

**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 LEAVE TO FILE CONFIDENTIAL SETTLEMENT
AGREEMENT UNDER SEAL OR PROVIDE FOR *IN CAMERA* REVIEW**

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, through their undersigned counsel, for leave to file their Confidential Settlement Agreement and Release under seal or to provide it to the Court for *in camera* review. In support of this motion, the Parties state the following:

I. The Parties’ Confidential Settlement Agreement

Plaintiffs brought this action against The City of Selma pursuant to Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, on behalf of themselves asserting claims for unpaid overtime and retaliation under the FLSA, and breach of contract. Following months of negotiations, the Parties have reached an agreement settling the case and have filed a Joint Motion for Approval of FLSA Settlement seeking the Court’s approval of their settlement. As set forth in that motion, the Parties agree this settlement is a fair and reasonable resolution of a *bona fide* dispute. The Parties have memorialized the terms of their settlement in a Confidential Settlement Agreement and Release (“Settlement Agreement”), which they have agreed should

remain confidential. Based on the Parties' agreement to keep the Settlement Agreement confidential, they seek leave to make it available to the Court for *in camera* review or, alternatively, to file it under seal so that it does not become part of the official court record accessible by the public.

II. The Settlement Should Remain Confidential and, If Necessary, Be Made Available for *In Camera* Review or Filed Under Seal

In determining whether the settlement under the Parties' Settlement Agreement is reasonable, fair, and adequate, the Parties request that the Court review the Settlement Agreement *in camera* or alternatively grant the Parties leave to file it under seal.

A. Grounds for Confidentiality

Confidentiality is a material term of the Settlement Agreement and constitutes part of the consideration provided in exchange for the sum that The City of Selma has agreed to pay. Whether the Settlement Agreement is inspected *in camera* or filed under seal, the public interest embodied in the FLSA is still protected by the Court's review of all its terms in order to ensure that the settlement is full and fair and that it reflects a reasonable compromise of a *bona fide* dispute.

B. The Parties Should Be Allowed to Provide the Settlement Agreement for *In Camera* Review.

While the courts are required to supervise settlements of FLSA claims, there is no compulsory process associated with this requirement. *See generally Lynn's Food Stores, Inc. v. V.S.*, 679 F.2d 1350, 1353 (11th Cir. 1982). For this reason, courts can allow parties to keep settlement agreements confidential and submit them to the court for *in camera* review without having to file the agreements with the clerk. Doing so serves the policies underlying the FLSA as well as those promoting the settlement of litigation. *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) (*citing Lynn's*

Food Stores, 679 F.2d. at 1354).

C. The Parties Should Alternatively Be Allowed to File the Settlement Agreement Under Seal.

Although the Parties do not believe that filing the Settlement Agreement under seal is necessary to ensure proper FLSA supervision, they will do so if this Court determines that it is necessary and appropriate. In considering requests to file documents under seal, courts apply a balancing test weighing the presumption of public access to public documents against interests favoring nondisclosure. *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1314-1315 (11th Cir. 2001); *see also Medley v. American Cancer Soc'y*, No. 10- civ-3214, 2010 U.S. Dist. LEXIS 75098, at *1 n.1 (S.D.N.Y. July 23, 2010) ("Because the terms of the [FLSA] settlement agreement are confidential, it will be filed under seal"). In this case, any public interest in allowing public access to the terms of the Settlement Agreement is outweighed by the interests of the Parties in efficiently and fairly resolving this case by means of the confidential Settlement Agreement.

As with submission for *in camera* review, filing the Settlement Agreement under seal provides for effective judicial supervision over the Parties' settlement of this case.

WHEREFORE, Plaintiffs Richard C. Byrd, Willie J. Mason, Jr., and Aeneas L. Pettway and Defendant the City of Selma respectfully request that the Court enter an order granting the Parties leave to provide their confidential Settlement Agreement and Release to the Court for *in camera* review or to file it under seal.

Respectfully submitted this 5th day of January, 2023.

/s/ Lee Gresham (with permission)

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