** “Gross Settlement Amount” means One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00), which is the maximum amount that Defendant has agreed to pay to fully resolve and settle this Litigation, and which includes any claim for attorneys’ fees and costs approved by the Court, any and all amounts to be paid to Participating Settlement Class Members, the cost of settlement administration, and any Court-approved Service Awards. Defendant will not be required to pay any more than the Gross Settlement Amount, except for the Employer Payroll Taxes.
- 1.10** “Litigation” or the “Lawsuit” or the “Action” mean the lawsuit entitled *Maar, et al. v. Beall’s, Inc.*, Case No. 2:16-cv-14121-DMM, filed in the United States District Court for the Southern District of Florida.
- 1.11** “Complaint” means the Complaint dated April 5, 2016 that was filed by Named Plaintiffs in this Action.
- 1.12** “Named Plaintiffs” means Eric Maar and Lindiane Wess.
- 1.13** “Net Settlement Fund” means the remainder of the Gross Settlement Amount after deductions, payments, or allocations for: (a) the Settlement Administrator’s fees and costs; (b) Court-approved attorneys’ fees and costs for Plaintiffs’ Counsel; and (c) Court-approved Service Awards.
- 1.14** “Order Granting Approval of Settlement” or “Approval Order” means an order to be approved and entered by the Court, which gives final approval to the Settlement and this Agreement, and enters final judgment, in a form substantially similar to the proposed Order Granting Approval of Settlement, attached hereto as Exhibit A.
- 1.15** “Participating Settlement Class Members” means each Eligible Settlement Class Member, including any Named Plaintiff, who timely signs and cashes a Settlement Check.
- 1.16** “Parties” collectively means the Named Plaintiffs and Defendant.
- 1.17** “Plaintiffs’ Counsel” means Shavitz Law Group, P.A. and Hepworth, Gershbaum & Roth, PLLC.
- 1.18** “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator from the Gross Settlement Amount paid by Defendant. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the

Court's Order(s). Interest, if any, earned on any monies in the QSF will become part of the Net Settlement Fund.

- 1.19 "Releasees" means Beall's, Inc., Beall's Stores, Inc., and each and all of their subsidiaries, predecessors, affiliates, business units, members, shareholders, and their predecessors and successors, officers, directors, agents, employees, and assigns.
- 1.20 "Settlement" means the settlement between the Parties embodied and contained in this Agreement.
- 1.21 "Settlement Administrator" means the Settlement Administrator to be selected by Plaintiffs and approved by Defendant.
- 1.22 "Settlement Agreement" or "Agreement" means this agreement and the exhibits hereto, which the Parties understand and agree set forth all material terms and conditions of the Settlement between them, and which is subject to Court approval.
- 1.23 "Settlement Check" means the check issued to each Eligible Settlement Class Member for their proportionate share of the Net Settlement Fund calculated in accordance with this Agreement.
- 1.24 "Settlement Hearing" means any hearing set by the Court for the purpose of determining the fairness, adequacy, and reasonableness of the Agreement and entering the Order Granting Approval of Settlement.
- 1.25 "Settlement Notice" means the document entitled Notice of Settlement to be approved by the Court in a form substantially similar to the Notice attached hereto as Exhibit B.

2. APPROVAL AND NOTICE TO ELIGIBLE SETTLEMENT CLASS MEMBERS

- 2.1 Binding Agreement. This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2 Duties of the Settlement Administrator. The Settlement Administrator will be responsible for establishing a QSF account; preparing and mailing the Settlement Notice to Eligible Settlement Class Members; preparing and mailing Settlement Checks; distributing approved Service Awards and attorneys' fees and expenses; calculating and paying all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; retaining and providing a copy of the Settlement Checks signed by the Participating Settlement Class Members to Defendant's Counsel; and preparing a declaration describing all duties performed and claims administration statistics.
- 2.3 The Parties will have equal access to the Settlement Administrator and all information related to the administration of the Settlement. The Settlement Administrator shall provide such information to either Party upon request. The Settlement Administrator will provide regular reports to counsel for the Parties regarding the status of the mailing of the Notice

to Eligible Settlement Class Members, the claims administration process, and distribution of the Settlement Checks.

