

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
RS LEGACY CORPORATION, <i>et al.</i> , ¹	:	Case No. 15-10197 (BLS)
Reorganized Debtors.	:	(Jointly Administered)

STIPULATION RESOLVING THE SISSON AND WILLS CLASS ACTIONS

Peter Kravitz, as Liquidating Trustee (the “*Liquidating Trustee*”) of the RSH Liquidating Trust in connection with the above-captioned reorganized debtors (collectively, the “*Debtors*”) and Michael Sisson (“*Sisson*”) and Jamie Wills (“*Wills*”), on behalf of themselves, more than 40 individual RadioShack Corporation (“*RadioShack*”) store managers and a putative class of store managers consisting of all former non-exempt managers of RadioShack retail stores with an annual sales volume of less than \$750,000 at any time after May 5, 2011 in certain states (collectively, the “*Claimants*”), (collectively, the “*Parties*”) hereby enter into this stipulation (the “*Stipulation*”) and agree as follows:

RECITALS

A. Prior to the filing of the above-captioned bankruptcy cases, Sisson and Wills, as lead Plaintiffs, filed complaints on behalf of themselves and all persons similarly situated against

¹ The Debtors are the following eighteen entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): RS Legacy Corporation (f/k/a RadioShack Corporation) (7710); Atlantic Retail Ventures, Inc. (6816); Ignition L.P. (3231); ITC Services, Inc. (1930); Merchandising Support Services, Inc. (4887); RS Legacy Customer Service LLC (f/k/a RadioShack Customer Service LLC) (8866); RS Legacy Global Sourcing Corporation (f/k/a RadioShack Global Sourcing Corporation) (0233); RS Legacy Global Sourcing Limited Partnership (f/k/a RadioShack Global Sourcing Limited Partnership) (8723); RS Legacy Global Sourcing, Inc. (f/k/a RadioShack Global Sourcing, Inc. (3960); RS Ig Holdings Incorporated (8924); RSIgnite, LLC (0543); SCK, Inc. (9220); RS Legacy Finance Corporation (f/k/a Tandy Finance Corporation) (5470); RS Legacy Holdings, Inc. (f/k/a Tandy Holdings, Inc.) (1789); RS Legacy International Corporation (f/k/a Tandy International Corporation) (9940); TE Electronics LP (9965); Trade and Save LLC (3850); and TRS Quality, Inc. (5417). The address of each of the Debtors is 300 RadioShack Circle, Fort Worth, Texas 76102.

RadioShack in the U.S. District Court for the Northern District of Ohio and the Southern District of New York, respectively, (the “*Class Actions*”). The initial complaints filed by Sisson and Wills in Federal District Court prior to the commencement of this case included claims under state and federal law.

B. The Class Actions alleged that the payment of performance-based bonuses to RadioShack’s non-exempt managers precluded RadioShack from using the “fluctuating work week” method of calculating overtime pay, and that RadioShack should have used the default “time-and-a-half” method of calculating overtime. RadioShack denied that its use of the fluctuating workweek method of overtime compensation was unlawful in such circumstances. Both cases involved issues of first impression in their respective circuits.

The Sisson Case (Northern District of Ohio; Sixth Circuit Court of Appeals)

C. Sisson filed a putative nationwide collective action under the Federal Fair Labor Standards Act, along with pendant state law class claims in the U.S. District Court for the Northern District of Ohio, Case No. 1:12-cv-958, on April 19, 2012. After an amended complaint was filed, RadioShack moved for dismissal of the FLSA claims on June 15, 2012. The District Court tolled all deadlines in the case pending a ruling on RadioShack’s motion to dismiss.

D. The District Court denied RadioShack’s motion to dismiss the Sisson case on March 11, 2013. On the following day, Sisson filed a renewed motion for conditional certification of his FLSA claims, expedited opt-in discovery, and court supervised notice to potential opt-in plaintiffs. RadioShack moved for an order certifying the court’s denial of its motion to dismiss for an interlocutory appeal to the U.S. Sixth Circuit Court of Appeals, and for a stay of the action pending the appeals court decision.

E. The District Court granted RadioShack's motion on August 9, 2013. The order granting the motion was conditioned on the tolling of the limitations period to opt-in during the pendency of the appeal. The appeal is still pending.

F. The U.S. Court of Appeals for the Sixth Circuit accepted the decision for interlocutory review on March 5, 2014. Briefing was completed in the Sixth Circuit on August 5, 2014. Oral argument was conducted on December 4, 2014. The parties were awaiting a ruling from the Sixth Circuit when the Debtors filed their bankruptcy cases on February 5, 2015. The appellate case has been stayed by the operation of Section 362 of the Bankruptcy Code.

The Wills Case (Southern District of New York; Second Circuit Court of Appeals)

G. Wills filed a class action complaint under New York law in the U.S. District Court for the Southern District of New York, Case No. 1:13-cv-02733, on April 24, 2013. RadioShack moved to dismiss the complaint on June 4, 2013, and Wills filed an amended class action complaint on June 25, 2013. RadioShack filed a second motion to dismiss, which Wills opposed.

H. The District Court held oral argument on the dismissal motion on August 22, 2013, and ultimately dismissed the case on November 7, 2013, holding that RadioShack was permitted to use the fluctuating work week method of calculating overtime for its non-exempt store managers.

I. Wills filed a timely notice of appeal to the United States Court of Appeals for the Second Circuit on December 5, 2013. Briefing was complete on July 21, 2014, and the Court held oral argument on October 24, 2014. The parties were awaiting a ruling from the Second Circuit when the Debtors filed their bankruptcy cases on February 5, 2015. The appellate case has been stayed by the operation of Section 362 of the Bankruptcy Code.

Class Proofs of Claim

J. On July 10, 2015, counsel to the Claimants (hereinafter, “Class Counsel”) filed Class Proofs of Claim on behalf of Sisson and Wills [Claim Nos. 7534 and 7515 respectively] in unliquidated amounts (the “*Class Claims*”). In addition, Class Counsel has filed individual proofs of claim for more than 40 former managers (the “*Individual Claims*”, and together with the Class Claims, the “*Claims*”).²

Motion for Class Certification

K. On September 16, 2015, Sisson and Wills filed a motion in this Court for certification of a class consisting of all former non-exempt store managers of RadioShack retail stores with an annual sales volume of less \$750,000 at any time after May 5, 2011 in 26 states (the “*Class Certification Motion*”, at Docket No. 2981).³

L. In connection therewith, Sisson and Wills filed a concurrent motion to apply Bankruptcy Rule 7023, pursuant to Bankruptcy Rule 9014 to the Class Certification Motion (the “*Procedural Motion*”, at Docket No. 2983).

M. On September 22, 2015, Sisson and Wills filed an amended motion for class certification (the “*Amended Motion*”, at Docket No. 3025) for the purpose of withdrawing the Pennsylvania managers from the Class Certification Motion, as a Pennsylvania class of managers

² The Individual Claims were filed on behalf of: Michael Aguilar No. 7632; Jeff Barner No. 7531; Kristina Benitez No. 7549; Eric Blevins No. 7503; David Braden No. 7600; Aaron Cheshier No. 7584; Kenisha Coon No. 7371; Kathryn Dana No. 7627; Matthew Dana No. 7635; Joseph Dennett No. 7609; Anthony Ford, Jr. No. 7630; Melissa Franz No. 7689; Jason Green No. 7519; Robert Heagan No. 7532; Christal Hoard No. 7498; Kurtis Jewell No. 7491; Tyler Jones No. 7506; Lawrence Kaplan No. 7524; Carrie King No. 7631; Joshua LeMay No. 7586; Kelley Lawrence No. 7641; Bryan Martin No. 7576; Cassandra McCray No. 7682; Daurys Neris No. 7475; Ellen M. Pepper No. 7581; Danielle Persico No. 7591; Tonny Pham No. 7261; Joseph Pope No. 7512; Richard Riegel No. 7249; Valerie Robertson No. 7247; Kellie Ruttar No. 7281; Andrew Somma No. 7496; Marcia Streicher No. 7459; Kevin Suits No. 7465; Robert Tiller No. 7446; David Twombly No. 7469; Robert Van Arsdale, III No. 7471; Nathan Walker No. 7638; William Walker No. 7597; Shiloh Watson No. 7604; Jamie Wills No. 7526;

³ The Motion seeks certification of the specified class of former RadioShack store managers in the following states: Alaska, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, and Wisconsin.

had already been certified in the litigation brought by class representative David Verderame.⁴

California managers are also excluded from the putative class because RadioShack did not utilize the “Fluctuating Work Week” method of calculating overtime in its California stores.

N. The Claimants, through Class Counsel, have engaged in informal settlement discussions with the Debtors, and subsequently the Liquidating Trustee, regarding a resolution of the Class Certification Motion, as amended by the Amended Motion and the Procedural Motion.

O. In order to ensure maximum finality, the Parties have agreed to certification of a class of store managers consisting of all former non-exempt managers of RadioShack retail stores with an annual sales volume of less than \$750,000 at any time after May 5, 2011 in all states except Pennsylvania and California (the “*Class*”).

P. Informal discovery provided by the Liquidating Trustee showed that there were approximately 7,666 potential members of the Class. Based upon payroll records made available to Class Counsel, the Claimants estimate that potential claims of the Class may total approximately \$68,382,062 plus potential liquidated damages based upon their interpretation of the law relative to whether the “fluctuating work week” method may be used to calculate overtime pay for RadioShack’s non-exempt managers who were paid annual performance bonuses. On the other hand, the Liquidating Trustee disputes that estimate and believes that the Class does not have any claims based upon his interpretation of that law, and are not entitled to any form of damages, penalties, or any relief whatsoever based on the conduct alleged in the Class Actions. Nevertheless, taking into account the uncertainty and risks inherent in litigation,

⁴ On April 5, 2013, an action styled *David Verderame v. RadioShack Corporation* was filed in the Court of Common Pleas for Philadelphia County. That action was subsequently removed to the United States District Court for the Eastern District of Pennsylvania. On February 10, 2016, this Court entered an order approving the Debtors’ motion to approve a stipulation between the Liquidating Trustee and David Verderame, on behalf of himself and a certified class of Pennsylvania store managers pursuant to Bankruptcy Rule 9019 [Docket No. 3796].

the Liquidating Trustee has concluded that it is desirable and beneficial to fully and finally settle all claims related to the Class Actions.

Q. The Parties expressly acknowledge that this Stipulation is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by the Liquidating Trustee.

R. On October 2, 2015, the Court entered an order [Docket No. 3067] confirming the First Amended Joint Plan of Liquidation of RS Legacy Corporation and its Debtor Affiliates, as Modified (the “*Plan*”). On October 7, 2015, the Effective Date occurred under the Plan, and pursuant to the Plan, the Liquidating Trust was established and substantially all of the Debtors’ remaining assets were transferred to the Liquidating Trust [Docket No. 3114]. As set forth in the RSH Liquidating Trust Agreement, Peter Kravitz is the Liquidating Trustee for the Liquidating Trust.

NOW THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

STIPULATION

1. The above recitals are true and correct and are incorporated herein by reference.
2. This Stipulation is subject to the Court’s approval and shall be of no force and effect unless and until approved by the Court.
3. The Class shall be certified, for settlement purposes only, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 7023. Jason R. Bristol, Esq of Cohen Rosenthal & Kramer LLP, Anthony J. Lazzaro, Esq. of the Lazzaro Law Firm, LLC, and Thomas W. Coffey of Tucker Ellis LLP are hereby designated as Class Counsel. Pursuant to written fee agreements between Sisson and Class Counsel on December 13, 2011, and Wills, and Class Counsel on March 19, 2013, Class Counsel shall be

compensated on the basis of one third of the proceeds paid by the Liquidating Trustee on the allowed claim of the Class.

4. For all claims related to the Class Actions, including any claims for liquidated damages, the Claimants shall have an allowed pre-petition claim of \$41,029,237 (the “*Stipulated Amount*”) on behalf of the entire Class in full and final settlement of the Claims and any other claim which may be asserted by any member of the Class.

5. The Claimants shall withdraw the Class Certification Motion, as amended by the Amended Motion, as moot upon the entry of a final order of court approving this Stipulation.

6. The Procedural Motion, Docket No. 2983, shall be, and hereby is, granted, and Bankruptcy Rule 7023 shall apply to the claims under consideration in this Stipulation, pursuant to the terms of FRBP 9014.

7. Claimants, and not the Liquidating Trustee, shall bear any and all expenses in connection with the Claims including, but not limited to, any notice required to be given to Class members or prospective Class members, all claims administration fees and costs, Class Counsel’s attorneys’ fees and costs, and any incentive payments to Sisson and Wills.

8. This Stipulation shall constitute a full and final resolution of all of the disputes or potential disputes by and between (i) the Liquidating Trustee and (ii) the Claimants, and/or the Class in any way relating to or arising from the Class Actions. By executing this Stipulation, the Claimants acknowledge that they have no other claims or rights related to the Class Actions or the Claims, including any such claims or rights that could have been but were not asserted as part of this Stipulation. Upon entry of a final order of this Court approving this Stipulation, the Claimants and each of their respective successors, assigns, legatees, heirs, and personal representatives shall be deemed to have fully, finally, and forever released and discharged the

Liquidating Trustee, the RSH Liquidating Trust and the Debtors from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of or relating to the Class Actions including, but not limited to claims for failure to pay overtime compensation, claims for liquidated damages, and any and all claims arising out of RadioShack's use of the "fluctuating work week" method of calculating overtime pay.

9. Kurtzman Carson Associates (the "Claims Administrator") shall be designated to administer the allowed claims of the Class as described in this Stipulation. The fees and expenses assessed by the Claims Administrator shall be borne by the Class, and not by the Liquidating Trustee. The Parties stipulate to the following process:

a. All payments made by the Liquidating Trustee in consideration of the allowed claims of the Class shall be paid into an escrow account established by the Claims Administrator ("Total Distribution Amount").

b. From payments made by the Liquidating Trustee, the Claims Administrator shall pay, first, its fees and expenses in accordance with the written agreement between the Claim Administrator and Class Counsel on behalf of the Class.

c. Each of Named Plaintiffs Michael Sisson and Jamie Wills shall receive \$7,500 as an incentive payment for serving as Class Representative. No withholding for taxes shall be made from such payments, and the Claims Administrator shall issue appropriate IRS Forms 1099 in connection with such payments.

d. From payments made by the Liquidating Trustee, the Claims

Administrator shall, after paying its fees and expenses and paying to Sisson and Wills their incentive payments in accordance with paragraph 9(b) and 9(c), deduct a one-third (1/3) share of the Total Distribution Amount and make payment of that share, within ten (10) days of receipt of each payment received from the Liquidating Trustee, directly to each of the three primary Class Counsel firms (Cohen Rosenthal & Kramer, the Lazzaro Law Firm, and Tucker Ellis LLP). The amount paid to each firm shall be consistent with a division of fees agreed upon in writing in advance by all three firms, and as represented to the Claims Administration in a letter signed by all three firms.⁵

e. The remaining funds from payments by the Liquidating Trustee shall be distributed by the Claims Administrator to the Class members, as follows: each Claimant shall receive his or her pro-rata share of the remaining funds, as calculated by the Claims Administrator. The Claims Administrator shall calculate the amount due to each Claimant, in consultation with Class Counsel, based upon the payroll records described in Recital “P” above.

f. Fifty percent (50%) of the payment to each Claimant on account of his or her claim shall be treated as wages subject to required taxes and withholdings; the remaining fifty percent (50%) shall be treated as liquidated damages and/or interest from which no taxes shall be due or withholdings made. At the appropriate time for tax reporting, the Claims Administrator will issue IRS Forms W-2 and 1099 in connection with these payments. Claimants shall each be solely responsible for any amounts due to any taxing authority.

⁵ Local Counsel for the Class is being paid separately by the three primary Class Counsel firms.

10. Within ten (10) days after entry of a final and non-appealable order of this Court approving this Stipulation, the Claimants/Class Counsel shall take all necessary steps to dismiss the Class Actions with prejudice.

11. The Parties represent and warrant to each other that the signatories to this Stipulation have full power and authority to enter into this Stipulation.

12. All representations, warranties, inducements and/or statements of intention made by the Parties that relate to this Stipulation are embodied in this Stipulation, and none of the Parties have relied upon, shall be bound by, or shall be liable for any alleged representation, warranty, inducement or statement of intention that is not expressly set forth in this Stipulation. This Stipulation constitutes the entirety of the Parties' settlement terms. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, as approved by the Court.

13. This Stipulation shall be binding upon, and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and/or assigns.

14. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Stipulation may be executed by facsimile or PDF signatures, and such facsimile or PDF signatures will be deemed to be as valid as an original signature whether or not confirmed by delivering the original signatures in person, by courier or mail, although it is the Parties' intention to deliver original signatures after delivery of facsimile or PDF signatures.

15. To the extent permitted by law, this Stipulation may be pled as a full and complete defense to any action, suit, or other proceedings that may be instituted, prosecuted or attempted against the Liquidating Trustee contrary to this Stipulation.

16. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation, implementation, or enforcement of the terms and provisions of this Stipulation and to adjudicate, if necessary, all disputes in connection herewith.

Signature Page Follows

Dated: _____, 2016
Wilmington, Delaware

/s/ Michael Sisson

Michael Sisson, on Behalf of Himself and a
Putative Class of Store Managers in All States
Other Than Pennsylvania and California Who Did
Not Receive Overtime Pay

/s/ Jamie Wills

Jamie Wills, on Behalf of Himself and a Putative
Class of Store Managers in All States Other Than
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Dated: June 24, 2016
Wilmington, Delaware

Respectfully submitted,

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