

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

XXX

PLAINTIFFS

v

XXX

DEFENDANTS

Case:

JUDGE:

Next Event:

Date:

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT AND RELEASE**

The Parties, through counsel, submit this Memorandum of Law in Support of their Joint Motion for Approval of Settlement Agreement and Release, and state for cause as follow:

BACKGROUND

This matter came upon the complaint of the Plaintiffs for unpaid overtime wages. The Plaintiff's complaint was filed on 09 November 2016. Therein, XXXX alleged that they failed to receive overtime compensation for the following dates:

(XXXX (plaintiff))

May 2 – May 8, 2015

43 hours

August 1 – August 7, 2015	60 hours
August 8 – August 14, 2015	54 hours
February 20 – February 26, 2016	48 hours
February 27 – March 4, 2016	46 hours
May 4 – May 10, 2016	55 hours
May 11 – May 17, 2016	52 hours
May 18 – May 24, 2016	49 hours

(XXXX (plaintiff 2))	
March 26 – April 8, 2016	47 hours
April 20 – April 26, 2016	42 hours
April 27 – May 3, 2016	49 hours
May 18 – May 24, 2016	51 hours
June 8 – June 14, 2016	45 hours

Service on Defendants was perfected in December 2016. Defendant's filed their answer and counterclaim on 21 December 2016. The Counterclaim was dismissed, without prejudice, in January of 2017.

The parties entered into settlement negotiations beginning 11 January 2017. Plaintiffs informally dismissed their representing attorneys on 17 January 2017. XXXX again notified their attorneys of their desire to proceed *pro se* on 27 January 2017. A final settlement agreement was reached on 27 January 2017. See, Exhibit 1, *Final Settlement Agreement*.

The settlement agreement includes a review of all pay periods spanning two years prior to the filing of the action, to the final pay check before Plaintiffs quit the company. Each settlement agreement includes and accompanying review of pay periods, and extra overages for that period. The parties then met and confirmed which hours were accurate, and which were not. This resulted in the increase of certain hours, and the reduction of others. Regardless, and out of an abundance of caution, all hours were paid at double time in consideration of FLSA requirements that unpaid overtime wages be doubled¹. Additionally, the resulting payment is considerably in excess of the complaint, and reflects the actual hours worked for XXXX.

¹ This comment is included because several changes in favor of XXXX resulted in the increase of hours on non-overtime work weeks.

ARGUMENT

Courts review FLSA settlements to ensure a fair and reasonable resolution of a bona fide dispute. See *Duprey v. Scotts Co. LLC*, 30 F. Supp. 3d 404, 407 (D. Md. 2014) (noting that the Court looks at the settlement as a “reasonable compromise of disputed issues”). “Although the Fourth Circuit has not addressed the factors to be considered in approving FLSA settlements, ‘district courts in this circuit typically employ the considerations set forth by the Eleventh Circuit in *Lynn's Food Stores*.’” *Id.* at 407-08 (citation omitted).

“The settlement must ‘reflect [] a fair and reasonable resolution of a bona fide dispute over FLSA provisions,’ which includes a finding with regard to (1) whether there are FLSA issues actually in dispute, (2) the fairness and reasonableness of the settlement in light of the relevant factors from Rule 23, and (3) the reasonableness of the attorneys' fees, if included in the agreement.” *Id.* at 408. “These factors are most likely to be satisfied where there is an ‘assurance of an adversarial context’ and the employee is ‘represented by an attorney who can protect [his] rights under the statute.’” *Id.* (citation omitted).

There is a bona fide dispute here. “In deciding whether a bona fide dispute exists as to a defendant's liability under the FLSA, courts examine the pleadings in the case, along with the representations and recitals in the proposed settlement agreement.” *Id.* The Parties are in disagreement over a key issue – whether the Plaintiffs should have been treated as employees or independent contractors under the FLSA, and the possible application of other affirmative defenses, raised by Defendants. Additionally, Defendants dispute that any FLSA violation was willful, and Defendants dispute any liability beyond the FLSA.

Not only is there a bona fide dispute, the parties’ settlement of \$20,000.00, which includes claimed damages, liquidated damages, costs, and attorney’s fees, is fair and reasonable. In

determining whether a settlement is fair and reasonable for purposes of approving claims under the FLSA, courts evaluate many factors, including ““(1) the extent of discovery that has taken place; (2) the stage of the proceedings, including the complexity, expense and likely duration of the litigation; (3) the absence of fraud or collusion in the settlement; (4) the experience of counsel who have represented the plaintiffs; (5) the opinions of [] counsel ...; and (6) the probability of plaintiffs’ success on the merits and the amount of the settlement in relation to the potential recovery.”” *Saman*, 2013 WL 2949047, at *3 (quoting *Lomascolo*, 2009 WL 3094955, at *10).

The parties exchanged discovery regarding Plaintiffs’ wage and hour records during the settlement negotiations, and prior, when opposing counsel was on the case. Defendants did not take the depositions of the Plaintiffs. By avoiding extensive depositions and discovery operations, resources that otherwise would have been consumed by the litigation were made available for settlement, thereby reducing the risk and uncertainties of the outcome of litigation for both parties.

The Settlement Agreement provides that Plaintiffs will receive a total payment of \$20,000.00, broken down as follows:

XXX (plaintiff 1)	XXX (plaintiff 2)
Settlement: \$7500	Settlement: \$7500
Attorney Fees: \$2500	Attorney Fees: \$2500

Each Plaintiff’s settlement amount was calculated individually, based upon each Plaintiff’s alleged amount of unpaid overtime, as calculated on the hour sheets attached to the respective settlement agreements (See, Exhibit 1, *Settlement Agreements*, hour attachments).

A multiplier of 2.0 was applied to each Plaintiff’s claimed amount, in order to compensate him for all of the liquidated damages available under the Fair Labor Standards Act (“FLSA”).

Defendant’s counsel has received the \$20,000 and placed the same in his IOLTA trust account. Upon approval of this settlement motion, the amounts will be dispersed to the Plaintiffs in accordance with the above break-down (which mirrors the settlement agreements). Any

additional attorney fees or payments stemming from this case are strictly the responsibility of XXX, and no provisions beyond what is included in the settlement itself, is included for payment of those fees.

The agreed payment represent 100% of the actual damages and FLSA liquidated damages claimed by Plaintiffs, as calculated by both Plaintiffs and Defendants. In this instance, a week by week review was conducted, and any corrections due as a result of inaccuracy in job or work assignments were negotiated and resolved at the settlement table.

As mentioned previously, the amounts paid represent considerably more than was originally requested by Plaintiffs in this case. This settlement enables all parties to avoid the unnecessary accumulation of litigation costs and attorney's fees. The settlement is the product of good-faith bargaining between the parties, with advice of legal counsel (initially and throughout the first part of the settlement conference), and through earnest negotiation regarding all hours worked.

Finally, the amount allocated for attorneys' fees and expenses is fair and reasonable. Combined, the Plaintiffs are receiving \$5000 towards the cost of this litigation. Although their attorneys are asking for more money, given the early stage of this litigation (discovery has not started, and the only litigation was that of the counterclaim, which was on the papers), and the lack of any attorney meetings or settlement conferences, \$5000 is a fair and equitable amount to offer the Plaintiffs in this case.

The settlement reached by the parties is fair and reasonable as the parties resolved this matter in a thorough, comprehensive and honest agreement, with full disclosure by the parties. Presenting evidence at trial would have consumed tremendous amounts of time and resources and demanded substantial judicial resources. This trial would have been costly for all parties and would have further deferred closure. Any judgment would likely have been appealed, thereby extending the duration of the litigation and exposing the parties to unnecessary risk. This settlement, on the other hand, will enable the parties to avoid anticipated risks, burdens and

expenses in establishing their respective claims and defenses. Therefore, all parties agree that the settlement is fair and reasonable and should be approved by the Court.

CONCLUSION

For all the above reasons, the parties request that the Court approve the settlement of Plaintiffs' FLSA claims as fair and reasonable and dismiss this case, all parties bearing their own costs, with prejudice.

Date: 03 February 2017

Respectfully submitted,

FOR THE DEFENDANTS:

FOR THE PLAINTIFFS:

Sean R. Hanover, Esq.

XXX

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