

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

KELLY BANKS, ET AL,

Plaintiffs,

vs.

CITY OF BARTLESVILLE, OK,

Defendant.

CIV. NO.: 4:24-cv-00521-GKF-CDL

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between the City of Bartlesville, Oklahoma (the “City”), and each of the Plaintiffs, identified on Exhibit A attached hereto, (the “Plaintiffs”), The City and the Plaintiffs are collectively referred to in this Agreement as the “Parties.”

**I. RECITALS**

1.1 Whereas, Plaintiffs are seventy-five (75) individuals employed, or formerly employed, by the City as fire fighters; and

1.2 Whereas, on November 7, 2023, Plaintiffs, through their attorneys, sent the City a letter detailing the City’s failure to properly pay Plaintiffs’ overtime under the FLSA and demanding full payment for the damages, liquidated damages under the FLSA, and attorneys’ fees that had accrued within the last three years; and

1.3 Whereas, the City responded quickly to address these issues by agreeing to bring its overtime pay practices into accordance with the FLSA and memorializing the revised practices in its July 1, 2024 Collective Bargaining Agreement with IAFF Local 200 (“2024 CBA”). Additionally,

the City provided Plaintiffs with a calculation of unpaid overtime between November 7, 2020 and December 15, 2023; and

1.4 Whereas, on October 29, 2024, Plaintiffs filed the action captioned “*Kelly Banks, et al v. City of Bartlesville, Oklahoma*” Civ No. 4:24-cv-00521-GKF-CDL, in the United States District Court for the Northern District of Oklahoma (the “Action”), arising out of their employment with the City; and

1.5 Whereas, Plaintiff’s Complaint alleges a violation of the Fair Labor Standards Act (29 U.S.C. § 201, et seq.) (“FLSA”) and seeks recovery of overtime wages, due to the City’s failure to include additional compensation (out of classification pay, longevity pay, certification pay uniform allowance, unused sick leave bonuses, and education incentive pay) when calculating Plaintiffs’ regular rate for purposes of FLSA overtime compensation, based on a three-year statute of limitations, and further seeks an equal amount of liquidated damages and reasonable attorneys’ fees and costs that are awardable to a prevailing plaintiff under the FLSA; and,

1.6 Whereas, the Parties have engaged in negotiations in an attempt to resolve their differences and evaluate the data relevant to a settlement calculation, and throughout these negotiations all Parties were, and continue to be, represented by counsel experienced in wage and employment matters; and,

1.7 Whereas, the Parties wish to avoid the potential uncertainty, expense, and delay of litigation and have therefore, based upon their negotiations, agreed to a settlement of the Parties’ dispute; and,

1.8 Whereas, the potential recovery at trial, if any, remains unknown, but the Parties believe that the terms of this Agreement are consistent with and within the range of a reasonable result that Plaintiffs might expect to obtain if they prevailed after a trial; and,

1.9 Whereas, as a result of their negotiations, the Parties wish to settle the Action and resolve and release all disputes and claims arising out of the Action against the County.

**NOW THEREFORE**, in consideration for the mutual promises and undertakings of the Parties as set forth below, Plaintiff and the County hereby enter into this Agreement and agree as follows:

## **II. Settlement Terms**

2.1. No Admission: This Agreement does not constitute an admission by the City of any wrongdoing with regard to Plaintiffs' claims for overtime under the FLSA, state or local law, ordinance, or regulation whatsoever. The City denies all such liability. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing. The recitals set forth in this Agreement are true and correct and are hereby fully incorporated by reference into this Agreement. By executing this Agreement, no Party admits or concedes any of the claims, defenses, or allegations which were raised or could be raised by any other party or any third party.

2.2. Contingent Upon Approval: Notwithstanding anything else contained herein to the contrary, this Agreement, and the parties' obligations thereunder, shall not become effective unless and until the Court in the Action approves the Parties' settlement pursuant to this Agreement, and the Action is completely and fully dismissed, with prejudice, with no other person seeking to join the Action.

2.3. Settlement Sum: In consideration for the terms, conditions, and promises in this Agreement, the City, shall pay or cause to be paid to Plaintiffs a total of \$129,698.19 in settlement of all Plaintiffs' claims in the Action which includes attorneys' fees and costs, ("the Settlement Amount"), and will, moving forward, adhere to the overtime provisions contained in the 2024

CBA, which are consistent with the FLSA. Although the Parties do not agree that there is liability regarding Plaintiffs' claims, for purposes of this Agreement, the Settlement Sum represents the agreed upon amount for all overtime compensation allegedly owed to Plaintiffs and the equal amount allegedly owed for liquidated damages, arising from an alleged three-year statute of limitations for recovery relief, and any and all other damages and/or relief recoverable in the Action, for the full liability period alleged in the Action, including attorneys' fees and costs.

