

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DAVID GILLARD, JACLYN
STRAMIELLO, and TROY PATE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Case No. 8:16-cv-81-T-27MAP

FLEETMATICS USA, LLC,

Defendant.

ORDER

BEFORE THE COURT is the Joint Renewed Motion for Entry of Order Approving Settlement and Authorization of Notice of Settlement and Notice of Filing Modified Collective Action Settlement Agreement Pursuant to Order dated September 20, 2016 (Dkt. 68),¹ and Plaintiff Counsel's Unopposed Motion for Approval of Attorney's Fees and Memorandum of Law (Dkt. 69).

The Court has reviewed the Collective Action Settlement Agreement (Dkt. 68-1) and finds that a bona fide dispute existed between the parties under the FLSA that has been amicably settled.² The Settlement Agreement creates a total common fund in the amount of \$2,102,250.00. This includes payments to employees for wages and liquidated damages, modest service payments to the Named Plaintiffs and Melissa Edwards in an amount of less than 1% of the total common fund, and

¹The previous settlement agreement was not approved because it contained a confidentiality provision, (Dkt. 61-1 at 11-12), a non-disparagement provision, (*Id.* at 13 ¶F), a limitation on assisting or encouraging others with claims against the Defendant, (*Id.*), and a provision for attorney's fees and costs at twenty-five percent of the Maximum Settlement Common Fund, (*Id.* at 3), that had not been approved. The offending provisions have been removed, (Dkt. 68-1), and Plaintiffs have moved for approval of attorney's fees, (Dkt. 69).

² Fleetmatics vigorously defended the application of the half time rate, the application of the statute of limitations, and intended to challenge conditional collective action certification. (Feldman Decl., ¶ 7). Notwithstanding, a settlement was reached after extensive arms-length negotiation including two full day mediations before an experienced mediator. (*Id.* ¶ 17). And, the attorney's fees were negotiated after the parties agreed on a gross settlement fund. (*Id.* ¶ 12).

attorney's fees to class counsel in an amount of 25% of the total common fund.³

The service payments to the Named Plaintiffs and Melissa Edwards are for providing valuable information, their time and effort, and their participation in the two mediations and in settlement. (Dkt. 61 at 5, 13, 14). The total amount of the service payments represents less than 1% of the total common settlement fund and are justified. *See Hosier v. Mattress Firm, Inc.*, No. 3:10-cv-294-J-32JRK, 2012 WL 2813960, at *5 (M.D. Fla. 2012), report and recommendation adopted, No. 3:10-cv-294-J-32JRK (M.D. Fla. 2012) (approving reasonable service payments representing less than 1% of the settlement fund). Thus, the service payments will be approved.

When a common settlement fund is created, the attorneys are entitled to a reasonable attorney's fee from the fund. *Camden I Condominium Assoc., v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991) (rejecting the lodestar approach in common fund cases). The majority of fees in common fund cases that fall between 20-25% are reasonable. *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011). "Where the requested fee exceeds 25%, the court is instructed to apply the twelve *Johnson* factors."⁴ *Id.* Because 25% is generally recognized as a reasonable fee, the requested fee of 25% should also be accepted as reasonable. *See e.g. id.* (affirming award that applied the *Johnson* factors only to the portion of the fee that exceeded the 25% benchmark). And, even applying the *Johnson* factors, the percentage requested is reasonable considering the amount involved and the results, the amount of time required, and Plaintiff's counsel's experience in

³The motion for fees states the gross settlement amount is \$2,102,500.00. (Dkt. 69). However, the agreement signed by the parties states the gross settlement amount is \$2,102,250.00. (Dkt. 68-1). Accordingly, the Court's review of the fee requested is based on the amounts stated in the Collective Action Settlement Agreement.

⁴The *Johnson* factors are as follows: "(1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case;(5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances;(8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases." *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir.1974)).

litigating FLSA collective actions.⁵ (Feldman Decl., ¶¶ 4-6, 8, 12, 16). Accordingly, the requested fee of 25% of the common fund of \$2,102,250.00 will be approved.

Upon review, the terms of the Collective Action Settlement Agreement (Dkt. 68-1) are fair, just, and in accordance with the FLSA and are approved. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982). The Notice of Settlement to be provided Putative Class Members (Dkt. 61-2) and the Notice of Settlement to be provided the Opt-In Plaintiffs (Dkt. 61-3), which incorporate the Collective Action Settlement Agreement, are approved with the following revision. The parties are directed to correct the typographical error on the Claims Administration Form(s) to reflect that this matter is in the Tampa Division.

Per the agreement of the parties, this action is conditionally certified as a collective action for purposes of settlement. (*See* Dkt. 61 at 4, 16).

Accordingly, the Joint Renewed Motion (Dkt. 68) and the Motion for Approval of Attorney's Fees (Dkt. 69) are **GRANTED**. The Settlement Agreement, including the amount of attorney's fees, the amount of service payments, appointment of class counsel, and appointment of a third party administrator, and the Authorization of Notice of Settlement to the Putative Class and the Opt-In Plaintiffs are **APPROVED**. This matter is conditionally certified as a collective action for purposes of settlement. This case is **DISMISSED with prejudice**. The file shall remain closed.

DONE AND ORDERED this 3rd day of November, 2016.


JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record

⁵The settlement is greater than settlements in other FLSA cases in which Plaintiff's counsel has been involved (Feldman Decl., ¶ 8, Dkt. 69-1).