- 2.4** Defendant agrees to cooperate with the Settlement Administrator, provide accurate information, to the extent reasonably available, necessary to calculate the Settlement Checks, and assist the Settlement Administrator in locating Eligible Settlement Class Members.
- 2.5** By May 18, 2017, Plaintiffs' Counsel shall file a Motion for Order Approving Settlement of Collective Action and Authorizing Notice of Settlement ("Approval Motion"). Plaintiffs' Counsel will provide Defendant's Counsel with a draft of the Approval Motion for review and comment as soon as practicable before filing it with the Court. With the Approval Motion, Plaintiffs' Counsel also will file the Settlement Agreement, Approval Order, and Settlement Notice. Among other things, the Approval Motion will ask the Court to: (a) issue and enter the Approval Order approving the Settlement as fair, adequate, and reasonable, (b) approve the proposed Settlement Notice to be sent to Eligible Settlement Class Members and the Settlement Notice distribution process, (c) incorporate the terms of this Settlement, and (d) enter an Order dismissing the case without prejudice, with leave to reinstate on or before 180 days after the first Settlement Notices are sent pursuant to the terms of the Settlement, and in the event a motion to reinstate is not filed on or before 180 days after the first Settlement Notice are sent, dismissing the case with prejudice.
- 2.6** Within ten (10) days¹ after the Approval Order is entered, Defendant shall give the Settlement Administrator a list, in electronic form, of the names, social security numbers, and Eligible Workweeks for each Eligible Settlement Class Member ("Class List"). Within ten (10) days after the Approval Order is entered, Plaintiffs' Counsel shall provide the Settlement Administrator with the last known address, e-mail address, and phone number for each Eligible Settlement Class Member.
- 2.7** This Settlement Agreement is intended to make payment to the 120 Eligible Settlement Class Members who opted into the case on or before March 14, 2017 for all Workweeks worked as an exempt AM between April 5, 2013, and the present.
- 2.8** As discussed in Section 3.4(B), Settlement Notice and Settlement Checks will be mailed via First Class U.S. Mail to Eligible Settlement Class Members by the Settlement Administrator no later than five (5) days after the Approval Order becomes a non-appealable, final order. If there is an appeal of the Approval Order by any person, Settlement Notice and Settlement Checks shall not be sent until all appeals are decided and the case is returned to the District Court and the District Court enters an Order that the Settlement Notice and Settlement Checks should be sent.
- 2.9** Settlement Checks issued pursuant to this Agreement shall expire one hundred twenty (120) days after issuance. If a Settlement Check has not been cashed by any Eligible Settlement Class Member within sixty (60) days after issuance, the Settlement Administrator shall send a letter or postcard, and e-mail to the Eligible Settlement Class

¹ Any reference to days herein shall mean calendar days unless otherwise stated.

Member inquiring whether they received the Settlement Check and reminding them of the expiration of the Acceptance Period. After the Acceptance Period expires, the Settlement Administrator will issue a stop payment order on all uncashed or returned checks. In the event an Eligible Settlement Class Member reports a lost or destroyed Settlement Check within the Acceptance Period, the Settlement Administrator shall issue a stop payment order on the original check and issue a new check. In no event shall an Eligible Settlement Class Member be issued a replacement check until any prior check sent to them has been cancelled.

