

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

**RICHARD C. BYRD; WILLIE J. MASON, )  
JR.; AENEAS L. PETTWAY, )**

*Plaintiffs,* )

v. )

**THE CITY OF SELMA, )**

*Defendant.* )

**CASE NO.: 2:21-cv-00190-WS-B**

**JOINT MOTION FOR APPROVAL OF FLSA SETTLEMENT**

Plaintiffs Richard C. Byrd, Willie J. Mason, Jr., and Aeneas L. Pettway and Defendant the City of Selma (collectively referred to as “the Parties”) hereby jointly move the Court to approve the proposed settlement negotiated by the Parties of this action brought by Plaintiffs pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*

**I. INTRODUCTION**

The Parties seek approval of a settlement of the FLSA claims that Plaintiffs assert against the City. The terms of the settlement negotiated by the Parties are a reasonable, adequate, and fair compromise of a *bona fide* dispute regarding whether, and to what extent, Plaintiffs are entitled to overtime compensation under the FLSA.

**II. BACKGROUND**

**A. Statement of Claims**

Plaintiffs claim they were wrongly classified as exempt in their positions as Assistant Fire Marshals/Fire Investigators for the City. They claim they are entitled to overtime compensation for time worked over 40 hours per week. The City contests these allegations and contends Plaintiffs were not

wrongly classified as exempt and are not entitled to overtime compensation under the FLSA. In their Complaint, Plaintiffs allege the City unlawfully failed to pay them overtime compensation, including for all on-call hours, since March 2019. Plaintiffs also assert claims of retaliation under the FLSA, and breach of contract claims related to the City's Education Incentive Program. The Parties have reached a settlement on all claims in this case.

**B. Summary of Settlement**

1. *A bona fide dispute exists.*

*A bona fide* dispute exists between the Parties regarding whether the City of Selma is liable to Plaintiffs under the FLSA. There is a *bona fide* dispute regarding whether Plaintiffs are wrongly classified as exempt in their positions as Assistant Fire Marshall/Fire Investigators and thus whether they are entitled to overtime compensation for all hours worked over 40 per work week. There is also a *bona fide* dispute regarding the amount, if any, of overtime compensation owed to Plaintiffs assuming they are wrongly classified as exempt. The Parties dispute the amount of overtime time allegedly spent working and the amount of compensation owed for the alleged overtime worked.

Plaintiffs' Counsel have analyzed and evaluated the merits of the claims against the City of Selma. Based upon their analysis and evaluation of a number of factors, and recognizing the substantial risk of continued litigation, including the possibility that the case, if not settled now, might not result in any recovery or might result in a recovery that is less favorable than the one provided by this settlement (or a recovery that would not be obtained for several years), Plaintiffs' counsel are satisfied that the terms and conditions of the settlement are fair, reasonable and adequate and that it is in the best interest of Plaintiffs.

2. *Summary of the Settlement.*

The Parties engaged in settlement negotiations and exchanged sufficient information as to allow all parties to make educated and informed decisions regarding settlement. These negotiations led to a

settlement whose terms are contained in a Confidential Settlement Agreement and General Release And Waiver Of All Claims (“Confidential Settlement Agreement”), which the Parties have sought leave to file under seal or to provide the Court *in camera* by filing a Motion for Leave to File Confidential Settlement Agreement Under Seal or Provide by *In Camera* Review.

Under the Settlement Agreement, the City of Selma has agreed to pay Plaintiffs a sum that includes full payment for all overtime wages Plaintiffs claim they are owed. The City also agreed to contribute to Plaintiffs’ pension accounts commensurate with the overtime hours that they were compensated for, and the City agreed to reclassify the Fire Investigator position as non-exempt under the FLSA. In addition, the City of Selma has agreed to pay an agreed sum of attorney’s fees and costs to Plaintiffs’ counsel. In exchange for the payments provided for under the Confidential Settlement Agreement, Plaintiffs agree to release all claims, including but not limited to all federal and state wage-and-hour claims under federal and state law which may have arisen from the beginning of time through the date on which a final judgment is entered dismissing this case. The Parties stipulate and agree that the terms of this settlement set forth in the Settlement Agreement constitute a fair and reasonable resolution of a *bona fide* dispute.

### **III. ANALYSIS**

#### **A. The Settlement is Reasonable and Fair.**

Pursuant to the case law of this Circuit, judicial review and approval of this settlement is necessary to give it final and binding effect. *See Lynn’s Food Stores, Inc. v. U.S. Dept. of Labor*, 679 F.2d 1350 (11th Cir. 1982). As the Eleventh Circuit held in *Lynn’s Food*:

“[t]here are only two ways in which back wage claims arising under the FLSA can be settled or compromised by employees. First, under section 216(c), the Secretary of Labor is authorized to supervise payment to employees of unpaid wages owed to them . . . . The only other route for compromise of FLSA claims is provided in the context of suits brought directly by employees against their employer under section 216(b) to recover back wages for FLSA violations. When employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness.”

*Id.* at 1352-53.

