

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

HUGO GARCIA,

Plaintiff,

v.

JAMES LEE FULTON,
SERENA FULTON,

Defendants.

Case Number: CV-07-J-1466-S

CERTIFICATE OF JUDGMENT

I, **Sharon Harris**, Clerk of the United States District Court for the Northern District of Alabama, do hereby certify that on the 14th day of July, 2008, a Stipulated Judgment and Order of Dismissal With Prejudice was rendered in the United States District Court for the Northern District of Alabama, in the above-styled cause, wherein it was **ORDERED** by the Court that plaintiff Hugo Garcia obtained a Judgment against defendant James Lee Fulton whose address is 57 Valley View Road, Cropwell, AL 35125 as shown in the Court proceeding, based upon the resolution by the parties as set out in the Settlement Agreement and Release filed July 11, 2008 (see Motion for Entry of Stipulated Judgment and Order of Dismissal With Prejudice with Settlement Agreement and Release attached); parties to bear own costs, fees and expenses except as otherwise provided for in the settlement agreement between the parties and interest at the rate of 2.30% from date of said Judgment, and that Robert N. Barber, II is the Attorney of Record for in said cause.

WITNESS My Hand and Seal of this Court on February 4, 2010.

SHARON HARRIS, CLERK

By: Shirley Brown
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HUGO GARCIA,

Plaintiff,

v.

JAMES LEE FULTON,
SERENA FULTON

Defendant.



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Shelby Cnty Judge of Probate, AL
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CV 07-J-1466-S

**MOTION FOR ENTRY OF STIPULATED JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiff Hugo Garcia and Defendant James Lee Fulton jointly move the Court to approve the parties' settlement and enter the attached proposed Stipulated Judgment and Order of Dismissal With Prejudice. As grounds for the motion, the parties say as follows:


This case includes claims by Plaintiffs under the Fair Labor Standards Act. The parties reached an agreement to resolve all claims in this case and orally notified the Court of the settlement. Given that this case involves claims under the FLSA, the parties respectfully seek Court approval of the settlement and the entry of a stipulated judgment and an order of dismissal with prejudice. The parties have exchanged the settlement agreement and it

has been executed. The pleadings and settlement agreement reflect that this litigation involves bona fide disputes of both law and fact, including, but not limited to, disputes as to coverage, liability, and facts. The parties believe that the settlement reflected in the agreement is fair and equitable to all parties involved.

Therefore, the parties jointly move the Court to approve the settlement by entering the Stipulated Judgment and Order of Dismissal with Prejudice.

Dated this 8th day of July 2008.

/s/ Robert Barber
Robert Barber
Attorney for Plaintiff


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OF COUNSEL:
Barber Law Group
421 Valley Avenue
Homewood, AL 35209
Tel: (205) 940-2233
FAX: (205) 942-0754

/s/ James Lee Fulton
James Lee Fulton
Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Motion upon the Pro Se parties in this case by sending a copy via prepaid first class mail on this the 11th day of July, 2008.

James Lee Fulton
1108 Henry Drive

Alabaster, AL 35226

Serena Fulton
1108 Henry Drive
Alabaster, AL 35226

/s/ Robert Barber
Robert Barber



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SETTLEMENT AGREEMENT AND RELEASE

To avoid the burden, delay and expense of litigation, Hugo Garcia hereby enters into the following Settlement Agreement and Release ("Settlement Agreement") with James Lee Fulton.

1. For and in consideration of the terms and conditions stated herein, all of which are hereby agreed to and the receipt and sufficiency of which is acknowledged, the undersigned, Hugo Garcia ("Releasor") hereby releases and forever discharges James Lee Fulton ("Fulton") and their current and former employees, agents, representatives, attorneys, officers, investors, owners, insurers, administrators, parent companies, subsidiaries, affiliated and related companies, and any and all persons or entities acting through, on behalf of, or in concert with any of them (collectively the "Releasee") jointly and severally, of and from any and all claims, causes or rights of action, demands and damages of every kind and nature whatsoever, known or unknown ("Claims"), that the Releasor may now or hereafter have arising out of any event, act or omission occurring up to and including the date of Releasor's signature below, including, but not limited to, any Claims in any way relating to Releasor's employment or contractual relationship with any of the Releasee, or the termination thereof.

2. Such Claims herein released include, but are not limited to, any claims arising under federal, state or local law, including, but not limited to, the Fair Labor Standards Act, the Portal to Portal Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. § 1981, the Equal Pay Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Alabama Age Discrimination Act, the Family and Medical Leave Act, ERISA (and any amendments to these laws), and any claims of interference or retaliation relating thereto. Such released Claims also include Claims for any relief or damages, including, but not limited to claims for actual, compensatory or punitive damages, back wages, front pay, benefits, regular wages, overtime pay, liquidated damages, attorneys' fees and liens, costs, interest, injunctive or declaratory relief, and any other Claims for any other type of relief, award or compensation arising under federal, state or local law.

3. This Agreement specifically includes a release of any and all Claims that have been or could have been asserted in the complaint filed in the United States District Court for the Northern District of Alabama, styled Hugo Garcia v. James Lee Fulton: CV 07-J-1466-S (the "Lawsuit") or any other action. Immediately following the execution of this Settlement Agreement, an attorney for Releasor and Releasee shall seek Court approval of this Settlement Agreement and the entry of a stipulated judgment, dismissing the Lawsuit with prejudice, each party to bear that party's own costs and attorney's fees. Releasor declares, warrants and represents that he had the authority and capacity to file the complaint in the Lawsuit and that he has the authority to consent to the stipulated judgment and dismissal of the Lawsuit with prejudice.