- 2.10** Thirty (30) days before the close of the one hundred twenty (120) day Acceptance Period, the Settlement Administrator shall provide Plaintiffs' Counsel with a list of the names and contact information for all Eligible Settlement Class Members who have not signed and cashed a Settlement Check. Plaintiffs' Counsel will attempt to contact Eligible Settlement Class Members who have not signed and cashed a Settlement Check. At Plaintiffs' Counsel's request, the Settlement Administrator also shall take additional steps to remind Eligible Settlement Class Members of their eligibility to participate in the Settlement.
- 2.11** The Settlement Administrator shall take all reasonable steps to obtain the correct address of Eligible Settlement Class Members for whom the Settlement Notice is returned by the United States Postal Service as undeliverable and shall make all reasonable attempts to ensure that the Settlement Notice and Settlement Check are successfully delivered. The Settlement Administrator will notify Plaintiffs' Counsel and Defendant's Counsel of any mailing sent to any Eligible Settlement Class Member that is returned as undeliverable. To the extent any such mailing is returned as undeliverable, that Eligible Settlement Class Member shall be permitted the greater of the balance of the remaining Acceptance Period or forty-five days from any re-mailing of the Settlement Notice to sign and cash their Settlement Check. The Settlement Administrator shall issue a stop-payment order on all returned checks.
- 2.12** If within thirty days (30) after the close of the Acceptance Period an Eligible Settlement Class Member reports a lost or destroyed check, and informs the Settlement Administrator that she or he did not receive a check or otherwise requests reissuance of her or his Settlement Check, Defendant may approve the reissuance of a Settlement Check to such Eligible Settlement Class Members on a case-by-case basis for good cause shown. Reissuance to a given Eligible Settlement Class Member will not require reissuance to any other Eligible Settlement Class Member.
- 2.13** Plaintiffs' Counsel and Defendant's Counsel have the right to make inquiries and receive any information from the Settlement Administrator related to the claims administration process. The Settlement Administrator will periodically update Plaintiffs' Counsel and Defendant's Counsel regarding returned mailings for which it is unable to obtain corrected addresses.
- 2.14** Retention/Filing of Copies of Settlement Checks. The Settlement Administrator shall on a weekly basis compile and transmit to Defendant's Counsel and Plaintiffs' Counsel statistics on the number of individuals who have signed and cashed Settlement Checks. At the end of the Acceptance Period, the Settlement Administrator shall provide redacted

copies (removing any bank account information) of signed and cashed checks to Plaintiffs' Counsel and Defendant's Counsel.

- 2.15** Effect of Court Failure to Approve Settlement. In the event that the Court fails to approve the Settlement and/or this Agreement, the Parties (a) must attempt to renegotiate the Settlement for the purpose of obtaining Court approval of a renegotiated Settlement and Agreement (b) and/or either or both Parties may seek reconsideration or appellate review of the decision denying approval of the Settlement or Agreement. In the event reconsideration and/or appellate review is denied, or a mutually agreed-upon settlement modification is not approved, and the Parties decide to forego further negotiation of a settlement, the Litigation will proceed as if no settlement had been attempted. In that event, nothing in the Settlement or Agreement may be used by or against any Party under Rule 408 of the Federal Rules of Evidence.

3. SETTLEMENT TERMS

3.1 Settlement Payments.

- (A) Defendant agrees to pay up to a maximum gross amount of One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00), which shall fully resolve and satisfy any and all amounts to be paid to Eligible Settlement Class Members, any Court-approved Service Awards as more fully set forth herein, the Settlement Administrator's fees and costs, and any Court-approved attorneys' fees and costs. Defendant will not be required to pay more than this amount under the terms of this Agreement, with the exception of Employer Payroll Taxes.
- (B) Within two (2) days after the Approval Order becomes a non-appealable, final order, Defendant shall deposit the Gross Settlement Amount into the QSF.
- (C) Any portion of the Net Settlement Fund that is unclaimed by Eligible Settlement Class Members who do not timely sign and cash their Settlement Check, or that otherwise remains in the QSF or under the control of the Settlement Administrator upon the final accounting of the settlement funds, shall revert to Defendant.
- (D) The final accounting and reversion shall occur no later than two hundred (200) days after the first Settlement Checks are mailed.

3.2 Settlement Amounts Payable as Attorneys' Fees and Costs.

- (A) In their Approval Motion, Plaintiffs' Counsel shall ask the Court to approve payment of one-third of the Gross Settlement Amount as an award of attorneys' fees. In addition, Plaintiffs' Counsel shall seek reimbursement of reasonable actual case-related costs and expenses from the Gross Settlement Amount. Defendant shall not oppose these requests. These amounts shall constitute full satisfaction of any claim for attorneys' fees or costs, and Plaintiffs agree that they shall not seek, nor be entitled to, any additional attorneys' fees or costs under any theory or from any source, incurred in relation to this case.

- (B) The substance of Plaintiffs' Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement and this Agreement. The outcome of any proceeding related to Plaintiffs' Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion. In the event that the Court (or any appellate court) awards less than the requested amounts, only the awarded amounts shall be paid and shall constitute full satisfaction of the obligations of this Section and full payment hereunder. Any money requested for attorneys' fees or costs that is not approved by the Court shall become part of the Net Settlement Fund.

