

Meeting Date
September 20, 2016



AGENDA	
Section	CONSENT
Item No.	II, D, 2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approve final settlement agreement for wages for <i>Jeffrey W. Piccolella v. Brevard County, Florida; Case No.: 6:15-cv-01610-Orl-41DAB</i> . Approval of Attorney's Fees and Costs as Ordered by the Honorable Judge Baker in the U.S. District Court of the Middle District of Florida.		
DEPT/OFFICE:	County Attorney's Office Shannon Wilson, Deputy County Attorney; Becky Behl-Hill, Assistant County Attorney, and Michael Bowling, Bell and Roper, P.A. shannon.wilson@brevardfl.gov ; becky.behl-hill@brevardfl.gov		
Requested Action:	It is requested that (1) the Board of County Commissioners sign the Settlement Agreement and General Release in the amount of \$96,000.00 and (2) approve and pay the Court's Order Granting Plaintiff's Motion for an Award of Attorney's Fees and Costs in a Civil Case, in the amount of \$71,527.33, as was Ordered by the Honorable Judge Baker.		
Summary Explanation & Background:	<p>On Tuesday, May 17, 2016 the Board of County Commissioners, in regular session approved the final settlement in the amount of \$96,000.00 for settlement of all pending claims. At that time approval of attorney's fees and costs was postponed until the Court ruled on the reasonable Attorney's Fees and costs.</p> <p>Since Attorney's fees and costs were not included in the settlement agreement, those issues are addressed by the Order Granting Plaintiff's Motion for an Award of Attorney's Fees and Costs. The Fair Labor Standards Act (FLSA) requires payment of Attorney's fees and costs to the prevailing party. 29 U.S.C. § 216(b) provides that in an FLSA action seeking unpaid wages and overtime the Court "shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." In this case, the Plaintiff was seeking \$121,312.50. The Court reviewed the Plaintiff's claim, Brevard County's response, and found reasonable attorney's fees and costs to be \$71,527.33.</p>		
Fiscal Impact:	\$71,527.33		
Fund/Account/Cost Code:	0001/ / 200500		
Clerk to the Board Instructions:			
Exhibits Attached:	1. Settlement Agreement and General Release 2. Second Amendment Judgment in a Civil Case		
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension	
Stockton Whitten	Assistant County Manager	Scott Knox, County Attorney	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

September 20, 2016

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Shannon Wilson

RE: Item II.D.2., Approval of Final Settlement Agreement Agreement for Attorney Fees and Wages, as Ordered by Honorable Judge Baker in U.S. District Court of the Middle District of Florida for Jeffrey W. Piccolella v. Brevard County, Florida, Case No.: 6:15-cv-01610-Orl-41-DAB

The Board of County Commissioners, in regular session on September 20, 2016, executed Settlement Agreement and General Release in the amount of \$96,000; and approved the payment of the Court's Order granting Plaintiff's motion for an award of attorney's fees and costs in Civil Case for Jeffrey W. Piccolella v. Brevard County, Florida, Case No.: 6:15-cv-01610-Orl-41-DAB, in the amount of \$71,527.33, as was ordered by the Honorable Judge Baker. Enclosed is fully-executed Settlement Agreement and General Release.

Your continued cooperation is greatly appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe

✓ Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration
Finance
Budget

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made and entered into by and between Jeffrey Piccolella ("Plaintiff") on the one side, and Brevard County ("Defendant") on the other.

RECITALS

WHEREAS, on or about September 28, 2015, Plaintiff filed a lawsuit in the United States District Court for the Middle District of Florida, Case No. 6:15-CV-01610-41-DAB, styled *Jeffrey Piccolella v. Brevard County*, alleging a violation under the Fair Labor Standards Act ("FLSA") for alleged failure to pay overtime wages and for retaliation (the "Federal Lawsuit");

WHEREAS, Defendant denies any liability and the allegations generally made by Plaintiff in the Federal Lawsuit;

WHEREAS, Plaintiff and Defendant have agreed to fully and finally settle all differences between them, (excluding attorney's fees and costs which are to be determined by the Court), including, but not limited to any differences that were or could have been embodied in or related to the Federal Lawsuit, any arbitration, and/or that may have arisen in any way out of Plaintiff's employment relationship with Defendant through the date of this Agreement, *except that this settlement, this agreement and this release do not apply to any claim that in any way pertains to Plaintiff's pending claim for workers' compensation benefits*;

WHEREAS, Plaintiff was represented by Martha A. Chapman, P.A., in connection with the Federal Lawsuit and this Agreement; and

WHEREAS, Plaintiff has been provided a reasonable opportunity to review this Agreement and has consulted with Plaintiff's Attorney before signing it.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiff and Defendant agree to settle the damages in this case as follows:



1. Payments to Plaintiff. In consideration for the undertakings of Plaintiff under this Agreement and his agreement to be legally bound by its terms, Defendant agrees that within thirty (30) days after the latest of the following events: (i) full execution of this Agreement by Plaintiff and; (ii) Defendant's receipt of an order from the Court granting approval of this Agreement in the manner described in Paragraph 11 below, Defendant will make the following payments:

(a) One payment made payable to Plaintiff in the gross amount of \$34,208.65, less applicable deductions, withholdings and taxes, representing compensation for alleged lost wages and unpaid overtime. To the extent required by applicable law or policy, the Defendant shall make any additional contributions to Plaintiff's state pension as a result of the back wages. Applicable W-2 form(s) will be issued to Plaintiff for this payment;

(b) One payment made payable to Plaintiff in the gross amount of \$31,775.44, representing liquidated damages claimed by Plaintiff. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(c) One payment made payable to the Plaintiff in the gross amount of \$446.34 alleged as interest on his unpaid wages and overtime not subject to FLSA. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(d) One payment made payable to Plaintiff in the gross amount of \$29,069.57, representing separate consideration for the Plaintiff's FLSA retaliation claim. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(e) One payment made payable to Plaintiff for \$500.00 representing consideration for a general release and any other claims of the Plaintiff related to his employment with the Defendant. Applicable 1099 form(s) will be issued to Plaintiff for this payment; and

(f) One payment to Plaintiff's counsel for attorney's fees and costs, in an amount to be determined by the Court as reasonable, either in approving an amount agreed to by the parties or in ruling on the Plaintiff's Motion for an Award of Fees and Costs. Applicable 1099 form(s) will be issued to Plaintiff's counsel for this payment.

2. Taxes. Defendant makes no representation as to the taxability of the consideration provided under this Agreement. Plaintiff and Plaintiff's Attorneys accept responsibility for the payment of any income, employment, or other taxes related to the payments made to them in accordance with Paragraph 1 above, except for the applicable deductions made on the wages as set forth above in paragraph 1(a). Accordingly, if any governmental taxing authority or court of competent jurisdiction ultimately determines that Plaintiff or Plaintiff's Attorneys owe any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between the Plaintiff or Plaintiff's Attorneys and the Taxing Authority, and that Defendant will not be responsible for the payment of such taxes, including any interest and/or penalties, except as prohibited by law. Plaintiff further agrees and acknowledges that he shall indemnify and hold harmless Defendant for any possible federal, state, or local tax liabilities relating to the payments made pursuant to Paragraph 1 and that he shall reimburse or make good any taxes, interest and/or penalties assessed against Defendant for any such tax liabilities caused by the above payments and/or Defendant's failure to withhold from any such payments, except as set out above in paragraph 1(a) and to the extent prohibited by law.

