

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

KRISTY WILSON, DARREN MOORE, AND)
KISHA ULYSSE, INDIVIDUALLY, AND ON)
BEHALF OF ALL OTHERS SIMILARLY)
SITUATED,)
) Case No. 3:13-cv-01328
)
) Plaintiffs,)
) Judge Campbell
)
) v.)
) Magistrate Judge Bryant
)
)
) MICROS SYSTEMS INC.,)
)
)
) Defendant.)

SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs Kristy Wilson, Darren Moore, and Kisha Ulysse, for themselves and on the behalf of all Opt-in Plaintiffs, and Defendant MICROS Systems, Inc., together with its successors, enter into this Settlement Agreement and Release, and agree as follows:

A. DEFINITIONS

1. “Action” or “Litigation” means this case, *Kristy Wilson, et al. v. MICROS Systems, Inc.*, Civil Action No. 3:13-cv-01328 (filed November 26, 2013).
2. “Court” means the United States District Court for the Middle District of Tennessee, Nashville Division.

3. “Fair Labor Standards Act” or “FLSA” means the Fair Labor Standards Act, 29 U.S.C. §§ 201 – 219, as amended by the Portal-to-Portal Act, *id.* §§ 251 – 62 (FLSA).

4. “MICROS,” “Company,” or “Defendant” means: (i) MICROS Systems, Inc. and its former and present parents, subsidiaries, related companies, partnerships, joint ventures, or other affiliates; and (ii) with respect to each of these, their predecessors and successors; and (iii) with respect to each entity, all past and current officers, directors, employees, partners, shareholders, attorneys, assigns, and agents, and any other successors, assigns, or legal representatives.

5. “Named Plaintiffs” means Kristy Wilson, Darren Moore, and Kisha Ulysse, together with their heirs, estates, executors, administrators, assigns, transferees, and representatives.

6. “Opt-in Plaintiffs” means the 86 individuals who are current or former MICROS employees and who, under 29 U.S.C. § 216(b), have joined this Action as party plaintiffs by signing and filing consent-to-join forms, and who have not been dismissed by the Court as of October 1, 2014, together with their heirs, estates, executors, administrators, assigns, transferees, and representatives.

7. “Parties” means the Named Plaintiffs, the Opt-in Plaintiffs, and MICROS.

8. “Plaintiffs’ Counsel” means the law firm of Fried & Bonder, LLC, and Gilbert Russell McWherther Scott Bobbitt, PLC., and includes, but is not limited to, C. Andrew Head and Michael Russell, who represent the Named Plaintiffs and the Opt-in Plaintiffs.

9. “Released Claims” means (i) the wage and hour claims, known or unknown, that could be asserted under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. or any state law, as defined in Section C(2), below, and (ii) with respect to the Named Plaintiffs, all claims of any kind, as defined in Section C(3) below.

10. “Settlement Effective Date” means the date the Court enters an Order approving this Agreement.

11. “Covered Position” means work performed under the job title of Implementation Specialist, or Senior Implementation Specialist, for MICROS Systems, Inc. prior to its acquisition by Oracle Corporation and thereafter (for any Opt-in Plaintiff who remained employed in such position for Oracle Corporation after the acquisition) for Oracle Corporation.

B. BENEFITS

1. Gross Settlement Payment. Within thirty–five (35) days of the Settlement Effective Date, MICROS will pay a gross amount not to exceed,

\$925,000 (the “Gross Settlement Amount”).¹ At its discretion, MICROS may pay this amount earlier. This Gross Settlement Payment includes all wages, damages, penalties, liquidated damages, interest, and any other amounts payable or owed to the Named Plaintiffs and Opt-in Plaintiffs, and all attorneys’ fees or costs.

2. Consideration. The Parties agree that the Gross Settlement Payment constitutes good, valid, and sufficient consideration for this Agreement.

3. Apportionment of Settlement. Plaintiffs agree, and Defendant does not oppose, that payments to Plaintiffs from the Gross Settlement Amount shall be apportioned as follows:

- a. Calculate the “Distribution Amount” by subtracting from the Gross Settlement Amount:
 - (i) the total amount of attorneys’ fees and costs approved by the Court to be paid to Plaintiffs’ Counsel, and
 - (ii) the total service payments, if any, approved by the Court to be paid to the Named Plaintiffs; then
- (2) Calculate the number of workweeks that each Plaintiff worked in a Covered Position during the three year period preceding the filing date of their Consent in the Litigation and continuing to the present to determine “Covered Workweeks”;²
- (3) Divide the total Covered Workweeks worked by the individual Plaintiff by the total Covered Workweeks in Section 3(a)(2)

¹ MICROS agrees, separately from the Gross Settlement Payment above, to also pay the mediator's fees incurred for the second mediation in the Litigation.

