

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AUDENZIO AIUTO, NATHANIEL
PALMER, and CHENZERIA
WRIGHT, on behalf of themselves
and all others similarly situated,

Plaintiff,

-against-

PUBLIX SUPER MARKETS, INC.,

Defendant.

Case No. 1:19-CV-04803-LMM

ORDER AND STIPULATED JUDGMENT

This case is before the Court for consideration of the Parties' Joint Motion for Entry of Stipulated Judgment Approving FLSA Settlement Approval (the "Joint Motion"). The Court held a hearing on March 25, 2021 and heard from the parties on this Motion. There were no objections.

The Court reviews an FLSA settlement to ensure it is fair, adequate, and reasonable. *See Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dep't of Labor, Employment Standards Admin., Wage & Hour Div.*, [679 F.2d 1350, 1355](#) (11th Cir. 1982) ("Other than a section 216(c) payment supervised by the Department of Labor, there is only one context in which compromises of FLSA back wage or liquidated damage claims may be allowed: a stipulated judgment

entered by a court which has determined that a settlement proposed by an employer and employees, in a suit brought by the employees under the FLSA, is a fair and reasonable [resolution] of a bona fide dispute over FLSA provisions.”).

Having reviewed the Joint Motion and the Settlement Agreement and Limited Release of Claims (the “Agreement”) executed by the parties resolving the named and opt-in Plaintiffs’ FLSA claims asserted in this case, the Court finds that the terms of the settlement, including the amount of attorney’s fees, costs, and settlement administration fees to be paid from the settlement, reflect a fair, adequate, and reasonable compromise of a *bona fide* dispute, and demonstrate a good-faith intention by the Parties to fully and finally resolve those claims.

With respect to the payment to the putative collective, based on the submissions of the Parties, the Court finds that the amount is fair, adequate, and reasonable. Defendant denies liability, denies Plaintiffs’ claimed amount of overtime hours worked, opposes Plaintiffs’ proposed damages calculation methodology, denies willfulness as to any FLSA violations under [29 U.S.C. § 255](#), and contends that it acted in good faith such that liquidated damages should not be assessed. Notwithstanding those denials, the gross settlement amount exceeds the total overtime wages, plus 100% liquidated damages, for an average 52 hours worked every overtime week (using the DOL Wage and Hour Division’s

enforcement assumption of 40/52 weeks worked without leave days per year) within the default FLSA statute of limitations period, if Plaintiffs succeeded in proving those overtime hours worked but Defendant succeeded in securing a half-time damages calculation method whereby weekly pay is divided by all hours worked and overtime premiums are only owed at .5 that regular rate. The agreed-upon settlement amount is the product of a good faith compromise between the Parties on disputed issues of law and fact reached through arm's length negotiations by experienced counsel with an experienced mediator.

Regarding the terms of settlement, the Court approves the settlement terms as reasonable, including approval of reversion of unclaimed funds to Defendant under Section 6(E).¹

The Court further finds that the attorney's fees and costs provided in the Agreement are reasonable. The payment of attorney's fees represents one-third (33 1/3%) of the total settlement amount, notwithstanding that Plaintiffs' counsel's contingency fee agreement provides for a 40% contingency fee agreement.

Plaintiffs' counsel have litigated this case successfully without any payment to date,

¹ The Court approves this reversion under the particular circumstances of this case: the settlement amount was based on a formula tied to the amount of hours worked and overtime owed to each plaintiff, the total amount paid to each plaintiff provided most of what they were requesting, plaintiffs were to be mailed a check without having to submit further paperwork, and the time allowed for plaintiffs to cash their checks was sufficiently long.

took the risk of potentially no payment with an adverse result, and advanced costs in the amount of \$46,091.87 on behalf of the Plaintiffs for which the Court awards payment from settlement as reasonable. An award of attorneys' fees as a percentage of the common fund is acceptable in these circumstances and is justified here. *See, e.g., Martinez v. Woodvalley Landscape*, No. 1:20-cv-04011- LMM, [2021 U.S. Dist. LEXIS 30908](#), at *4 (N.D. Ga. Feb. 17, 2021) (collecting cases supporting fees at one-third of common settlement fund in FLSA collective actions).²

In addition to this Motion, the parties have two other pending motions: Plaintiffs' Motion for Reconsideration of Sanctions Order [105] and Defendant's Motion for Attorney Fees [88] regarding that same sanctions order. Because the Court's approval of the settlement and dismissal of the case moots the motion for reconsideration, the Court takes no position on the merits of this motion. The Court does note, however, that the issues raised in the motion for reconsideration may have some merit such that the Court is unable rule on this motion on the same day

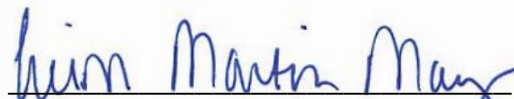
² The parties have disclosed that they negotiated separate settlements that provide \$7,500 payments to each of the three named Plaintiffs in exchange for their separate General Release Agreement releasing non-FLSA claims. The Court finds that under the circumstances of this case, these other settlements have not created conflicts of interest that influenced the FLSA settlement. All circumstances related to these settlements were disclosed to the Court and thoroughly discussed during the hearing. Because these are non-FLSA settlements, no court approval is required of them.

the settlement is approved.³ In addition, Defendant has withdrawn its Motion for Attorneys Fee.

Therefore, the Parties' Joint Motion is hereby **GRANTED**, the settlement of the Parties in the Settlement Agreement is hereby **APPROVED** by entry of stipulated **JUDGMENT**, and the terms of the Parties' Settlement Agreement are hereby incorporated into this Order. The Court hereby enters final **JUDGMENT** in this case and there being no reason to delay entry of this final judgment, the Clerk of the Court is ordered to enter this final judgment forthwith pursuant to Rule (54)b of the Federal Rules of Civil Procedure and terminate the file.

This Court having entered **JUDGMENT**, this case is **DISMISSED WITH PREJUDICE**. The Court **RETAINS JURISDICTION** over this matter for the purposes of enforcing the terms of the Parties' Settlement Agreement. Plaintiffs' Motion for Reconsideration of Sanctions Order [105] and Defendant's Motion for Attorney Fees [88] are **DENIED AS MOOT**.

SO ORDERED this 29th day of March, 2021.



The Honorable Leigh Martin May
U.S. District Judge

³ The Court provided the parties with the option of delaying dismissal of the case so that the Court could reach the merits of the Motion for Reconsideration. Both parties insisted that they preferred the Court to move forward with approving the settlement and dismissing the case.