3. Payment Discharges All of Defendant's Obligations. The payments described above shall be above and beyond full satisfaction of, and thereby discharge, any obligations of Defendant and Releasees (as defined in Paragraph 6) to Plaintiff for lost compensation, lost remittance, lost wages and overtime, lost benefits, pain and suffering, compensatory damages, liquidated damages, punitive damages, injunctive or other remedial relief, or any other expectation of remuneration or benefit on the part of Plaintiff for the claims asserted in this case or that could have been asserted up to the date of this release, except for his pending Worker's Compensation Claim, and except for attorney's fees and costs and any currently due wages, accrued benefits or other rights arising from his current employment with Defendant.

4. Non-Admission of Liability. This Agreement shall not in any way be construed as an admission by Defendant that it has acted wrongfully with respect to Plaintiff or any other persons, or that Plaintiff has any rights whatsoever against Defendant, except as set forth in this Agreement, and Defendant specifically disclaims any liability to or wrongful acts against Plaintiff or any other person, on the part of itself or any other Releasee (as defined in Paragraph 6). Accordingly, this Agreement shall not serve or be construed to be, or be admissible in any proceeding as, evidence that any party has prevailed in the Federal Lawsuit or that



Defendant has engaged in any wrongdoing. Notwithstanding this section, the Defendant agrees that the Plaintiff is entitled to reasonable attorney's fees and costs in this action, in an amount to be determined by the Court as reasonable. Also, nothing in this section or anywhere in this Agreement releases or waives Plaintiff's pending Worker's Compensation claim.

5. Resolution of Issues Presented in the Federal Lawsuit. The parties agree that there was a bona fide dispute as to liability under the FLSA and, moreover, that even if there were liability, there was a bona fide dispute as to any amounts owed to Plaintiff by Defendant. The parties desire to resolve all claims by Plaintiff against Defendant, and Plaintiff also wishes to avoid the costs and risks of the possibility of having to pay costs to Defendant should Defendant prevail. Plaintiff represents that with the receipt of the consideration set forth in this Agreement, he has been fully compensated for any and all claims arising from or related to the Federal Lawsuit, and/or his employment relationship with Defendant to date, except for his attorney's fees and costs in this action, and Defendant continues to owe to the Plaintiff all rights and privileges due to him as a current employee, including but not limited to any wages due from his current position, health or medical insurance, fringe benefits, pension contributions, vacation pay, holiday pay, or sick leave.. Plaintiff agrees that aside from his FLSA claims and potential employment contract claim against Defendant and his pending Worker's Compensation claim (which he does not release or waive), he does not have any other viable claims against Defendant or the Releasees (as defined in Paragraph 6). Plaintiff agrees that he will not file, or cause to be filed any lawsuit, arbitration, or any other proceeding against Defendant or any of the Releasees (defined below) relating to his relationship with Defendant up to the date of the execution of this release.

6. Complete General Release. As a further material inducement for Defendant to enter into this Agreement and as consideration for the payments provided for in Paragraph 1, Plaintiff, on behalf of himself, his heirs, executors, administrators, and/or assigns, does hereby irrevocably and unconditionally RELEASE AND FOREVER DISCHARGE Defendant, together with its employees, agents, directors, officers, independent contractors, insurers and reinsurers, representatives, attorneys, and employee benefit plans (and the agents, representatives, trustees, administrators, fiduciaries, insurers, and reinsurers of such plans) past, present, and future, and their heirs, executors, administrators, predecessors, successors, and assigns (collectively, the "Releasees") of and from any and all causes of action, suits, debts, complaints, claims and demands whatsoever in law or in equity, whether known or unknown, suspected or

