IN PRIVATE ARBITRATION

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| JOSEPH NEELY, et al., | § | PENDING BEFORE |
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| Claimants, | § | |
| | § | |
| -vs- | § | WILLIAM H. LEMONS |
| | § | |
| HALLIBURTON ENERGY SERVICES, INC., | § | |
| | § | |
| | § | |
| Respondent. | § | HOUSTON, TEXAS |

**AMENDED PARTIAL (INTERIM) AWARD GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT, PRELIMINARILY APPROVING THE SETTLEMENT AND APPROVING AND DIRECTING THE ISSUANCE OF NOTICE(S)**

The undersigned Arbitrator, having been designated in accordance with the Agreement to Private Arbitration entered into by the parties, and in accordance with applicable provisions of Respondent's Dispute Resolution Program, having been duly sworn, and having carefully considered the Motion for Preliminary Approval of Class & Collective Action Settlement (the "Motion") filed September 11, 2015, and in recognition of my duty to make a preliminary determination as to the reasonableness of any proposed class and/or collective action settlement submitted to this arbitration, and if preliminarily determined to be reasonable, to ensure proper notice is provided to members of the Putative Settlement Class(es); and to conduct a Final Hearing and make a Final Award addressing and determining issues pertaining to the good faith, fairness, adequacy and reasonableness of the settlement described in the Motion, hereby makes the following determinations and enter my Amended Partial (Interim) Award.

Having reviewed the Motion, as well as the Declaration of Richard J. Burch, and in light of the entire record in this matter, including the Settlement Agreement and Release (the "Settlement") executed by the parties,[1] I FIND and AWARD as follows:

I find, on a preliminary basis, that the Settlement appears to be within the range of reasonableness of a settlement which could ultimately be given final approval, and that the parties have demonstrated a likelihood of success in ultimately gaining final approval. Specifically, it appears from the Settlement and the Motion that *bona fide* disputes and controversies exist between the parties, both as to liability and the amount thereof, if any, and by reason of such disputes and controversies the parties desire to compromise and settle all claims and causes of action which are the subject of this arbitration. In particular, the disputes raised in this arbitration involve hotly contested and adversarial issues, including a) whether there is liability in the first instance under the FLSA and/or various state minimum wage statutes, b) if there is liability under the FLSA and/or state law, what is the appropriate remedy, c) how many hours did members of the Putative Settlement Class actually work, d) what was the applicable base rate of pay for each member of the Putative Settlement Class and e) what is the appropriate overtime rate per hour. Accordingly, all parties have stipulated and agreed in the Settlement that this is a full and complete compromise and resolution, achieved through counsel, "in settlement of bona fide disputes between the parties with respect to coverage or amount(s) due under the Act," and is not a mere waiver of liquidated or other statutory claims. *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982); *Martinez v. Bohls Bearing Equip. Co.*, 361 F.Supp.2d 608 (W.D.Tex. 2005); *Martin v. Spring Break '83 Productions, L.L.C.*, 688 F.3d 247 (5th Cir. 2012). That being said, the parties have also made clear in the Settlement that their agreement is a compromise of disputed claims, and nothing contained in the Settlement is to be construed as an admission of liability by any party, all such liability being expressly denied.

[1] The parties have consented to my making this Partial (Interim) Award, and serving as Arbitrator, notwithstanding that I served as Mediator in this matter. I find that this prior service as Mediator actually clothed me with a great deal of knowledge of the facts and the law, and a particular awareness as to the settlement process and its penultimate fairness.

It further appears, and I find on a preliminary basis, that the Settlement is fair and reasonable to the members of the Putative Settlement Class when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues. It further appears that significant informal discovery, investigation, research, and litigation has been conducted such that the parties' counsel could reasonably evaluate their respective positions. It further appears that settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It also appears that the proposed Settlement has been reached as the result of intensive, informed and non-collusive negotiations between the Parties. Indeed, the Settlement obligates Halliburton Energy Services, Inc. ("Halliburton" or "Respondent") to pay up to $18,250,000 (the "Maximum Settlement Amount") to Plaintiffs, members of the Putative Settlement Class and Class Counsel, in full satisfaction of the Settlement Claims.

It further appears, and I find on a preliminary basis and for purposes of settlement only,[2] that the prerequisites for class arbitration under the American Arbitration Association's Supplementary Rules for Class Arbitration (October 8, 2003) ("Supplementary Rules") have been satisfied. Additionally, it appears, and I find on a preliminary basis for the purposes of settlement only, that the prerequisites of Rule 23, Federal Rules of Civil Procedure,[3] have been satisfied in that:

> (1) the members of the Putative Settlement Class number more than 700 and are spread across the United States. They are, therefore, so numerous that separate arbitrations on behalf of all members is impracticable;
>
> (2) there are questions of law and fact common to the Putative Settlement Class – such as whether Respondent properly classified the members of the Putative

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[2] In the Settlement, Respondent expressly retains its argument that "collective or class treatment is not permitted under the DRP, absent agreement of all parties," and in fact, should the Settlement not become final, Respondent's "stipulation to collective and/or class certification [for the purpose of this case only] shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context."

[3] I find that there is no evidence of any congressional intent to make the right to the "opt-in" requirement of FLSA Section 16(b) nonwaivable, and the FLSA does not preclude enforcement of the parties' Agreement to Private Arbitration pursuant to AAA Class Rules. *See Long John Silver's Restaurants, Inc. v. Cole*, 514 F.3d 345 (4th Cir. 2008).

Settlement Class as exempt, whether Respondent acted in good faith, and whether Respondent's violation of the FLSA (if any) was willful;

(3) Class Representative Neely and Gruelle's overtime claims are typical of the claims of the members of the Putative Settlement Class in that all of the members of the Putative Settlement Class were classified as exempt from federal and/or state overtime laws for similar reasons;

(4) Class Representative Neely and Gruelle have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Putative Settlement Class by negotiating a substantial settlement on its behalf;

(5) Class Representative Neely and Gruelle retained counsel - Richard J. (Rex) Burch and Michael A. Josephson - with extensive experience in the litigation of wage and hour collective and class actions; and

(6) the Class Members entered into an arbitration agreement (the DRP) that is substantially similar to the signed by Neely and Gruelle and will only become members of the Putative Settlement Class by consent.

The Arbitrator further finds that the common questions of law and fact with respect to the issues of exemption, good faith and willfulness predominate over questions affecting only individual members of the Putative Settlement Class. Further, a Rule 23 class and/or collective action arbitration appear superior to other available methods for the fair and efficient resolution of the action. For example, the fact that a fair percentage of the Putative Settlement Class is already represented by Class Counsel favors the handling of the arbitration on a class and/or collective basis. Relatively few other proceedings have been commenced by any other potential members of the Putative Settlement Class. Further, given the relative expense of proceeding individually, and the substantial amount of recovery provided by the settlement, it appears desirable to concentrate the claims in this arbitration forum. Further, the parties have agreed to proceed on a class/collective basis provided preliminary approval is granted in accordance with the Settlement.

Accordingly, based upon the entire record before me, the Motion for Preliminary Approval of Class & Collective Action Settlement is hereby GRANTED; and I hereby conditionally certify the Putative Settlement Class, and/or the Collective Action Class, for settlement purposes only.

The Putative Settlement Class is defined in the Settlement as all Putative Class Members, collectively, who were employed in the Settlement Positions during the Settlement Class Period.[4]

On a preliminary basis and for purposes of settlement only, I hereby appoint Joseph Neely and Tom Gruelle (the "Class Representatives") as representatives of both the Putative Settlement Class and the Collective Action Class;

On a preliminary basis and for purposes of settlement only, the Arbitrator hereby appoints Richard J. (Rex) Burch and Michael A. Josephson as counsel for both the Putative Settlement Class and the Collective Action Class ("Class Counsel");

For purposes of the settlement of this action only, I find the Settled Claims are suitable for class resolution both under Rule 23 and as a collective action under the FLSA;[5]

I also find, on a preliminary basis, that an award of attorneys' fees to Class Counsel equal to up to twenty-five percent (25%) of the Maximum Settlement Amount, and a potential Cost Award up to $5,000.00 of costs/expenses, appear to be fair, reasonable, and justified given the time, effort and expenses Class Counsel has expended pursuing the Putative Settlement Class' claims, as well as the substantial benefit conferred upon the Putative Settlement Class as a result of such time and effort. I will address that more fully in connection with my Final Approval Order;

I also find, on a preliminary basis, that a Service Payment of up to $7,500 to each of the Class Representatives (not to exceed three) is fair, reasonable and justified given the amount of time and effort each Class Representative has expended during the course of the litigation, the risk of stigma the Class Representative has assumed for being a class representative in a class action labor dispute, which in turn, could affect his future employability, and the value of the individual claim each Class Representatives is settling;

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[4] Capitalized terms in this Award have the meaning attributed to them in the Settlement, incorporated herein by reference as if set forth *verbatim*.

[5] In that regard, this Arbitrator has not identified the geographical areas, states or job classifications where a Rule 23 class would be more fair and efficient that would be a FLSA collective action, so leaves that to the collective wisdom and discretion of Class Counsel and Respondent's Counsel, subject to my continuing jurisdiction and supervision.

The Arbitrator finds that ILYM Group, Inc. is qualified to serve as "Claims Administrator;" and that said Claims Administrator is authorized and directed to carry out the obligations set forth in the Settlement, including without limitation those described in Sections 11 and 12 thereof;

Within five (5) business days after the parties have agreed to the final forms of Settlement Notice and Notice of Consent to Join Settlement, Respondent shall provide Class Counsel and the Claims Administrator with the list of members of the Putative Settlement Class; *provided, however,* that it is not necessary that any Settlement Notice or other notice(s) be sent to those members of the Putative Settlement Class who would not be entitled to any payment under the formula proposed by Class Counsel for distribution of the Net Settlement Amount, or to any member of the Putative Settlement Class who has previously compromised and released his or her Settled Claims;

The Claims Administrator shall be responsible for preparing, printing, mailing, and – if necessary - remailing the Settlement Notice and Notice of Consent to Join Settlement Forms to all members of the Putative Settlement Class Members as provided in the Settlement, save and except for those members of the Putative Settlement Class who would not be entitled to any payment under the formula proposed by Class Counsel for distribution of the Net Settlement Amount or who have previously compromised and released his or her Settled Claims;

Draft templates of the Settlement Notice and Notice of Consent to Join Settlement are appended hereto as Exhibit "A" and Exhibit "B," respectively. The Arbitrator hereby approves such notices and forms as being appropriate and adequate to advise members of the Putative Settlement Class and/or the Collective Action Class of the pendency of this arbitration, the Settlement, their right to participate (or not participate) therein and as to their options under the Settlement; *provided, however,* Class Counsel and Respondent's Counsel may in their wisdom and discretion modify any such template as may be necessary, helpful and appropriate to carry out the provisions and spirit of the Settlement, subject to my continuing jurisdiction and supervision;

Pursuant to the Class Action Fairness Act ("CAFA"), Respondent will mail a CAFA Notice to the Attorney General of the United States and the appropriate state official in each state in which

a Rule 23 Putative Class Member then resides within twenty days of the date of this Partial (Interim) Award. Class Counsel's motion for Final Approval will seek not only the approval of the fairness of the Settlement under Rule 23 and its reasonableness under the FLSA, but also its compliance with CAFA;

Objections to the Settlement must be submitted in a manner consistent with the Settlement, and be actually received by the Claims Administrator, within forty-five (45) days after the Notice Mailing Date[6];

Any request for exclusion must comply with the provisions of Section 14 of the Settlement, and must be submitted in a manner consistent with the Settlement such that is actually received by the Claims Administrator, within forty-five (45) days after the Notice Mailing Date;

Notices of Consent to Joint Settlement must be actually received by the Claims Administrator within sixty (60) days after the Notice Mailing Date (the "Notice Deadline");

Pursuant to the Agreement to Private Arbitration and the Settlement, but for settlement purposes only, it is further my Award and Order that those members of the Putative Settlement Class and/or Collective Action Class who execute and return a Notice of Consent to Join Settlement (in substantially the same form as Exhibit "B") shall be deemed to have consented to join their claims with those of the Class Representatives in this arbitration, the terms of the DRP notwithstanding, and each shall be fully bound by the Final Approval and/or Final Approval Order.

The Parties shall file a Motion for Final Approval within ten (10) days of the Notice Deadline;

A Final Approval Hearing is set for January 8, 2016, at 10:00 a.m. CT. This hearing shall take place at the offices of Respondent's Counsel. The date and location of the Final Approval Hearing is subject to change by mutual agreement. In the event there are no objections to the Settlement and it appears that a face-to-face hearing is not necessary, the Final Approval Hearing may be reset to take place by telephone.

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[6] The date the Settlement Notices and Notices of Consent to Join Settlement are mailed.

The parties have stipulated and the Arbitrator recognizes that this is a partial, interlocutory award and not a final award, because there remain numerous issues that the Arbitrator has yet to consider, including Final Approval. Accordingly, the time to seek confirmation, vacatur or other post-award relief shall not begin to run until this Arbitrator delivers his Final Award in this case.

**SIGNED** this 12th day of November, 2015.

William H. Lemons

**WILLIAM H. LEMONS**, Arbitrator