4. Releasor hereby warrants and represents that he has no claims or causes of action against any of the Releasee that he has not already asserted against any of the Releasee and that he has no claims or causes of action which are not released in Paragraphs 1-3, above. Releasor



acknowledges that this warranty and representation is a material inducement to the Releasee in entering into the Settlement Agreement. Releasor shall not make or file any lawsuits against the Releasee based on any actions, events or omissions occurring on or before the date of the execution of this Settlement Agreement. Should any individual or entity file a lawsuit against the Releasees on Releasor's behalf, Releasor agrees to waive the recovery of any monetary damages in that action and agrees to indemnify, defend, and hold harmless the Releasees from any such claims.

5. This Settlement Agreement is expressly conditioned on its approval by the Court in which the Lawsuit was originally filed and the entry of a stipulated judgment, including a dismissal with prejudice, by the Court. Following Releasor's execution of this Settlement Agreement, Court approval, and the entry of a stipulated judgment, Releasee agree to pay to the order of Releasor and his attorneys as consideration the total collective sum as follows:

A. \$11,000 to be paid at the rate of \$450.00 per month beginning August 1, 2008. Any payment received after the 30th day of each month will be deemed to be delinquent. Said payments shall be in the form of money order and shall be delivered to:

Robert Barber
Barber Law Group
421 Valley Avenue
Homewood, AL 35209

By their signatures below, Releasor acknowledges that he is due no additional wages, benefits or compensation from Releasees and Releasor and his attorneys acknowledge that all claims for attorney's fees and costs by any party, if any, will released and satisfied as a result of this Agreement.

6. Releasee specifically disclaim any liabilities to, discrimination against, or retaliation against Releasor or any other person. Releasor understands that this settlement is a compromise of bona fide disputes relating to both liability and damages and is not an admission of liability by Releasee. Releasor agrees not to suggest, imply or state to the contrary to any third parties. Releasor also agrees not to disparage Releasee or to induce, suggest to or encourage any other person to bring claims against Releasee.

7. Releasor and Releasee mutually agree to keep the terms, conditions and amounts of this Settlement Agreement confidential and not to disclose or cause them to be disclosed except as may be required by law or court order to comply with judicial process or tax reporting requirements. Releasor and Releasee acknowledge that confidentiality is a material inducement to the Releasees in entering into the Settlement Agreement. If the Settlement Agreement is the subject of a formal request by way of judicial process, Releasor shall immediately notify and provide Fulton with a copy of said process.



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8. Releasor knowingly and voluntarily is waiving and generally releasing all rights or claims as stated above, known or unknown, that Releasor has or might have against the Releasees. Releasor represents and warrants that Releasor is competent to execute this release, that Releasor has fully read and completely understood this Settlement Agreement or has had it explained to Releasor by counsel. Releasor also represents and warrants that Releasor is waiving rights and claims in exchange for consideration in addition to anything of value to which Releasor is already entitled, that Releasor has been given a reasonable period of time to consider this Settlement Agreement, and that Releasor has been advised by legal counsel concerning execution of this Settlement Agreement.

9. Releasor agrees and recognizes that Releasor's employment relationship with Fulton and any affiliated or related entities has been permanently and irrevocably severed and that Releasor will not apply for or otherwise seek re-employment with Fulton or any affiliated or related companies, or any company owned or operated by Flores. Neither Flores nor the Releasee have any obligation, contractual or otherwise, to rehire, reemploy or recall Releasor in the future.

10. It is agreed that should it develop that there are mistakes in this Settlement Agreement or any document pertaining to this settlement or dismissal that would cause the release and discharge of the Releasee to be defective or less than complete, then the Releasor will cooperate fully and execute any and all instruments and do any and all things reasonably necessary to bring about a full, final, and complete release of Releasee.

11. Releasor represents that Releasor is competent to sign this Settlement Agreement and has the authority to do so. Releasor further declares and acknowledges that no representation made by any of the Releasee, or by anyone on behalf of the Releasee, concerning the validity or merit of any claim has induced Releasor to sign this Settlement Agreement, and that Releasor is voluntarily acting upon Releasor's own best judgment, belief and knowledge of the nature and validity of any and all claims or potential claims, with the advice of Releasor's attorney.

12. Releasor further represents and warrants that Releasor is not in bankruptcy and has not heretofore otherwise assigned to any other person or entity all or any portion of any claim whatsoever that Releasor may have or may have had or may have in the future against the Releasee. Releasor further agrees that Releasor's heirs, administrators, executors, successors and assigns shall be fully bound by each and every provision of this Settlement Agreement, just as Releasor is bound. Releasor also agrees that each and every provision of this Settlement Agreement inures to the benefit of the Releasee and their heirs, legatees, administrators, executors, predecessors, successors and assigns.

13. The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either Releasor



or any or all of the Releasees. This Settlement Agreement shall be deemed to have been drafted jointly by Releasor and the Releasees.

14. This Settlement Agreement sets forth the entire agreement and fully supersedes any and all prior agreements or understandings between Releasor and the Releasee.

15. The provisions and obligations of this Settlement Agreement are severable and divisible. In the event any provision, any obligation, or any consideration of the Settlement Agreement is determined to be illegal or unenforceable, the remainder of the Settlement Agreement shall be enforceable.

16. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, and such counterparts shall, together, constitute and be one and the same instrument.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of laws.

[SIGNATURES FOLLOW]

Executed this 8 day of July, 2008.

Hugo H. Garcia
Hugo Garcia, Releasor

Robert Barber
Robert Barber, Attorney for Releasor

Lee Fulton
Lee Fulton, Releasee



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