unsuspected, which Plaintiff, or his heirs, executors, administrators, and/or assigns, ever had or now have against each or any of the Releasees, from the beginning of time to the date of execution of this Agreement, including without limitation any and all claims relating to the Federal Lawsuit, Plaintiff's relationship with Defendant or any of the Releasees, the terms and conditions of that relationship, or the termination of that relationship, including but not limited to any applicable federal, state, or local constitutional, statutory, regulatory, or common law claims, now or hereafter recognized, including but not limited to, any claim for defamation, libel, slander, wages, overtime pay, severance pay, bonus pay, sick leave, holiday pay, vacation pay, life insurance, health or medical insurance or any other fringe benefit or disability, or any claims for economic loss, compensatory damages, punitive damages, liquidated damages, (collectively, the "Released Claims"), except for his pending Worker's Compensation Claim (which he does not waive or release) and except for the attorney's fees, expenses and costs in this action, and to the extent that Defendant continues to owe to the Plaintiff all rights and privileges due to him as a current employee, including but not limited to any wages due from his current position, health or medical insurance, fringe benefits, pension contributions, vacation pay, holiday pay, or sick leave. Moreover, Plaintiff shall forego pursuing any claim against Defendant or the other Releasees in court, through the Wage and Hour Division of the United States Department of Labor, or through any other avenue of redress based on any alleged violation of the FLSA, the Florida Constitution, or Florida's Minimum Wage Act ("FMWA") through this date. If for any reason anyone or any entity contends that this Agreement does not result in the complete resolution of Plaintiff's FLSA claims against Defendant or the other Releasees, Plaintiff shall cooperate with counsel for the Defendant and/or other Releasees in efforts to obtain a dismissal of all of Plaintiff's FLSA claims against Defendant or the other Releasees in their entirety with prejudice, for no additional consideration, If Plaintiff pursues such an action, Plaintiff shall immediately refund to Defendant all the payments to Plaintiff described in Paragraph 1 above.

7. No Other Claims. Plaintiff represents that aside from the Federal Lawsuit, he has not filed or participated in the filing of any complaints, grievances, arbitration demands, charges, or lawsuits against Defendant or any of the other Releasees, as defined above in Paragraph 6, with any governmental agency, union, arbitration forum, or court, except for his pending Worker's Compensation Claim (which he has not waived or released in this agreement).

8. Venue and Governing Law. This agreement shall be governed by the law of the State of Florida. In the event of any action arising hereunder, venue shall



be proper in the United States District Court for the Middle District of Florida. In the event of litigation relating to this agreement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorneys' fees and costs, including any fees and costs for any appeal.

9. Ownership of Claims. Plaintiff hereby warrants and represents that he owns all claims that are the subject of this Agreement, including any and all claims arising from or relating to the Federal Lawsuit or his relationship with Defendant, and that he has the sole and exclusive right to settle and compromise such claims. Plaintiff further warrants and represents that he has not conveyed, pledged, transferred, or in any manner encumbered or assigned, to any other natural person, firm, corporation, partnership (general or limited), joint venture, trust or estate, business, association, or other form of legal entity, any of the claims, demands, damages, actions, liabilities, causes of action, covenants, suits, or judgments described herein.

10. Agreement Contingent upon Non-Revocation and Court Approval. The parties agree that Defendant's obligations under this Agreement are conditioned completely and entirely upon Plaintiff declining to revoke his execution of this Agreement, and Court approval of this Agreement. Thus, the parties agree that Plaintiff's revocation or the failure of this Agreement to be Court-approved relieves Defendant of any obligation under this Agreement. To obtain Court approval, the parties agree to file a joint motion for approval of this Agreement. The parties agree that they shall work on further submissions if necessary to gain Court approval but if Plaintiff revokes or the Court fails to approve this agreement, the case shall continue forward until resolution.

11. No Representations. Plaintiff represents and acknowledges that in executing this Agreement, he does not rely and has not relied upon any representation or statement not set forth herein made by Defendant or any of its agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

12. Binding Agreement. This Agreement shall be binding upon the parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Releasees, and to the respective heirs, administrators representatives, executors, successors, and assigns.

13. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

14. Consultation with Counsel. The parties acknowledge and agree that this settlement over a legally and factually disputed claim was negotiated at "arms length" and with the advice of counsel. Plaintiff represents and agrees that Defendant hereby advise him in writing to consult with an attorney prior to executing this Agreement, that he has done so with Plaintiff's Attorney, that Plaintiff has carefully read and fully understands all of the provisions of this Agreement, and that Plaintiff is knowingly and voluntarily entering into this Agreement without duress or reservation of any kind, and after having given the matter full and careful consideration.

15. Drafting. The parties agree that this Agreement shall be construed and interpreted as if all of its language were prepared jointly by Plaintiff and Defendant, No language in this Agreement shall be construed against a party on the ground that such party drafted or proposed that language.

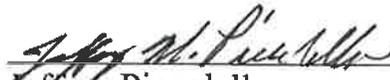
16. Execution of Additional Documents. The parties agree to execute such other, further, and different documents as reasonably may be required to effectuate this Agreement.

17. Sole and Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, relating to the subject matter hereof. The parties acknowledge that neither they, the Releasees, nor their agents or attorneys have made any promise, representation, or warranty whatsoever, either express or implied, written or oral, other than the express written representations herein. The parties agree that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement signed by those parties who are affected by the alteration, amendment, modification, or change.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and General Release on the dates indicated below.



DATED: August 18th, 2016



Jeffrey Piccolella

DATED: 9/20/16 2016



Brevard County

Two Agreements
found, one signed
by the Chair, and
none attested by
the Clerk.

8/17/2021



1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

JEFFREY W. PICCOLELLA,

Plaintiff,

v.

Case No: 6:15-cv-1610-Orl-DAB

BREVARD COUNTY, FLORIDA,

Defendant.

SECOND AMENDED JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered for the clarified total award for attorney's fees and costs in the amount of \$71,527.33 in Plaintiff Jeffrey W. Piccolella's favor and against Defendant Brevard County, Florida; for which sum let execution issue.

Date: August 18, 2016

SHERYL L. LOESCH, CLERK

s/S. Tolliver, Deputy Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made and entered into by and between Jeffrey Piccolella ("Plaintiff") on the one side, and Brevard County ("Defendant") on the other.

RECITALS

WHEREAS, on or about September 28, 2015, Plaintiff filed a lawsuit in the United States District Court for the Middle District of Florida, Case No. 6:15-CV-01610-41-DAB, styled *Jeffrey Piccolella v. Brevard County*, alleging a violation under the Fair Labor Standards Act ("FLSA") for alleged failure to pay overtime wages and for retaliation (the "Federal Lawsuit");

WHEREAS, Defendant denies any liability and the allegations generally made by Plaintiff in the Federal Lawsuit;

WHEREAS, Plaintiff and Defendant have agreed to fully and finally settle all differences between them, (excluding attorney's fees and costs which are to be determined by the Court), including, but not limited to any differences that were or could have been embodied in or related to the Federal Lawsuit, any arbitration, and/or that may have arisen in any way out of Plaintiff's employment relationship with Defendant through the date of this Agreement, *except that this settlement, this agreement and this release do not apply to any claim that in any way pertains to Plaintiff's pending claim for workers' compensation benefits;*

WHEREAS, Plaintiff was represented by Martha A. Chapman, P.A., in connection with the Federal Lawsuit and this Agreement; and

WHEREAS, Plaintiff has been provided a reasonable opportunity to review this Agreement and has consulted with Plaintiff's Attorney before signing it.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiff and Defendant agree to settle the damages in this case as follows:



1. Payments to Plaintiff. In consideration for the undertakings of Plaintiff under this Agreement and his agreement to be legally bound by its terms, Defendant agrees that within thirty (30) days after the latest of the following events: (i) full execution of this Agreement by Plaintiff and; (ii) Defendant's receipt of an order from the Court granting approval of this Agreement in the manner described in Paragraph 11 below, Defendant will make the following payments:

(a) One payment made payable to Plaintiff in the gross amount of \$34,208.65, less applicable deductions, withholdings and taxes, representing compensation for alleged lost wages and unpaid overtime. To the extent required by applicable law or policy, the Defendant shall make any additional contributions to Plaintiff's state pension as a result of the back wages. Applicable W-2 form(s) will be issued to Plaintiff for this payment;

(b) One payment made payable to Plaintiff in the gross amount of \$31,775.44, representing liquidated damages claimed by Plaintiff. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(c) One payment made payable to the Plaintiff in the gross amount of \$446.34 alleged as interest on his unpaid wages and overtime not subject to FLSA. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(d) One payment made payable to Plaintiff in the gross amount of \$29,069.57, representing separate consideration for the Plaintiff's FLSA retaliation claim. Applicable 1099 form(s) will be issued to Plaintiff for this payment;

(e) One payment made payable to Plaintiff for \$500.00 representing consideration for a general release and any other claims of the Plaintiff related to his employment with the Defendant. Applicable 1099 form(s) will be issued to Plaintiff for this payment; and

(f) One payment to Plaintiff's counsel for attorney's fees and costs, in an amount to be determined by the Court as reasonable, either in approving an amount agreed to by the parties or in ruling on the Plaintiff's Motion for an Award of Fees and Costs. Applicable 1099 form(s) will be issued to Plaintiff's counsel for this payment.



2. Taxes. Defendant makes no representation as to the taxability of the consideration provided under this Agreement. Plaintiff and Plaintiff's Attorneys accept responsibility for the payment of any income, employment, or other taxes related to the payments made to them in accordance with Paragraph 1 above, except for the applicable deductions made on the wages as set forth above in paragraph 1(a). Accordingly, if any governmental taxing authority or court of competent jurisdiction ultimately determines that Plaintiff or Plaintiff's Attorneys owe any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between the Plaintiff or Plaintiff's Attorneys and the Taxing Authority, and that Defendant will not be responsible for the payment of such taxes, including any interest and/or penalties, except as prohibited by law. Plaintiff further agrees and acknowledges that he shall indemnify and hold harmless Defendant for any possible federal, state, or local tax liabilities relating to the payments made pursuant to Paragraph 1 and that he shall reimburse or make good any taxes, interest and/or penalties assessed against Defendant for any such tax liabilities caused by the above payments and/or Defendant's failure to withhold from any such payments, except as set out above in paragraph 1(a) and to the extent prohibited by law.

3. Payment Discharges All of Defendant's Obligations. The payments described above shall be above and beyond full satisfaction of, and thereby discharge, any obligations of Defendant and Releasees (as defined in Paragraph 6) to Plaintiff for lost compensation, lost remittance, lost wages and overtime, lost benefits, pain and suffering, compensatory damages, liquidated damages, punitive damages, injunctive or other remedial relief, or any other expectation of remuneration or benefit on the part of Plaintiff for the claims asserted in this case or that could have been asserted up to the date of this release, except for his pending Worker's Compensation Claim, and except for attorney's fees and costs and any currently due wages, accrued benefits or other rights arising from his current employment with Defendant.

4. Non-Admission of Liability. This Agreement shall not in any way be construed as an admission by Defendant that it has acted wrongfully with respect to Plaintiff or any other persons, or that Plaintiff has any rights whatsoever against Defendant, except as set forth in this Agreement, and Defendant specifically disclaims any liability to or wrongful acts against Plaintiff or any other person, on the part of itself or any other Releasee (as defined in Paragraph 6). Accordingly, this Agreement shall not serve or be construed to be, or be admissible in any proceeding as, evidence that any party has prevailed in the Federal Lawsuit or that



Defendant has engaged in any wrongdoing. Notwithstanding this section, the Defendant agrees that the Plaintiff is entitled to reasonable attorney's fees and costs in this action, in an amount to be determined by the Court as reasonable. Also, nothing in this section or anywhere in this Agreement releases or waives Plaintiff's pending Worker's Compensation claim.

5. Resolution of Issues Presented in the Federal Lawsuit. The parties agree that there was a bona fide dispute as to liability under the FLSA and, moreover, that even if there were liability, there was a bona fide dispute as to any amounts owed to Plaintiff by Defendant. The parties desire to resolve all claims by Plaintiff against Defendant, and Plaintiff also wishes to avoid the costs and risks of the possibility of having to pay costs to Defendant should Defendant prevail. Plaintiff represents that with the receipt of the consideration set forth in this Agreement, he has been fully compensated for any and all claims arising from or related to the Federal Lawsuit, and/or his employment relationship with Defendant to date, except for his attorney's fees and costs in this action, and Defendant continues to owe to the Plaintiff all rights and privileges due to him as a current employee, including but not limited to any wages due from his current position, health or medical insurance, fringe benefits, pension contributions, vacation pay, holiday pay, or sick leave.. Plaintiff agrees that aside from his FLSA claims and potential employment contract claim against Defendant and his pending Worker's Compensation claim (which he does not release or waive), he does not have any other viable claims against Defendant or the Releasees (as defined in Paragraph 6). Plaintiff agrees that he will not file, or cause to be filed any lawsuit, arbitration, or any other proceeding against Defendant or any of the Releasees (defined below) relating to his relationship with Defendant up to the date of the execution of this release.

6. Complete General Release. As a further material inducement for Defendant to enter into this Agreement and as consideration for the payments provided for in Paragraph 1, Plaintiff, on behalf of himself, his heirs, executors, administrators, and/or assigns, does hereby irrevocably and unconditionally **RELEASE AND FOREVER DISCHARGE** Defendant, together with its employees, agents, directors, officers, independent contractors, insurers and reinsurers, representatives, attorneys, and employee benefit plans (and the agents, representatives, trustees, administrators, fiduciaries, insurers, and reinsurers of such plans) past, present, and future, and their heirs, executors, administrators, predecessors, successors, and assigns (collectively, the "Releasees") of and from any and all causes of action, suits, debts, complaints, claims and demands whatsoever in law or in equity, whether known or unknown, suspected or

unsuspected, which Plaintiff, or his heirs, executors, administrators, and/or assigns, ever had or now have against each or any of the Releasees, from the beginning of time to the date of execution of this Agreement, including without limitation any and all claims relating to the Federal Lawsuit, Plaintiff's relationship with Defendant or any of the Releasees, the terms and conditions of that relationship, or the termination of that relationship, including but not limited to any applicable federal, state, or local constitutional, statutory, regulatory, or common law claims, now or hereafter recognized, including but not limited to, any claim for defamation, libel, slander, wages, overtime pay, severance pay, bonus pay, sick leave, holiday pay, vacation pay, life insurance, health or medical insurance or any other fringe benefit or disability, or any claims for economic loss, compensatory damages, punitive damages, liquidated damages, (collectively, the "Released Claims"), except for his pending Worker's Compensation Claim (which he does not waive or release) and except for the attorney's fees, expenses and costs in this action, and to the extent that Defendant continues to owe to the Plaintiff all rights and privileges due to him as a current employee, including but not limited to any wages due from his current position, health or medical insurance, fringe benefits, pension contributions, vacation pay, holiday pay, or sick leave. Moreover, Plaintiff shall forego pursuing any claim against Defendant or the other Releasees in court, through the Wage and Hour Division of the United States Department of Labor, or through any other avenue of redress based on any alleged violation of the FLSA, the Florida Constitution, or Florida's Minimum Wage Act ("FMWA") through this date. If for any reason anyone or any entity contends that this Agreement does not result in the complete resolution of Plaintiff's FLSA claims against Defendant or the other Releasees, Plaintiff shall cooperate with counsel for the Defendant and/or other Releasees in efforts to obtain a dismissal of all of Plaintiff's FLSA claims against Defendant or the other Releasees in their entirety with prejudice, for no additional consideration, If Plaintiff pursues such an action, Plaintiff shall immediately refund to Defendant all the payments to Plaintiff described in Paragraph 1 above.

7. No Other Claims. Plaintiff represents that aside from the Federal Lawsuit, he has not filed or participated in the filing of any complaints, grievances, arbitration demands, charges, or lawsuits against Defendant or any of the other Releasees, as defined above in Paragraph 6, with any governmental agency, union, arbitration forum, or court, except for his pending Worker's Compensation Claim (which he has not waived or released in this agreement).

8. Venue and Governing Law. This agreement shall be governed by the law of the State of Florida. In the event of any action arising hereunder, venue shall



be proper in the United States District Court for the Middle District of Florida. In the event of litigation relating to this agreement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorneys' fees and costs, including any fees and costs for any appeal.

9. Ownership of Claims. Plaintiff hereby warrants and represents that he owns all claims that are the subject of this Agreement, including any and all claims arising from or relating to the Federal Lawsuit or his relationship with Defendant, and that he has the sole and exclusive right to settle and compromise such claims. Plaintiff further warrants and represents that he has not conveyed, pledged, transferred, or in any manner encumbered or assigned, to any other natural person, firm, corporation, partnership (general or limited), joint venture, trust or estate, business, association, or other form of legal entity, any of the claims, demands, damages, actions, liabilities, causes of action, covenants, suits, or judgments described herein.

10. Agreement Contingent upon Non-Revocation and Court Approval. The parties agree that Defendant's obligations under this Agreement are conditioned completely and entirely upon Plaintiff declining to revoke his execution of this Agreement, and Court approval of this Agreement. Thus, the parties agree that Plaintiff's revocation or the failure of this Agreement to be Court-approved relieves Defendant of any obligation under this Agreement. To obtain Court approval, the parties agree to file a joint motion for approval of this Agreement. The parties agree that they shall work on further submissions if necessary to gain Court approval but if Plaintiff revokes or the Court fails to approve this agreement, the case shall continue forward until resolution.

11. No Representations. Plaintiff represents and acknowledges that in executing this Agreement, he does not rely and has not relied upon any representation or statement not set forth herein made by Defendant or any of its agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

12. Binding Agreement. This Agreement shall be binding upon the parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Releasees, and to the respective heirs, administrators representatives, executors, successors, and assigns.

13. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

14. Consultation with Counsel. The parties acknowledge and agree that this settlement over a legally and factually disputed claim was negotiated at "arms length" and with the advice of counsel. Plaintiff represents and agrees that Defendant hereby advise him in writing to consult with an attorney prior to executing this Agreement, that he has done so with Plaintiff's Attorney, that Plaintiff has carefully read and fully understands all of the provisions of this Agreement, and that Plaintiff is knowingly and voluntarily entering into this Agreement without duress or reservation of any kind, and after having given the matter full and careful consideration.

15. Drafting. The parties agree that this Agreement shall be construed and interpreted as if all of its language were prepared jointly by Plaintiff and Defendant, No language in this Agreement shall be construed against a party on the ground that such party drafted or proposed that language.

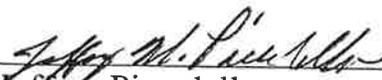
16. Execution of Additional Documents. The parties agree to execute such other, further, and different documents as reasonably may be required to effectuate this Agreement.

17. Sole and Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, whether written or oral, relating to the subject matter hereof. The parties acknowledge that neither they, the Releasees, nor their agents or attorneys have made any promise, representation, or warranty whatsoever, either express or implied, written or oral, other than the express written representations herein. The parties agree that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement signed by those parties who are affected by the alteration, amendment, modification, or change.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and General Release on the dates indicated below.



DATED: August 18th, 2016



Jeffrey Piccolella

DATED: 9/20 2016

Brevard County - JIM BARFIELD, CHAIRMAN

As approved by Board 9/20/16

ATTEST:

SCOTT ELLIS, CLERK