3.3 Service Awards to Certain Plaintiffs.

- (A) In their Approval Motion, Named Plaintiffs will apply to the Court to receive \$7,500.00 each from the Gross Settlement Amount for the services they rendered to the Collective. Defendant shall not oppose this request.
- (B) These Service Awards and any requirements for obtaining any such payment are separate and apart from, and in addition to, Named Plaintiffs' recovery from the Net Settlement Fund as Eligible Settlement Class Members. The substance of the Named Plaintiffs' application for Service Awards is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of the Settlement and this Agreement. The outcome of the Court's ruling on the application for a Service Award shall not terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion. Any Service Award money not approved by the Court shall become part of the Net Settlement Fund.

3.4 Distribution of Payments.

- (A) The payments from the Gross Settlement Amount to Plaintiffs' Counsel for any Court-approved attorneys' fees and costs will be wired to Plaintiffs' Counsel by the Settlement Administrator within five (5) days after the Approval Order is entered and becomes a non-appealable, final order.
- (B) The Settlement Checks will be mailed to Eligible Settlement Class Members by the Settlement Administrator along with the Settlement Notice within five (5) days after the Approval Order becomes a non-appealable, final order, in accordance with Section 2.8 above.
- (C) Service Awards, allocated from the Gross Settlement Amount, shall be sent via First Class U.S. Mail to the Named Plaintiffs by the Settlement Administrator within five (5) days after the Approval Order is entered and becomes a non-appealable, final order.

- (D) The allocation to Eligible Settlement Class Members for their Settlement Checks will be made from the Net Settlement Fund. The estimated proportionate share of the Net Settlement Fund for each Eligible Settlement Class Member will be determined by the Settlement Administrator pursuant to the following formula:
- (1) Each Eligible Settlement Class Member, including the Named Plaintiffs, shall be assigned one point for each of his or her Eligible Workweeks.
 - (2) To calculate each Eligible Settlement Class Member's proportionate share:
 - (a) Add all points for all Eligible Settlement Class Members together to obtain the "Denominator";
 - (b) Divide the number of points for each Eligible Settlement Class Member by the Denominator to obtain each Eligible Settlement Class Member's "Portion of the Net Settlement Fund";
 - (c) Multiply each Eligible Settlement Class Member's Portion of the Net Settlement Fund by the Net Settlement Fund to determine each Eligible Settlement Class Member's Settlement Check amount.
- (E) Tax Characterization of Payments.
- (1) Payments of attorneys' fees and costs pursuant to Section 3.2 shall be made without withholding, and be reported to the Internal Revenue Service ("IRS") and to Plaintiffs' Counsel on an IRS Form 1099. Payment of Service Awards pursuant to Section 3.3 shall be deemed non-wage compensation in its entirety. Fifty percent (50%) of the payment to an Eligible Settlement Class Member pursuant to Section 3.4(D) shall be treated as back wages and fifty percent (50%) of such payment shall be treated as interest, any applicable penalties, liquidated damages and other non-wage relief.
 - (2) Payments treated as back wages shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the IRS and the payee under the payee's name and Social Security number on an IRS Form W-2. Payments treated as interest and/or liquidated damages shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and Social Security number on an IRS Form 1099. The Settlement Administrator shall be responsible for determining the appropriate number of exemptions to be used in calculating payroll tax and withholding, deciding the appropriate tax rate, issuing the Settlement Checks and Service Awards and issuing IRS Forms W-2 and Forms 1099.

- (3) The employee portion of all applicable income and payroll taxes will be the sole responsibility of the individual Participating Settlement Class Member receiving a Settlement Check or Service Award. The Parties and their Counsel make no representations as to the taxability of any portions of the settlement payments to any Participating Settlement Class Members, the payment of any costs or award of attorneys' fees, or any payments to the Named Plaintiffs. The Settlement Notice will advise Eligible Settlement Class Members to seek their own tax advice prior to acting in response to that Settlement Notice. Neither Plaintiffs' Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.
- (4) None of the amounts paid to the Named Plaintiffs or Participating Settlement Class Members shall create any credit for, be included in, or otherwise affect the calculation or the accrual of any employee benefits in any plans, programs, agreements or policies sponsored, maintained or contributed to by Defendant, including for purposes of any bonus of any kind.