Before approving an FLSA settlement, the court must scrutinize it to determine if it is “a fair and reasonable resolution of a bona fide dispute.” *Id.* at 1354-55. If the settlement reflects a reasonable compromise over issues that are in dispute, the Court may approve the settlement “in order to promote the policy of encouraging settlement of litigation.” *Id.* at 1354. In determining whether the settlement is fair and reasonable, the Court should consider the following factors:

- (1) the existence of fraud or collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
  
- (4) the probability of Davis success on the merits;
- (5) the range of possible recovery; and
- (6) the opinions of the counsel.

*See Leverso v. South Trust Bank of Ala., Nat. Assoc.*, 18 F.3d 1527, 1531 n.6 (11th Cir. 1994); *Hamilton v. Frito-Lay, Inc.*, No. 6:05-cv-592-Orl-22JGG, 2007 U.S. Dist. LEXIS 10287, at \*2-3, (M.D. Fla. Jan. 8, 2007); *see also Hill v. Florida Industrial Elec., Inc.*, No. 6:06-cv-915-Orl-31JGG, 2007 U.S. Dist. LEXIS 9498, at \*6, (M.D. Fla. Feb. 9, 2007); *Pacheco v. JHM Enterprises, Inc., et al.*, No. 6:05cv-1247-Orl-JGG, at \*4 (M.D. Fla. Apr. 12, 2006). The Court should keep in mind the strong presumption in favor of finding a settlement fair. *Hamilton*, 2007 U.S. Dist. LEXIS at \* 2-3; *see also Cotton v. Hinton*. 559 F.2d 1326, 1331 (5th Cir. 1977).

**B. All of the Relevant Criteria Support Final Approval of the Settlement.**

Courts have found no fraud or collusion where both parties were represented by counsel and the amount to be paid under the settlement appears fair. *See Helms v. Central Fla. Reg. Hosp.*, No. 6:05-cv-383-Orl-22JGG, 2006 U.S. Dist. LEXIS 92994, at \*11-12 (M.D. Fla. Dec. 21, 2006). In this case, each party was represented by counsel. Plaintiffs are represented by W. Lee Gresham, III at Heninger Garrison Davis, LLC, and the City of Selma is represented by Courtney C. Morman of Hill Hill Carter Franco Cole

& Black, P.C. All counsel involved in this case have extensive experience in litigating the types of FLSA claims brought by Plaintiffs. Each counsel was obligated to, and did, vigorously represent their clients' rights.

The overall settlement amount also takes into account the likelihood of success and the amounts Plaintiffs might recover if they prevail on their claims. The complexity, expense, and length of future litigation also militate in favor of this settlement. Plaintiffs and the City continue to disagree over the merits of the claims asserted by Plaintiffs. The Parties agree that the outcome of the case is uncertain and that if this matter were to be litigated, both Parties would be forced to engage in costly, protracted litigation. This settlement, therefore, is a reasonable means for all Parties to minimize future risks and litigation costs.

There has been sufficient investigation and exchange of information to allow counsel and the Court to act intelligently in this matter. The parties exchanged information during discovery and continued to voluntarily exchange information on an informal basis during their negotiations. In agreeing to the proposed settlement, the Parties had sufficient information and had conducted an adequate investigation to allow them to make an educated and informed analysis and conclusion.

The range of possible recovery also shows that settlement is appropriate in this case. In light of the costs of further litigation and the uncertainty regarding whether Plaintiffs will recover any amounts, the proposed settlement is a fair and reasonable resolution to this dispute.

The last element the Court should evaluate in determining fairness of the settlement is the reasonableness of the proposed attorneys' fees. *See Helms v. Central Fla. Reg. Hosp.*, No. 6:05-cv-383-Orl-22JGG, 2006 U.S. Dist. LEXIS 92994, at \*6-7, (M.D. Fla. Dec. 21, 2006); *Strong v. BellSouth Telecomms., Inc.*, 137 F.3d 844, 849-50 (5th Cir. 1998). If "the plaintiff attorneys' fee is agreed upon separately and without regard to the amount paid to the Plaintiffs, then, unless the settlement does not appear reasonable on its face or there is reason to believe that the Davis recovery was adversely affected

by the amount of the fees paid to her attorney, the Court [should] approve the settlement without separately considering the reasonableness of the fee to be paid to Plaintiffs' counsel." *Bonetti v. Embarq Management Company*, 715 F.Supp.2d 1222, 1228 (M.D. Fla. 2009).

The agreement regarding plaintiffs' attorney's fees and costs was reached separately and without regard to the amount paid to Plaintiffs under the settlement. Plaintiffs' claims were not compromised by any deduction of attorney's fees, costs or expenses.

**A. CONCLUSION**

The Settlement terms are fair, reasonable, and adequate. Accordingly, the Parties respectfully request that the Court grant the Parties' Joint Motion for Approval of FLSA Settlement.

**WHEREFORE**, Plaintiffs and Defendant respectfully request that the Court enter an Order:

- A. Approving the settlement of this action based on the terms set forth in the Parties' Confidential Settlement Agreement;
- B. Retaining jurisdiction to enforce the terms of the Confidential Settlement Agreement;
- C. Providing for the entry of a Final Order dismissing this case with prejudice with respect to all claims; and
- D. Providing for any other relief that this Court deems just and appropriate.

Respectfully submitted this 5th day of January, 2023.

*/s/ Lee Gresham (with permission)*

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