² For any Plaintiff who filed a Consent and met the definition of an eligible participant under the Court-approved Notice in the Litigation, but who did not work within the three year period preceding the filing date of their Consent in the Litigation, that number shall be two (2) weeks.

above, to determine the fraction of the Distribution Amount to which that individual claimant is entitled; and

- (4) Multiply the Distribution Amount from Section 3(a)(1) above by the result of Section 3(a)(3) above, to determine the individual Plaintiff's settlement payment amount from the Distribution Amount.³

4. Taxes. The Parties recognize that the individual settlement payments include sums for back wages, liquidated damages, penalties, and interest. MICROS will issue two (2) checks for each Named Plaintiff and Opt-in Plaintiff. The Parties agree that one of the two checks will consist of fifty percent (50%) of the payment to each Named Plaintiff and Opt-in Plaintiff, which will be deemed back wages and will be subject to W-2 reporting. Therefore, normal payroll taxes (federal income taxes, state income taxes, employee's share of FICA and FUTA taxes, and other state-specific statutory deductions) and withholdings (garnishments, tax liens, child support, etc.) will be deducted from this portion of each individual settlement payment. The Parties agree that the second check will consist of the remaining fifty percent (50%) and will be deemed non-wage liquidated damages. For this second payment, MICROS will issue to each individual an IRS Form 1099 (reported in Box 3) for that portion of their payments

³ The parties dispute whether opt-in Plaintiff Christina Clay was converted to a CA-based pay code and permitted to record her overtime hours worked upon moving to CA and becoming a CA-based Implementation Specialist with Micros, but settled that dispute by crediting 60% of opt-in Plaintiff Clay's weeks during her CA-based employment as Implementation Specialist weeks covered by the settlement allocation formula.

without tax withholdings. MICROS will be responsible for correctly reporting its payments to the Named Plaintiffs and Opt-in Plaintiffs. The Named Plaintiffs and Opt-in Plaintiffs will be responsible for correctly characterizing this compensation for tax purposes and to pay any taxes owing on these 1099 amounts. Funds from any uncashed checks at the end of the applicable statute of limitations period for contracts under Tennessee law shall be submitted as required by applicable state unclaimed property laws.

5. Service Payments to Named Plaintiffs. In addition to receiving their respective portions of the Gross Settlement Payment, Plaintiffs will apply for Court approval for Kristy Wilson, Darren Moore, and Kisha Ulysse to each receive \$5,000.00 (\$2,500.00 for each full or partial year of participation) from the Gross Settlement Payment, for their time, expense, and service in this Action, including their providing information and documents for case investigation and filing, responding to written discovery, participating in person or remotely in mediations, and participating in other conferences and meetings with Plaintiffs' Counsel.

6. Taxes on Service Payments to Named Plaintiffs. The Parties agree that the service payments to the Named Plaintiffs are not wages. Therefore, the Named Plaintiffs will receive a third check consisting of this service payment and, when appropriate, an IRS Form 1099 for this service payment will be issued.

The Named Plaintiffs will be responsible for correctly characterizing this 1099 compensation for tax purposes and to pay any taxes owing on these amounts.

7. Employer's Payroll Taxes. In addition to the Gross Settlement Payment, MICROS will pay the employer's share of all applicable payroll taxes on amounts paid to the Named Plaintiffs and Opt-in Plaintiffs as wages.

8. Attorneys' Fees and Costs. Plaintiffs' Counsels' fees and costs will be paid from the Gross Settlement Payment. MICROS will not oppose an award to Plaintiffs' Counsel of an amount no greater than 40% of the Gross Settlement Amount for all fees, expenses, and costs incurred in connection with the claims of the Named Plaintiffs and Opt-in Plaintiffs. Although Plaintiffs' Counsel's engagement agreement allows for reimbursement of all expenses and costs in addition to recovery of 40% of the Gross Settlement Amount, Plaintiffs' Counsel agrees for the limited purpose of this settlement not to seek total fees and costs in excess of 40% of the Gross Settlement Amount. The amount approved by the Court, not to exceed 40% of the Gross Settlement Payment, will be paid within thirty-five (35) days of the Court approving the Settlement, provided that there is no appeal, or, in the event of an appeal, within 30 days of the entry of final, unappealable judgment.