4. RELEASE OF CLAIMS

- 4.1 All Settlement Checks shall contain, on the back of the check, the following limited endorsement:

RELEASE OF CLAIMS:

By signing and cashing this check, I consent to participate in the settlement of the Litigation entitled *Maar, et al. v. Beall's, Inc.*, No. 2:16-cv-14121-DMM, pending in the United States District Court for the Southern District of Florida, and agree to be bound by the Settlement Agreement negotiated by Plaintiffs' Counsel in that case.

I waive, release, and forever discharge Beall's and the Releasees from any and all wage and hour claims asserted in the Litigation or that could have been so asserted under the FLSA or state law based on the allegations in the Complaint in the Litigation that accrued during my employment as an exempt AM through March 14, 2017, including claims for liquidated damages, attorneys' fees, costs and expenses.

Any Eligible Settlement Class Member who endorses and negotiates a settlement check shall be deemed to have waived, released, and forever discharged Beall's and its Releasees from any and all wage and hour claims asserted in the Litigation or that could have been so asserted under the FLSA or state law based on the allegations in the Complaint in the Litigation that accrued during the Eligible Settlement Class Member's employment as an exempt AM through March 14, 2017, including claims for liquidated damages, attorneys'

fees, costs and expenses. Any attempt to alter or modify the terms of the Release contained on the Check shall be invalid, and any check that is endorsed and negotiated by an Eligible Settlement Class Member shall result in a waiver and release of claims as specified in this paragraph.

- 4.2** Any Eligible Settlement Class Member who does not timely sign and cash a Settlement Check will not be bound by any release of claims.
- 4.3** To receive a Service Award, all Named Plaintiffs must sign an additional general release that waives, releases, and discharges any and all claims that the Named Plaintiffs may have against Beall's and its Releasees, including all demands, claims and actions, whether known or unknown, relating to their employment or termination of employment at Beall's, including but not limited to claims under the Americans With Disabilities Act, National Labor Relations Act, Fair Labor Standards Act (including but not limited to claims for overtime compensation), Equal Pay Act, Employee Retirement Income Security Act of 1974, Worker Adjustment and Retraining Notification Act, Title VII of the Civil Rights Act of 1964, Civil Rights Acts of 1866, 1871 and 1991, Family and Medical Leave Act, Florida Civil Rights Act, Florida's private sector whistleblower act, and any other federal, state or local statute, regulation, and order, and in common law, through the date the respective Named Plaintiff signs this Agreement; provided, however that Named Plaintiffs do not waive the right to file a charge or complaint with any administrative agency but they do waive any right to recover any damages or other personal relief based on any demand, claim or action waived in this Section brought on their own behalf or by any third party, including as a member of any class or collective action. Named Plaintiffs do not release any claim that cannot be released as a matter of law or rights under this Agreement. A copy of the Release to be signed by Named Plaintiffs has been provided to Plaintiffs' Counsel for review and has been deemed acceptable by Plaintiffs' Counsel.

5. VOIDING THE AGREEMENT

- 5.1** If the Court rejects the Settlement and/or this Agreement, fails to approve and enter the Approval Order in substantially the form submitted by the Parties, or fails to enter a Final Judgment, unless the Parties agree in writing, this Agreement shall be void *ab initio* except as to the provisions expressly stated in this Agreement to survive, and Defendant shall have no obligations to make any payments under the Settlement or this Agreement.
- 5.2** A decision of the Court declining to approve any material condition of this Agreement, which effects a fundamental change of the Parties' agreement (except as to any payment under Sections 3.2 and 3.3), including but not limited to eliminating the reversion of funds to Defendant or requiring that Defendant pay any amount in excess of \$1,200,000.00, shall render the entire Settlement voidable and unenforceable as to all Parties at the option of either Party. Each Party may exercise its option to void this Settlement by giving notice, in writing, to the other and to the Court within fifteen (15) days of the Court's disapproval of any material condition, but in no event at any time after the Approval Order.

5.3 Unless the Parties agree in writing otherwise, in the event that the Agreement is not approved by the Court or the Settlement set forth in the Settlement Agreement is revoked, terminated, cancelled, declared void or fails to become effective in accordance with its terms, or if there is no Approval Order, the Parties shall resume the Litigation at that time as if no Agreement had been entered. In such event, the terms and provisions of the Agreement, and the approval of any settlement class for purposes of implementing this Settlement, shall have no further force and effect with respect to the Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Agreement (including without limitation any order certifying the case or any part of the case as a class or collective action for settlement purposes) shall be treated as vacated *nunc pro tunc*.

6. PARTIES' AUTHORITY

6.1 The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

7. MUTUAL COOPERATION

7.1 The Parties agree to reasonably cooperate with each other and to take all steps necessary and appropriate to obtain the Court's approval of this Agreement and all of its terms and to effectuate the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their commercially reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Plaintiffs' Counsel shall, with the assistance and cooperation of Defendant and their counsel, take all necessary steps to secure the Court's approval of this Agreement.

8. NOTICES

8.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs:

Gregg I. Shavitz
Shavitz Law Group, P.A.
1515 S. Federal Highway
Boca Raton, Florida 33432
Telephone: (561) 447-8888
Facsimile: (561) 447-8831 (facsimile)
E-mail: gshavitz@shavitzlaw.com

and

Marc S. Hepworth
Hepworth, Gershbaum & Roth, PLLC
192 Lexington Avenue, Suite 802
New York, New York 10016
Telephone: (212) 545-1199
Facsimile: (212) 532-3801
E-mail: mheworth@hgrlawyers.com

To Defendant:

Kevin D. Johnson
Johnson Jackson LLC
100 N. Tampa Street, Suite 2310
Tampa, FL 33602
Telephone: (813) 580-8400
Facsimile: (813) 580-8407
E-mail: kjohnson@johnsonjackson.com

9. NO ADMISSION OF LIABILITY

9.1 Defendant denies all of the allegations made by Named Plaintiffs in the Litigation and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation.

10. INTERPRETATION AND ENFORCEMENT/MISCELLANEOUS TERMS

10.1 Further Acts. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

10.2 No Assignment. Plaintiffs' Counsel and Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action, and any attempt to do so shall be of no force or effect.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

- 10.4** Binding Effect. This Agreement shall be binding upon the Parties and, with respect to Plaintiffs, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.
- 10.5** Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 10.6** Captions. The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 10.7** Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 10.8** Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Florida, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 10.9** Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 10.10** Waivers, etc. to Be in Writing. No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification or amendment with any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 10.11** Notice. The Settlement Notice will advise all Eligible Settlement Class Members of the binding nature of the release and that by signing and cashing a Settlement Check they are bound by the release provisions in this Agreement.

10.11 Notice. The Settlement Notice will advise all Eligible Settlement Class Members of the binding nature of the release and that by signing and cashing a Settlement Check they are bound by the release provisions in this Agreement.

10.12 Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.

10.13 Facsimile, Electronic and E-mail Signatures. Any Party may execute this Agreement by signing or by causing its counsel to sign, or by e-signature on the designated signature block below and transmitting that signature page via facsimile, e-mail, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, e-signature, or e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile, e-signature or e-mail.

10.14 Signatories. This Agreement is valid and binding if signed by Defendant's authorized representative and any one of the Named Plaintiffs.

WE AGREE TO THESE TERMS.

Dated: 5/18/17

BEALL'S, INC.:

By: 

Its: SVP-CHRO Bealls Inc

Dated: _____

ERIC MAAR:

Dated: _____

LINDIANE WESS:

10.12 Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.

10.13 Facsimile, Electronic and E-mail Signatures. Any Party may execute this Agreement by signing or by causing its counsel to sign, or by e-signature on the designated signature block below and transmitting that signature page via facsimile, e-mail, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, e-signature, or e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile, e-signature or e-mail.

10.14 Signatories. This Agreement is valid and binding if signed by Defendant's authorized representative and any one of the Named Plaintiffs.

WE AGREE TO THESE TERMS.

Dated: _____


BEALL'S, INC.:

By: _____

Its: _____

Dated: 5/17/2017

ERIC MAAR:

DocuSigned by:

97C8417FA99A41C...

Dated: _____

LINDIANE WESS:

10.12 Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.

10.13 Facsimile, Electronic and E-mail Signatures. Any Party may execute this Agreement by signing or by causing its counsel to sign, or by e-signature on the designated signature block below and transmitting that signature page via facsimile, e-mail, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, e-signature, or e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile, e-signature or e-mail.

10.14 Signatories. This Agreement is valid and binding if signed by Defendant's authorized representative and any one of the Named Plaintiffs.

WE AGREE TO THESE TERMS.

Dated: _____

BEALL'S, INC.:

By: _____

Its: _____

Dated: _____

ERIC MAAR:

Dated: 5/18/2017

LINDIANE WESS:

DocuSigned by:
Lindiane Wess _____
16BD48728D294CE...

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

-----X		
ERIC MAAR and LINDIANE WESS, individually :	:	
and on behalf of all others similarly situated, :	:	
	:	
Plaintiffs, :	:	Case No: 2:16-cv-14121-DMM
	:	
-against-	:	
	:	
BEALLS, INC. :	:	
	:	
Defendant. :	:	
-----X		

ORDER GRANTING APPROVAL OF SETTLEMENT

THIS MATTER came before the Court upon the Parties’ Joint Motion for Approval of Settlement (“Joint Motion”). Having reviewed the Joint Motion and exhibits attached thereto, and the Court being otherwise fully advised in the premises, the Court finds that the Parties’ Joint Stipulation and Release (“Settlement Agreement”) reflects a reasonable compromise over contested litigation to resolve a *bona fide* dispute under the Fair Labor Standards Act.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Parties’ Joint Motion is GRANTED.
2. The Court approves the Settlement Agreement attached as Exhibit 1 to the Joint Motion as a fair, adequate and reasonable settlement of the claims at issue.
3. The Court certifies the collective described in the Settlement Agreement for settlement purposes only.
4. The Court approves the proposed Notice Form attached as Exhibits B to the Settlement Agreement and the proposed distribution method.
5. The Court approves Settlement Services, Inc. to serve as the Claims Administrator. The Administration Costs will be paid out of the Gross Settlement Amount.

6. The Court awards Service Awards of \$7,500.00 to each of the two Named Plaintiffs as set forth in the Settlement Agreement.

7. The Court awards fees and costs to Plaintiffs' Counsel in the amounts of \$400,000.00 and \$18,840.42, respectively, as set forth in the Settlement Agreement and Joint Motion.

8. This action is DISMISSED WITH PREJUDICE.

9. The Court retains jurisdiction over this action to enforce the terms of the Settlement Agreement, if needed.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida, this ___ day of _____, 2017.

Donald M. Middlebrooks
United States District Judge

cc: All Counsel of Record

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

-----X		
ERIC MAAR and LINDIANE WESS, individually :	:	
and on behalf of all others similarly situated, :	:	
	:	
Plaintiffs, :	:	Case No: 2:16-cv-14121-DMM
	:	
-against-	:	
	:	
BEALL’S, INC., :	:	
	:	
Defendant. :	:	
-----X		

OFFICIAL COURT NOTICE OF SETTLEMENT

To:

[Name]
[Address]
[City, State Zip]

You joined the lawsuit identified above. Recently, the United States District Court approved a settlement of the lawsuit and authorized this Notice.

A settlement check payable to you is enclosed. Read this entire Notice before signing and cashing the check.

- This Notice is directed to you because you were employed by Beall’s, Inc. (“Beall’s”) as an exempt Area Manager (“AM”) between April 5, 2013 and March 14, 2017 and previously opted-in to this lawsuit by filing a consent to join the action.
- The two Named Plaintiffs identified in the caption are former AMs who sued Beall’s alleging that it failed to pay them and other AMs for overtime hours they worked. The Named Plaintiffs filed the lawsuit as a collective action under the federal Fair Labor Standards Act (“FLSA”).
- Beall’s has denied the allegations in the Complaint and asserts that AMs were compensated correctly under the law. Nevertheless, the Parties have agreed to settle this dispute for the purpose of avoiding further disputes and litigation with its attendant risk, expense, and inconvenience. The Court has not made any ruling on the merits of the claims and no Party has prevailed in this action. However, the Court has reviewed and approved the Settlement and this Notice.

- Although it denies the allegations, Beall’s is encouraging all eligible AMs who have opted in to accept their settlement payment. Beall’s will not take an adverse action against any eligible AM whether or not she or he accepts a settlement payment.
- Under the allocation formula created by the settlement, you are entitled to the enclosed settlement payment of \$ [redacted]. This amount is based on the number of weeks in which you worked as an exempt AM between April 5, 2013 and the present (the “Eligibility Period”).
- Neither Plaintiffs’ Counsel nor Beall’s make any representations concerning the tax consequences of your settlement payment. You are advised to obtain personal tax advice prior to acting in response to this Notice.

BASIC INFORMATION

1. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Beall’s and neither Party prevailed. The Parties agreed to a settlement to avoid further disputes and the risk, expense, and inconvenience of litigation. The Plaintiffs and their attorneys believe that this settlement is a good outcome for all individuals who opted into the lawsuit.

THE SETTLEMENT BENEFITS – WHAT YOU GET

2. What does the settlement provide?

The settlement fully resolves and satisfies any claims for attorneys’ fees and costs approved by the Court, all amounts to be paid to individuals who opted into the lawsuit, Court-approved service awards to Named Plaintiffs, and the Settlement Administrator’s fees and costs. The settlement funds for collective action members are being divided among current and former AMs based on the number of weeks in which they worked as an AM during the Eligibility Period. Settlement checks that are not cashed on or before [120 days after the date on the check] will be null and void.

3. How much is my payment and how was it calculated?

Based on the allocation formula that has been approved by the Court, you are receiving a settlement check for \$ [redacted], half of which is subject to deductions for applicable taxes and withholding like any other paycheck, and for which you will receive an IRS Form W-2, and half of which will be reported on an IRS Form 1099. The allocation formula takes into account the number of weeks in which you worked as an AM during the Eligibility Period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement by following the instructions in Paragraph 7 below.

HOW YOU GET A PAYMENT

4. How do I get my payment?

A check is enclosed. All you have to do is sign and cash the settlement check.

5. What am I giving by accepting the settlement check?

By signing and cashing your settlement check by [120 days after the date on the check], you waive, release, and forever discharge Beall’s and the Releasees from any and all wage and hour claims asserted in the Litigation or that could have been so asserted under the FLSA or state law based on the allegations in the Complaint in the Litigation that accrued during your employment as an exempt AM through March 14, 2017, including claims for liquidated damages, attorneys’ fees, costs and expenses.

THE LAWYERS REPRESENTING YOU

6. How will the lawyers be paid?

The Court has approved payment to Plaintiffs’ Counsel of one-third of the settlement fund for attorneys’ fees. These fees compensate Plaintiffs’ Counsel for investigating the facts, litigating the case and negotiating and finalizing the settlement. The Court also has approved payment of Plaintiffs’ Counsel’s out-of-pocket costs, excluding the cost of the Settlement Administrator. The costs of the Settlement Administrator are also paid from the settlement fund. In addition, the Court has approved payments of \$15,000 in total to the Named Plaintiffs to recognize the risks they took and their services to the collective action.

FOR MORE INFORMATION

7. Are there more details about the Settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You are encouraged to read it. To the extent there is any inconsistency between this Notice and the Settlement Agreement, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement by sending a request, in writing, to:

Claims Administrator
Beall’s AM Overtime Litigation
Address: _____
Telephone: _____
Fax: _____
E-mail: _____

8. How do I get more information?

If you have other questions about the settlement, you can contact the Claims Administrator, or Plaintiffs' Counsel at the addresses and/or telephone numbers below.

Gregg I. Shavitz
Susan H. Stern
Paolo C. Meireles
Shavitz Law Group, P.A.
1515 S. Federal Highway
Boca Raton, Florida 33432
Telephone: (561) 447-8888
Facsimile: (561) 447-8831 (facsimile)
E-mail: info@shavitzlaw.com

Marc S. Hepworth
Charles Gershbaum
David A. Roth
Rebecca S. Predovan
Hepworth, Gershbaum & Roth, PLLC
192 Lexington Avenue, Suite 802
New York, New York 10016
Telephone: (212) 545-1199
Facsimile: (212) 532-3801
E-mail: mhepworth@hgrlawyers.com

DATED: _____, 2017