2.4. Allocation of Settlement Sum: Subject to Court approval, the Settlement Amount will be divided and distributed to Plaintiffs as follows:

2.4.1. a set of payroll checks and/or stubs for direct deposit payments, regular payroll checks for active (employed) Plaintiffs, and separate payroll checks for inactive (no longer employed) Plaintiffs, made Payable to each Plaintiff in accordance with Exhibit A to this Agreement and totaling a pre-tax amount of \$63,106.69 (the "Backpay Amount"), less all applicable deductions and withholdings for each individual Plaintiff. Plaintiffs will notify the City if they wish to defer any additional amounts to applicable benefit plans prior to distribution. With respect to all Plaintiffs who are no longer employed by the City as of the effective date of this Agreement, the Defendant shall utilize the last known withholding amount for each former employee. The City will provide each Plaintiff with a W-2 form regarding the payment for unpaid overtime compensation as required by law; and

2.4.2. one check in the total amount of \$66,591.50 representing \$53,196.50 in liquidated damages and \$13,395.00 in reimbursed attorneys' fees and expenses (the "Lump Sum Amount"), payable to Plaintiffs' Counsel Mooney, Green, Saindon, Murphy &

Welch, P.C. for distribution to the Plaintiffs. In accordance with Paragraph 2.6 below and pursuant to the individual retainer agreements signed by all Plaintiffs, Plaintiffs' counsel will deduct their litigation expenses and contingency attorney fee equal to twenty-five percent (25%) of the Settlement Amount prior to distributing to all Plaintiffs their liquidated damages share of the Lump Sum Amount.

2.4.3. The Parties agree that the payment of liquidated damages to the Plaintiffs' counsel for distribution to the Plaintiffs is not wages, and therefore the Parties believe that such amounts are not subject to federal and state tax withholding requirements, although they are taxable as gross income. Plaintiffs are encouraged to consult with a tax advisor or attorney to independently determine any federal, state, or local tax consequences of the liquidated damages portion of the settlement amounts as no opinion on any tax matter is expressed herein. Plaintiffs are solely responsible for reporting amounts received as liquidated damages pursuant to this Agreement to any applicable federal, state or local agency as required by law. The Plaintiffs agree that the County is not responsible for any tax liability they may suffer as a result of the liquidated damages being subject to taxation. Mooney, Green, Saindon, Murphy & Welch, P.C. will provide Plaintiffs with an IRS 1099 form regarding liquidated damages as required by law. Plaintiffs' Counsel shall provide the City with an executed IRS W9 form. The City will provide Plaintiff's Counsel with an IRS 1099 form regarding attorneys' fees and costs. Except as provided herein, the Parties agree to be responsible for their own costs and expenses including attorney fees. To the extent any taxes are owed, Plaintiffs hereby acknowledge that they will be

individually responsible for the payment of those taxes (except any payroll taxes that are the City's lawful obligation to pay).

These amounts are agreed to among the Parties to compromise, settle, and satisfy the Released Claims described in paragraph 3.1 below, liquidated damages related to the Released Claims, and all attorneys' fees and expenses related to the Released Claims.

2.5. Approval: The Parties will present this Settlement Agreement to the Court along with a joint motion requesting the Court's approval of the settlement as fair, reasonable, and adequate and consistent with the FLSA. The Parties agree to take all reasonable actions consistent with this Agreement, the Court's rules, and applicable ethical rules to obtain approval. Within three (3) days of Plaintiff's receipt of all payment due pursuant to this Settlement Agreement, Plaintiff shall file a Stipulation of Dismissal pursuant to Rule 41(a)(ii) dismissing the Action with prejudice, and with the Parties bearing their own costs. Counsel for Plaintiffs shall hold all amounts paid in trust, and shall not disburse the same, until the Action is fully and finally dismissed.

2.6. Payment: The County shall provide payment to Plaintiffs and their counsel within 30 days after the Court approves the Settlement Agreement. The Parties agree and stipulate to the Court's continued jurisdiction over matters relating to the enforcement of the Settlement Agreement.