The settlement amounts paid to Plaintiffs' Counsel for fees and costs are not wages and are designated as attorney's fees and costs, and constitute payment of

Plaintiffs' attorneys' fees and costs on claims under the FLSA, and therefore are within the definition of 26 U.S.C. § 62(e)(4) and subject to the provisions of 26 U.S.C. § 62(a)(20) of the Internal Revenue Code.

9. Collective Action Certification. The Parties agree that Defendant's stipulation to conditional certification in This Lawsuit and to the settlement of the Named Plaintiffs' and Opt-in Plaintiffs' claims on a collective basis is in no way an admission by MICROS that the Named Plaintiffs or Opt-in Plaintiffs are similarly situated to one another under § 216(b) of the FLSA or that certification of any kind is proper.

C. RELEASE OF CLAIMS

1. Power to Bind Opt-in Plaintiffs. By their signed Court-approved Consent forms filed with the Court in the Litigation, each Opt-in Plaintiff has designated the Named Plaintiffs as the Opt-in Plaintiffs' agents to make decisions on the Opt-in Plaintiffs' behalves, including, but not limited to, all matters pertaining to settlement and engagement of counsel. Named Plaintiffs represent that they therefore have the authority to settle This Lawsuit on behalf of themselves and all Opt-in Plaintiffs, except as may be required by applicable law.

2. Release of Wage and Hour Claims. Each Named Plaintiff and each Opt-in Plaintiff, hereby voluntarily agrees to a limited release of all Named Plaintiffs' and Opt-in Plaintiffs' wage and hour claims known or unknown that

they have or may have had through the Settlement Effective Date against MICROS arising out of the factual predicate of the pay received or the manner in which they were paid for hours worked as an Implementation Specialist, or Senior Implementation Specialist, as alleged in the Complaint under the FLSA or analogous state wage and hour laws, for work performed for MICROS Systems, Inc. prior to its acquisition by Oracle Corporation and thereafter (for any Opt-in Plaintiff who remained employed in such position for Oracle Corporation after the acquisition) for Oracle Corporation, including such claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and any similar state law. By way of example, and not exclusion, the claims arising out of that factual predicate covered by this release includes those allegedly arising under another state's law that are substantially similar to the California state law claims alleged in the Complaint, those that derive from claims of misclassification as exempt from the minimum wage or overtime requirements of any law; and failure to pay for all hours worked, including claims for penalties and/or interest for the failure to pay the amount or in the manner required by law, whether those claims are postured as claims of violation of a substantive statute or a common law duty, and whether asserted in a private attorney general action or under any *qui tam* theory; allegations of late payment of unpaid wages due to the pay received or the manner in which they were paid while classified as exempt from overtime laws, alleged inaccurate wage

statements, claimed failure to provide meal or rest breaks, claimed failure to pay daily overtime, or claimed failure to maintain records of hours worked for non-exempt employees; but would not include, for example, employment discrimination claims.

The Named Plaintiffs and Opt-in Plaintiffs understand that the Settlement Agreement fully and finally resolves the wage and hour claims described above that were brought or could have been brought in This Lawsuit through the Settlement Effective Date. The Named Plaintiffs and Opt-in Plaintiffs further represent and warrant that they have not directly or indirectly assigned, transferred, or purported to assign or transfer any portion of any liability, claim, demand, or cause of action that they herein release, except as may be required by applicable law. The Named Plaintiffs and Opt-in Plaintiffs understand that, if the Court does not approve this Settlement Agreement and the Parties are unable to negotiate a new agreement that the Court approves, this agreement has no effect and they will not be entitled to any portion of the Gross Settlement Payment.

3. Named Plaintiffs' Releases of All Other Claims. In exchange for the benefits provided to the Named Plaintiffs under this agreement, they hereby voluntarily agree to forever release MICROS from any and all known or unknown claims, causes of actions, demands, debts, obligations, damages or liability, whether or not asserted in This Lawsuit, through the Settlement Effective Date,

including, but not limited to, claims of discrimination, wrongful discharge, breach of contract, infliction of emotional distress, or negligence, whether arising under statute or common law.

4. Defendant's Limited Release of Plaintiffs. In exchange for the benefits provided to the Defendant under this Agreement, Defendant releases Named Plaintiffs and Opt-in Plaintiffs from known or unknown claims Defendant may have or had arising out of Named Plaintiffs and Opt-in Plaintiffs' assertion of the claims made in This Lawsuit against Defendant and settled herein. These claims include, by way of example, claims that any Named Plaintiff or Opt-in Plaintiff breached any prior agreement with Defendant (whether for severance, settlement, or release for any other reason) by asserting, and/or receiving payment for, their claims released in this settlement.

5. Duty To Negotiate. If the Court does not approve the settlement as submitted by the Parties, then the Parties agree to engage in good faith efforts to renegotiate the settlement in good faith in a manner that addresses the Court's concerns within ten days, and to promptly submit any unresolved disputes over those negotiated terms to mediation before Robert Boston.

6. Claim Preclusion. There shall be no claim preclusion effect for claims not released in this Agreement. The Parties agree that, while the filing of This Lawsuit stayed the statute of limitations for any claim asserted in the

Complaint under Federal Rule of Civil Procedure 23 (Rule 23), the filing of This Lawsuit did not act to stay the statute of limitations for any claims not asserted in the Complaint.

7. Rule 23 California Claims of Non-Parties. During the litigation of This Lawsuit, the Named Plaintiffs did not seek certification of any Rule 23 class under California law. Upon the Court's order approving the Settlement Agreement, the California Rule 23 claims of putative California class members shall be dismissed without prejudice, provided that Named Plaintiffs' and Opt-in Plaintiffs' claims under California law, if any, will be dismissed as provided in Paragraph C(2), above.

D. SETTLEMENT ADMINISTRATION

1. Duty of Cooperation. The Parties agree to cooperate in obtaining expeditious final approval of this Settlement.

2. Motion for Settlement Approval. Plaintiffs shall file an Unopposed Motion for Settlement Approval and a Proposed Order Approving Settlement with the Court on or before February 4, 2015, which will include a Proposed Order granting approval of the Settlement, adjudging the terms to be fair, reasonable, and adequate, directing consummation of its terms and provisions, and dismissing the Action on the merits, with prejudice (other than as set forth in Section C(7) above), in accordance with the terms of this Agreement. Before filing

this motion, Plaintiffs' Counsel will provide Defendant with a draft of the motion for review and revision. The motion shall not be filed until the Parties agree on its content. In the event of a dispute regarding the language of the settlement agreement or settlement documents, the dispute will be submitted to Robert Boston as mediator. The Proposed Order will approve and incorporate the terms of this Agreement, and in addition will declare that any Named Plaintiffs and Opt-in Plaintiffs who participate in the Settlement are bound by this Settlement Agreement and its releases, and that the California Rule 23 claims of non-parties are dismissed without prejudice. The Court will reserve jurisdiction over the construction, interpretation, implementation, and enforcement of the Parties' settlement.

3. Information for Settlement Distribution. The Parties will collectively and collaboratively exchange information necessary to confirm the number of weeks worked by each Plaintiff in covered positions within the recovery period. Plaintiffs' Counsel will provide to Defendant a report listing the amount of all payments to be made to each Named Plaintiff and Opt-in Plaintiff when it provides Defendant with an advance draft of the Unopposed Motion for Settlement Approval.

4. Diligence in Finding Named Plaintiffs and Opt-in Plaintiffs. Plaintiffs' Counsel will use standard devices, including ACCURINT or an

equivalent public records search, the National Change-of-Address database or their equivalent, to obtain forwarding addresses for mailing by Plaintiffs' Counsel of notice of this settlement and its applicable releases and individual settlement payments to the Named Plaintiffs and Opt-in Plaintiffs, and will provide any updated address information received to MICROS for use in administering the settlement payments and for tax reporting purposes.

5. Distributing Settlement Payment. Subject to the terms of this Agreement, within thirty-five (35) days of the Settlement Effective Date, MICROS will transmit by overnight courier all settlement checks payable as part of the Gross Settlement Payment to Plaintiffs' Counsel. Within thirty-five (35) days after the Settlement Effective Date, subject to the terms of this Agreement, MICROS will deliver full payment to Plaintiffs' Counsel for attorneys' fees and costs as discussed herein.

6. Altering Dates. Upon written agreement or with Court approval, the Parties may alter the above dates or time periods.

E. PROMISES

1. No Admission. Nothing contained in this Agreement or in any other document related to the settlement will be construed as or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of MICROS. Each of the Parties has entered into this settlement with the intention to

avoid further disputes and litigation with the attendant inconvenience and expenses. Parties further acknowledge and agree that this Agreement shall not be used to suggest an admission of liability in any dispute the Parties may have now or in the future with respect to any person or entity. Further, neither this Agreement, nor any part of the negotiations in connection with this Agreement, shall constitute evidence with respect to any issue or dispute, other than for purposes of enforcing this Agreement.

2. Waiver of Appeals. The Parties agree to waive all appeals.

F. MISCELLANEOUS

1. Authority. The signatories represent that they are fully authorized to enter into this Agreement and bind the parties to these terms and conditions, and that they know of no reason why this Court's approval would be insufficient to effect a settlement as to all Parties. If, however, this Agreement requires the approval of another court to be effective against any Party (for example, if an Opt-in Plaintiff were to declare bankruptcy or die), then Named Plaintiffs and their counsel agree to seek such approval.

2. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the Settlement and to this Agreement, and all prior or contemporaneous agreements, understandings, representations, or statements, whether oral or written and whether by a Party or a Party's counsel, are

merged into this Agreement; except, however, that this Agreement shall have no effect on or be affected by any prior settlement or other agreement entered into between Defendant and any Plaintiff regarding payment for all or part of any claims released herein.

3. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Agreement will use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to effectuate this Agreement and the terms set forth in it. As soon as practicable after execution of this Agreement, Plaintiffs' Counsel will, with the assistance and cooperation of MICROS and its counsel, take all necessary steps to secure the Court's approval of the Parties' settlement.

4. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms-length negotiations between the parties and that this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not construed in favor of or against any party by reason of the extent to which any Party or the Party's counsel participated in the drafting of this Agreement.

5. Construction of Captions and Interpretations. Paragraph titles or captions in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital, except for those defined in Section A.

6. No Modification and Waiver. This Agreement may not be changed, altered, or modified except in writing and signed by the parties and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the parties. The waiver by one Party of any breach of this Agreement will not be deemed to be a waiver of any prior or subsequent breach.

7. Binding on Assigns. This Agreement, and all obligations imposed by it, will be binding upon, and all benefits of the Agreement will inure to the benefit of, the Parties and their respective spouses, children, offspring, heirs, trustees, executors, administrators, successors, and assigns.

8. Named Plaintiff Signatories. It is agreed that it would be impractical to have each Opt-in Plaintiff execute this Agreement. Plaintiffs' Counsel will advise each Opt-in Plaintiff of the binding nature of the Release.

9. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such

counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Agreement, which will be binding upon and effective as to all parties, subject to Court approval. A facsimile or scanned copy of a signature of a Party to this Agreement shall be as acceptable as an original.

10. Governing Law. Except to the extent governed by federal law, this Agreement will be governed by the statutes and common law of Tennessee, excluding any that mandate the use of another jurisdiction's laws.

Executed this 14 day of April, 2015.


On behalf of MICROS

Joana M Schurman
Print Name

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Kristy Wilson)

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Darren Moore)

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Kisha Ulysse)

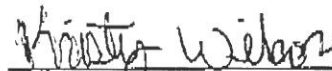
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Executed this 4 day of April, 2015.


On behalf of MICROS

Joanna M. Schurman
Print Name

Executed this 29 day of April, 2015.


Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Kristy Wilson
Print Name (Kristy Wilson)

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Darren Moore)

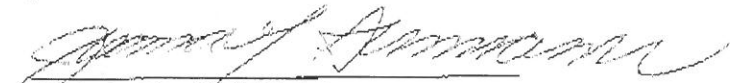
Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Kisha Ulysse)

20858986.1

Executed this 14 day of April, 2015.


On behalf of MICROS


Joanna M. Schurman
Print Name

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Kristy Wilson)

Executed this 30 day of April, 2015.


Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Darren Moore
Print Name (Darren Moore)

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Kisha Ulysse)

20856986.1

Executed this 14 day of April, 2015.


On behalf of MICROS

Kiana M Schermerhorn
Print Name

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs


Print Name (Kristy Wilson)

Executed this ____ day of April, 2015.

Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Print Name (Darren Moore)

Executed this 29th day of April, 2015.


Individually and on behalf of Named
Plaintiffs, and including all Opt-in Plaintiffs

Kisha Ulysse
Print Name (Kisha Ulysse)

20856986.1