2.6.1. The payments specified in paragraphs 2.4.2 shall be delivered to Plaintiff's attorney, Lauren McDermott, of Mooney, Green, Saindon, Murphy & Welch, P.C., at 1920 L Street NW, Suite 400, Washington, D.C. 20036.

2.6.2. Plaintiffs have entered into individual agreements with Plaintiffs' Counsel. These agreements provide for a contingency attorney fee amount equal to twenty-five percent (25%) of the Settlement Amount calculated after expenses are deducted from

the Settlement Amount. Plaintiffs and their counsel are solely responsible for determining the contingency attorney fee applicable to this Agreement. Plaintiffs' counsel shall deduct their contingency attorney fee from the Lump Sum Amount in accordance with Plaintiffs' individual agreements with Plaintiffs' Counsel.

2.6.3. Plaintiffs and their counsel determined the method used to calculate the amounts to be paid to each Plaintiff for the Back Pay Amount and his/her share of the Lump Sum Amount.

2.7 Plaintiffs and their counsel, Mooney, Green, Saindon, Murphy & Welch, P.C., will defend, release, and hold the City harmless from any and all claims or causes of action arising from the allocation and distribution of the Settlement Amount.

### **III. RELEASE AND WAIVER OF CLAIMS**

3.1 Plaintiffs hereby release, acquit, and forever discharge the Defendant from all Fair Labor Standards Act claims set forth in the Action relating to overtime pay for time worked as fire fighters from January 1, 2021 through August 1, 2024 ("Released Claims"). Plaintiffs agree and acknowledge that, with respect to such claims, Plaintiffs are waiving not only their right to recover money or other relief in any action that they might institute but also that they are waiving their right to recover money or other relief in any action that might be brought for such claims on their behalf by any other person or entity including, but not limited to, the state of Oklahoma, the United States Department of Labor ("DOL"), or any other (U.S. or foreign) federal, state, or local agency or department.

3.2 All Plaintiffs shall be deemed to and shall have waived, released, discharged, and dismissed all Released Claims as set forth in Paragraph 3.1, with full knowledge of any and all

rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved or with regard to any facts which are now unknown to them.

3.3 All Plaintiffs understand and agree that, to the fullest extent permitted by law, they are precluded from filing or pursuing any legal claim or action of any kind against any entity at any time in the future, or with any federal, state or municipal court, tribunal or other authority arising out of the Released Claims.

3.4 All Plaintiffs agree that they are entering this Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Plaintiff affirms that he/she has not been coerced, threatened, or intimidated into agreeing to the terms of this Agreement, and he/she has been advised to and has had the opportunity to consult with an attorney with respect to the terms of this Agreement.

#### **IV. DISMISSAL OF CLAIMS**

4.1 Plaintiffs agree to dismissal of all claims asserted in the Action with prejudice as specified in paragraph 2.5, upon the Parties' execution of the Settlement Agreement and the Court's Order approving the Settlement Agreement.

#### **V. CONTINUED JURISDICTION**

5.1 The U.S. District Court for the Northern District of Oklahoma shall have jurisdiction to construe, interpret and enforce the provisions of this Agreement, and to hear and adjudicate any dispute or litigation arising under this Agreement.

#### **VI. PARTIES' AUTHORITY**

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



6.2 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

6.3 Any signature made and transmitted by facsimile, email, or verified electronic signature program such as DocuSign for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement.

**VII. MUTUAL FULL COOPERATION**

7.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish 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 and effectuate the terms of this Agreement.

**XIII. MODIFICATION**

8.1 This Agreement and its attachment may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court.

**IX. ENTIRE AGREEMENT**

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

**X. CHOICE OF LAW/JURISDICTION**

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

**XI. VOIDING THE AGREEMENT**

11.1 In the event this Agreement does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties.

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

**MOONEY, GREEN, SAINDON,  
MURPHY & WELCH, P.C.**

**ROBINETT, KING, ELIAS,  
BUHLINGER, BROWN & KANE**

---

Lauren P. McDermott  
1920 L Street NW, STE 400  
Washington, DC 20036  
Phone: (202) 783-0010  
Facsimile: (202) 783-6088  
Email: lmcdermott@mooneygreen.com  
*Attorneys for Plaintiffs*

---

Jess M. Kane  
117 W. 5<sup>th</sup> Street  
500 Professional Building  
P.O. Box 1066  
Bartlesville, OK 74005-1066  
Phone: (918) 336-4132  
Facsimile: (918) 336-9009  
Email: jkane@robinettking.com  
*Attorneys for the City*

Dated:

Dated: