UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO 19-10163-CIV-MARTINEZ-OTAZO-REYES

PEDRO J. CABRE, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
COTTON COMMERCIAL USA, et al.,	)
	)
Defendants.	)
_____	)

JOINT MOTION FOR APPROVAL OF SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT COTTON COMMERCIAL USA

Pursuant to this Court's April 30, 2020, Order (Dkt. 61), and in accordance with the Settlement Agreement between Plaintiffs and Defendant Cotton Commercial USA ("Cotton") (collectively, the "Parties"), Plaintiffs and Defendant Cotton hereby request that this Court approve the Settlement Agreement between the Parties, as the Parties agree that the Settlement Agreement is a fair, adequate, and reasonable resolution of a bona fide dispute.

I. BACKGROUND

On September 17, 2019, Plaintiffs filed the instant action arising out of their employment by Defendants Cotton Commercial USA Inc. ("Cotton"), Superior Staffing & Payroll Services ("SSPS"), VCDP Companies Inc. ("VCDP"), and Daniel Paz in the fall of 2017. *See* Dkt. 1. Plaintiffs filed their First Amended Complaint on December 9, 2019. Dkt. 31. Defendant Cotton responded to the Complaint on December 23, 2019. Dkt. 35. Because Defendants SSPS, VCDP,

and Daniel Paz failed to respond to the Complaint or otherwise appear, the Clerk of Court entered a Clerk's Default on March 20, 2020. Dkt. 57.[1]

The 18 Plaintiffs who have opted-in to the case allege that they were employed by defendants in 2017 to perform clean-up work at two hotel sites in the Florida Keys—the Hyatt Residence Club Key West, Windward Pointe ("Hyatt Key West") and the Hilton Key Largo Resort ("Hilton Key Largo")—following Hurricane Irma. The job duties of the seventeen plaintiffs who were employed at these sites as laborers included but were not limited to: tearing out and putting up sheet rock; hauling fallen trees; collecting trash and debris; and power-washing outside hotel walls. Dkt. 31, ¶¶ 1, 29. The job duties of the one plaintiff employed as a Coordinator included but were not limited to recruiting workers, receiving and transmitting paperwork including timesheets, and troubleshooting problems for workers. Dkt. 31, ¶ 31.

For the duration of the clean-up projects, all of the Plaintiffs routinely worked over 40 hours in a workweek. Dkt. 31, ¶ 40. However, the Plaintiffs were not paid the legally required minimum wage for all hours worked, in violation of the FLSA and the Florida Minimum Wage Act. Dkt. 31, ¶¶ 40, 45, 52, 58. Plaintiffs were also not paid the legally required overtime wage for all hours worked over 40 in a workweek, in violation of the FLSA. Dkt. 31, ¶¶ 40, 46, 53, 59. In addition, laborer Plaintiffs were promised pay at a rate of $10-11 per hour, and the Coordinator plaintiff was promised pay at rate of $24 per hour, but Defendants failed to compensate Plaintiffs at these promised rates of pay in violation of their binding agreement. Dkt. 31, ¶¶ 33, 50, 57.

In addition, when certain Plaintiffs confronted Defendants about their failure to compensate the Plaintiffs in accordance with the law and with their agreement on hourly wage

[1] Plaintiffs intend to file a Motion for Default Judgment against defendants SSPS, VCDP, and Daniel Paz within 45 days of submission of the instant motion.

rates, the Defendants threatened to send immigration officials to the Plaintiffs' homes or to call immigration authorities. Dkt. 31, ¶¶ 41, 90-91. Defendants also refused to pay the Plaintiffs in response to these repeated complaints. *Id.* Such actions violate the FLSA's anti-retaliation provisions.

Plaintiffs filed a Motion for Collective and Class Action Certification on December 9, 2019, which Cotton opposed. Dkts. 32, 36. Although a hearing was held on the Plaintiffs' Motion on February 28, 2020, the Court deferred a ruling to give Plaintiffs and Cotton an opportunity to attempt to resolve the case through a settlement. *See* Dkt. 47. On April 30, 2020, the Parties notified the Court that they had reached a settlement in principal. Dkt. 59. The Court thereafter issued an Order directing the Clerk to deny all pending motions as moot and directing the Parties to file the instant Motion within 45 days. Dkt. 61.

II. TERMS OF THE PROPOSED SETTLEMENT

The proposed monetary settlement with Cotton calls for total payment of $95,000.00. Of this amount, $50,000.00 represents back pay and liquidated damages for unpaid wages as well as damages for unlawful retaliation, and $45,000.00 represents reasonable attorneys' fees and expenses. *See* Ex. 1 (Settlement Agreement), ¶ 2.1. The $50,000.00 in damages to be paid to the Plaintiffs will be allocated among the Plaintiffs by Plaintiffs' counsel, based on Cotton's timekeeping records. *Id.*, ¶¶ 2.2, 2.4. Cotton has also agreed to pay $45,000 in attorneys' fees and costs; what this means is that the Plaintiffs will not pay any contingency fee or bear any of the costs of the litigation. *Id.*, ¶ 2.1.

Cotton has agreed to provide payment to Plaintiffs' Counsel in accordance with the Settlement Agreement within fourteen (14) calendar days of Cotton's receipt of both this Court's Order approving the Settlement Agreement and a 1099 tax form from McGillivary Steele Elkin

LLP. *Id.*, ¶ 2.3. In exchange, Plaintiffs have agreed to release Cotton from any claims under federal or state law arising specifically out of the work performed at the Hyatt Key West or Hilton Key Largo for the time period from September 17, 2016, through the date the Agreement is filed with the Court, to the extent such claims can be released as a matter of law. *Id.*, ¶¶ 3.1, 3.3.

Significantly, Plaintiffs have not released any claims for additional damages against defendants SSSPS, VCDP, and Daniel Paz. *Id.* Further, the Settlement Agreement does not contain a confidentiality provision.

Should this Court approve the Settlement Agreement, the effective date of the Agreement will be the date that the instant Motion is filed with the Court, or June 12, 2020. *Id.*, ¶ 1.7.

III. THE COURT SHOULD APPROVE THE PARTIES' SETTLEMENT

A. Standard for Judicial Approval of FLSA Settlements

When employees bring a private action for violations of the FLSA, the parties must present any proposed settlement to the district court, "which may enter a stipulated judgment after scrutinizing the settlement for fairness." *Lynn's Food Stores, Inc. v. United States,* 679 F.2d 1350, 1353 (11th Cir. 1982). *See also Crankshaw v. NCL Corp.*, 2018 U.S. Dist. LEXIS 426788, *7 (S.D. Fla. Mar. 14, 2018). Courts are required to scrutinize proposed FLSA settlements to determine whether they represent "a fair and reasonable resolution of a bona fide dispute." *Lynn's Food Stores,* 679 F.2d at 1354-55. If a settlement reflects "a reasonable compromise over the 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.

The decision to approve an FLSA settlement of a bona fide dispute as fair and reasonable lies within the trial court's discretion. *Id.* at 1350. In exercising that discretion, courts in the

Eleventh Circuit consider the following factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, risk, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the strength of the plaintiff's case and the probability of plaintiff's success on the merits; (5) the range of possible recovery; and (6) the counsel's opinion. *Silva v. Miller*, 547 F. Supp. 2d 1299, 1304 (S.D. Fla. 2008) (citing *Leverso v. South Trust Bank of Ala., Nat. Assoc.*, 18 F.3d 1527, 1531 n.6 (11th Cir. 1994)). "[R]eview of the FLSA settlement ensures that the plaintiff's recovery is a reasonable approximation of the wages [] not paid over the course of years within the statute of limitations, while accounting for other relevant considerations as the facts of a particular case require." *Silva*, 547 F. Supp. 2d at 1304.

FLSA cases "also require judicial review of the reasonableness of counsel's legal fees to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement." *Jimenez v. Pizzerias, LLC*, 2017 U.S. Dist. LEXIS 129820, *6 (S.D. Fla. Aug. 14, 2017) (citing *Silva v. Miller*, 307 Fed. Appx. 349, 351 (11th Cir. 2009)).

There is a strong presumption in favor of finding a settlement fair. *Arce v. Doral Costa Servs., LLC*, 2017 U.S. Dist. LEXIS 181969, *2 (S.D. Fla. Oct. 31, 2017) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)).

B. The Settlement is Fair, Adequate, and Reasonable

As set forth below, each of the factors analyzed by courts in this Circuit in determining whether to approve an FLSA settlement weigh in favor of settlement approval in this case. *See Silva*, 547 F. Supp. 2d at 1304. The Parties' Settlement Agreement should therefore be approved.

1. *The Existence of Fraud or Collusion Behind the Settlement*

"In determining whether there was fraud or collusion, the Court examines whether the settlement was achieved in good faith through arm's-length negotiations, whether it was the product of collusion between the parties and/or their attorneys, and whether there was any evidence of unethical behavior or want of skill or lack of zeal on the part of class counsel." *Berman v. GM LLC,* 2019 U.S. Dist. LEXIS 200947, *10-11 (S.D. Fla. Nov. 15, 2019) (quoting *Canupp v. Sheldon,*2009 U.S. Dist. LEXIS 113488, *9 (M.D. Fla. Nov. 23, 2009)). Here, the risk of fraud or collusion is minimal, as the Parties have a bona fide dispute and both Plaintiffs and Cotton are represented by experienced counsel who, in the "adversarial context of a lawsuit," negotiated "a reasonable compromise of disputed issues." *Lynn's Food Stores,* 679 F.2d at 1354. This factor therefore weighs in favor of approval of the Parties' settlement agreement.

2. *The Complexity, Risk, Expense, and Likely Duration of the Litigation*

The complexity, expense, and likely duration of the litigation weigh in favor of approval of the Settlement Agreement. Litigating Plaintiffs' FLSA and state law claims through trial will be fact-intensive and time consuming. This is particularly so given that Plaintiffs have alleged Cotton is a joint employer, which Cotton vigorously disputes, and the issue of joint employment "involves fact intensive inquiries that need to be developed." *See Dawkins v. Picolata Produce Farms, Inc.,* 2005 U.S. Dist. LEXIS 28789 (M.D. Fla. Nov. 15, 2005). *See also Aguilar v. United Floor Crew,* 2014 U.S. Dist. LEXIS 166468, *8 (S.D. Fla. Nov. 26, 2014) ("The inquiry into joint employment for FLSA purposes is flexible and fact-intensive."). *See, also e.g.,* Ex. 1, ¶¶ 1.2, 1.4; Dkt. 35 at 14.

In addition, in the event that this Court grants Plaintiffs' Motion for Collective and Class Action Certification and notice is sent out to all eligible putative plaintiffs, the litigation will be

lengthy and could involve a number of additional plaintiffs. Further, continuing to engage in discovery will be drawn out and expensive for the Parties given that, among other things, the Parties will need to engage a translator for almost all depositions and/or discovery responses. Similarly, many of the plaintiffs no longer live in Florida; at least one plaintiff no longer lives in the United States. As such, avoiding the substantial expenditure of time and resources involved in continuing to litigate this case is in both Parties' interests.

3. *The Stage of the Proceedings and the Amount of Discovery Completed*

Settlement is appropriate at this stage of the litigation; this factor also weighs in favor of settlement approval. Courts favor early settlement, as long as the settlement is not so early that a party does not have sufficient information with which to negotiate. *See Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324-25 (S.D. Fla. 2005).

In this case, at the time of settlement, the Parties had not yet engaged in formal discovery, other than to serve written discovery requests. The Parties had, however, engaged in a limited exchange of information in order to facilitate settlement negotiations, including the exchange of payroll and timekeeping records. Had the parties continued to litigate this case, discovery would have been extensive and costly, as noted above, given the disputed legal and factual issues, the risk that this case would be certified as a collective and/or class action, and the fact that the Parties would need to take numerous depositions that would require travel and/or that a translator be present. In addition, the Parties were still awaiting a decision on Plaintiffs' Motion for Collective and Class Action Certification at the time of settlement, but at the request of the Parties the Court had agreed to defer a decision for 60 days to permit the Parties to engage in meaningful settlement discussions. *See* Dkt. 47. Although the parties initially requested mediation to help them facilitate settlement, the Parties were able to reach an agreement prior to

the scheduled mediation conference. *See* Dkt. 59. Thus, the Parties worked diligently to limit litigation costs and effectuate settlement prior to continuing discovery, without a formal settlement conference, and prior to the Court's ruling on Plaintiffs' certification motion.

As such, because the settlement was reached relatively early in the litigation and without the need for formal mediation, the parties had not yet incurred the costs mediation or the costs of engaging in discovery, significant briefing on summary judgment or pre-trial motions, and trial. Further, as the clean-up projects at the Hyatt Key West and Hilton Key Largo concluded in 2017, the plaintiffs' damages are not increasing as the litigation continues. Indeed, should litigation continue, the only thing that will increase are the parties' attorneys' fees and costs. As such, this factor weighs in favor of approval of the parties' Settlement Agreement.

4. *The Strength of the Plaintiffs' Case and Their Probability of Success on the Merits*

Under this factor, courts consider "the likelihood and extent of any recovery from the defendants absent…settlement." *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1249 (S.D. Fla. 2016) (quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1349)). A plaintiff's "likelihood of success at trial is weighed against the amount and form of relief contained in the settlement." *Id.* (quoting *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014)). Here, the Parties dispute both the facts and the law. Although both Plaintiffs and Cotton believe their legal positions are strong, continuing to litigate this matter—particularly given the dispute over whether Cotton is Plaintiffs' joint employer, explained *infra*—would be extremely costly and presents litigation risk to both parties.

First, the Parties strongly disagree as to whether Cotton is a joint employer of the Plaintiffs. Plaintiffs urge that Cotton is the Plaintiffs' employer, and Cotton has admitted that it managed the Hyatt Key West and Hilton Key Largo work sites. *See* Dkt. 39 at 5. Cotton has also

admitted that it controlled the Plaintiffs' conditions of employment by, among other things, providing workers and managers with required safety equipment, vests, and timekeeping paperwork bearing Cotton's logo. *Id.* In addition, Cotton directly employed Plaintiffs' supervisors. *Id.* However, Cotton counters that Plaintiffs were employed not by Cotton but instead by SSPS, the staffing company engaged by Cotton to provide labor at the clean-up sites. *See* Dkt. 21 at 2. This will not be an easily resolved issue as, like this Court has explained, the "inquiry into joint employment for FLSA purposes is flexible and fact-intensive." *Aguilar v. United Floor Crew*, 2014 U.S. Dist. LEXIS 166468, *8 (S.D. Fla. Nov. 26, 2014). *See also Kingsley v. Tellworks Communs., LLC*, 2017 U.S. Dist. LEXIS 92619, *53 (N.D. Ga. May 24, 2017) ("the question of integrated or joint employment status is a fact-intensive analysis that involves weighing numerous factors and making determinations based on the totality of the circumstances").

The Parties also dispute the number of hours that they worked for which they have not been paid, as well as the rate of pay they are owed. Plaintiffs argue, as set forth in their Amended Complaint, that they worked approximately 66-77 hours per week, for multiple weeks, without minimum wage or overtime pay. *See* Dkt. 31, ¶¶ 44-46, 49-53, 57-59, 102. Cotton, on the other hand, relies on time and attendance records to argue that Plaintiffs worked significantly fewer hours than alleged in their Amended Complaint, including at least one week at each project location where Plaintiffs worked only 9-11 hours total. Similarly, the Parties disagreed as to the hourly rate of pay owed to the Plaintiffs. The Plaintiffs argue that they should be paid at the higher, promised hourly rate of $10, $11, or $24 per hour (depending on work location), whereas Cotton argues that Plaintiffs are only owed the minimum wage and overtime wages set forth under federal and state law. Thus, the legitimacy of each party's claims will turn on whether a

jury believes that Cotton's timekeeping records are reliable and accurate, as well as Plaintiffs' ability to prove that Cotton promised they would be paid at the higher, hourly wage rate.

In addition, the Parties dispute the appropriateness of class and collective action certification. Plaintiffs moved for class and collective action certification in December 2019. Dkt. 32. Currently, there are 18 Plaintiffs who have opted-in to the case; Plaintiffs allege, however, that there are approximately 50 putative plaintiffs who would be included in any class that is certified and for whose unpaid wages Cotton would eventually be liable. *See* Dkt. 32 at 18. Cotton opposed the Plaintiffs' motion for certification. *See* Dkt. 36. A contested hearing on Plaintiffs' motion was held on February 28, 2020, and the Court deferred ruling on the Motion to permit the Parties to engage in settlement discussions. *See* Dkt. 47. Thus, by continuing to litigate this case, both parties risk that the Court rules in the other party's favor as to class and collective action certification.

Further, the Parties disagree as to whether Cotton acted in good faith such that it is not liable for the maximum amount of liquidated damages under the FLSA. For example, Cotton may have a strong argument against liquidated damages, as Cotton alleges it provided SSPS and the other defendants with compensation owed to the Plaintiffs and for SSPS to distribute to Plaintiffs. Plaintiffs, of course, disagree that this is sufficient to demonstrate good faith. The parties also disagree as to whether Cotton was involved with, or had knowledge of, any of retaliatory actions taken against a number of employees who sought to obtain the wage payments they were owed. Similarly, the Parties disagree as to whether Cotton's actions in violating the law were willful, entitling the Plaintiffs to a three-year statute of limitations under the FLSA. If the Plaintiffs are unable to prove that Cotton willfully violated the law, there are at least 3

plaintiffs who would not be entitled to damages on their FLSA claims. *See* Dkt. 48 (Consents to Sue filed on March 11, 2020).

Accordingly, although the Plaintiffs believe their legal arguments are strong and that they are likely to succeed on the merits of their federal and state law claims against Cotton, they nevertheless have litigation risk in proceeding with the case that could greatly impact the amount of backpay, if any, owed to them. This factor therefore weighs in favor of settlement approval.

5. *The Range of Possible Recovery*

Although Plaintiffs believe that they have alleged sufficient facts to demonstrate violations of the FLSA and Florida law on a class and collective action basis, the Plaintiffs are nevertheless cognizant of the legal and factual difficulties they face in this litigation. For example, there is no doubt that continued litigation and trial would be costly, arduous and complex. This settlement, on the other hand, makes monetary relief available to the Plaintiffs for violations which occurred years ago in a prompt and efficient manner. Importantly, the Plaintiffs' damages are not increasing as the litigation continues, as the clean-up projects at the Hyatt Key West and Hilton Key Largo concluded in 2017. For this same reason, should a collective and/or class action be certified, it may be difficult to locate additional class members given the transient nature of the plaintiffs' jobs and the length of time that has passed since the clean-up projects concluded.

In addition, given the potential challenges Plaintiffs would face going forward in proving that Cotton—as opposed to the remaining Defendants in the lawsuit—was Plaintiffs' employer and did not act willfully or in good faith, the Plaintiffs' recovery from Cotton in this settlement is significant. If Cotton is held not to be Plaintiffs' employer, it will owe Plaintiffs' nothing. Similarly, if Cotton demonstrates that it acted in good faith, it will not owe liquidated damages

equal to the backpay to which Plaintiffs are entitled. In addition, as noted above, if Cotton's violations are not found to be willful, Plaintiffs are entitled only to a two-year statute of limitations under the FLSA; accordingly, certain opt-in Plaintiffs would no longer be eligible to assert FLSA claims. Further, even after approval of the Settlement Agreement, Plaintiffs still retain the right to seek the additional damages owed for the asserted federal and state law violations from the remaining defendants. *See* Ex. 1, ¶ 1.5.

Here, the awards to each of the 18 opt-in Plaintiffs range from approximately $1,941 to $3,935 and were calculated based on the hours recorded in Cotton's timekeeping records. *See* Ex. 2 ("Faulman Decl."), ¶ 3. Under the Settlement Agreement, Plaintiffs are receiving a total of $50,000 in backpay and liquidated damages. Ex. 1, ¶ 2.1. Per Cotton's timekeeping records and damages calculations, Plaintiffs would be owed approximately $32,350 in backpay alone if paid at the minimum wage rate, or approximately $45,280 if paid at the promised wage rate. Faulman Decl. ¶ 4. In addition, at the time Plaintiffs filed their Statement of Claim (when there were only 15 opt-in plaintiffs), Plaintiffs estimated that the backpay wages owed to the opt-in plaintiffs totaled just $37,792. *See* Dkt. 19 (Plaintiffs' Statement of Claim) (backpay damages estimated to be $6,480 in minimum wage at the Florida minimum wage rate and $28,312 overtime wages for 15 opt-in plaintiffs).Thus, one way to look at the Settlement is that the Plaintiffs will receive over 100% of the backpay that Cotton believes the Plaintiffs are owed based on their records and likely over the total amount of backpay that even Plaintiffs believe they are owed, plus an additional amount as liquidated damages. Another way to look at the Settlement is that the Plaintiffs will receive approximately 55% percent of the total backpay owed to them, with an equal amount as liquidated damages, based upon Cotton's records and at the promised wage rate.

Faulman Decl. ¶ 6. Some Plaintiffs will also receive an additional amount as damages for retaliation. *Id*. Given these calculations, this factor weighs in favor of settlement approval.

6. *Counsel's Opinion*

The opinion of experienced counsel should be afforded substantial consideration by the Court. *See, e.g., Holmes v. Cont'l Can. Co.,* 706 F.2d 1144, 1149 (11th Cir. 1983); *Pettway v. Am. Cast Iron Pipe Co.,* 576 F.2d 1157, 1215 (5th Cir. 1978) ("The trial court is entitled to take account of the judgment of experienced counsel for the parties" in assessing the fairness of a proposed settlement). Here, counsel for both parties have weighed the respective risks in proceeding with the litigation and have extensively analyzed Cotton's potential liability based on damage calculations prepared by both McGillivary Steele Elkin LLP and Cotton, using Cotton's own timekeeping records and assuming that Plaintiffs were not paid for any hours at all, which may not prove to be the case should the Parties proceed with discovery. Faulman Decl. ¶ 7. Based on their experience, counsel for both parties believes that this settlement is fair, reasonable, and adequate.

Further, upon reaching a tentative settlement agreement with Cotton, Plaintiffs' counsel communicated the terms of the proposed settlement to the Plaintiffs on May 5, 2020, via letter sent by U.S. Mail, email, and/or WhatsApp message. Faulman Decl. ¶ 8. This letter included an explanation of their potential recovery versus recovery under the settlement, as well as the amount of damages other Plaintiffs would receive under the settlement. *Id.* Plaintiffs were requested to respond by no later than May 22, 2020, with any objections to the terms of the settlement. *Id.* While a number of Plaintiffs contacted Plaintiffs' Counsel with questions regarding the Settlement Agreement, no Plaintiff voiced or otherwise submitted an objection to the terms of the settlement. As such, each Plaintiff determined that the certainty of settlement at

the present time outweighs the costs of going forward against Cotton. Faulman Decl. ¶ 9. Thus, this factor weighs in favor of settlement approval.

C. The Court Should Approve the Agreed, Reasonable Attorneys' Fees Included in the Settlement Agreement

The FLSA provides that the "court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). Courts have broad discretion to determine what fees are reasonable in FLSA cases. *See Martinec v. Party Line Cruise Co.,* 350 F. App'x 406, 407 (11th Cir. 2009). "In the Eleventh Circuit, the calculation of a reasonable attorney's fees award begins with the number of hours reasonably expended on a case multiplied by a reasonable hourly rate. *Arce,* 2017 U.S. Dist. LEXIS 181969 at *4 (citing *Loranger v. Stierheim,* 10 F.3d 776, 781 (11th Cir. 1994)). "To determine a reasonable hourly rate, the Court considers the skill, experience, and reputation of the lawyers involved." *Id.*

As set forth in the Declaration of Sara L. Faulman, Plaintiffs' Counsel have extensive experience litigating multi-plaintiff wage-and-hour actions on behalf of low wage workers nationwide. Faulman Decl. ¶¶ 23-41. In addition, Plaintiffs' Counsel took this case on a contingency basis, with the understanding that if there was no recovery in the lawsuit then there would also be no entitlement to fees. Faulman Decl. ¶ 10. Further, Plaintiffs' Counsel agreed to advance all expenses necessary to litigate this case. *Id.*

As of May 15, 2020, Plaintiffs' Counsel had incurred upwards of $133,475 in fees for over more than 500 hours of work, based on reasonable billing rates in the Southern District of Florida. Faulman Decl. ¶¶ 12-14; Faulman Decl. Exs. A-C. *See also Cardoza v. Mario's Cleaning Servs.,* 2018 U.S. Dist. LEXIS 41990 (S.D. Fla. Mar. 14, 2018) (finding hourly rates of $350 per hour for attorney with 18 years of employment law experience and $250 per hour for

attorneys with 4-6 years of legal experience reasonable); *Bacallao v. Zidell*, 2016 U.S. Dist. LEXIS 167379 (S.D. Fla. Nov. 3, 2016) (awarding an attorney practicing since 2009 an hourly rate of $350 in an FLSA overtime matter); *De Armas v. Miabraz, LLC*, 2013 U.S. Dist. LEXIS 116381, *3-4 (S.D. Fla. Aug. 16, 2013) (finding hourly rates of $300-350 an hour reasonable for attorney's practicing labor and employment law for the last 7-9 years); *Ismael v. Plantation Key Operating Co., LLC,* 2019 U.S. Dist. LEXIS 20355, *2-3 (S.D. Fla. Feb. 1, 2019) (finding $450 an hour in FLSA case to be reasonable and citing *CCAventura, Inc. v. Weitz Co.,* 2008 U.S. Dist. LEXIS 7214 (S.D. Fla. 2008), for the proposition that a $400 per hour rate for an eighth year associate is appropriate). In addition, since that time, Plaintiffs have continued to incur additional fees and expenses in connection with resolving the case with Cotton, including through the drafting of the Settlement Agreement and instant Motion for Approval and in communicating with Plaintiffs regarding the Settlement. Faulman Decl. ¶ 22.

Plaintiffs' Counsel has agreed, however, to accept only $45,000 in attorneys' fees and expenses. Ex. 1, ¶ 2.1. This represents a more than 69% discount from the hourly fees actually incurred through May 15, 2020. Faulman Decl. ¶ 15. *See, e.g., Bermudez v. McLean,* 2018 U.S. Dist. LEXIS 136421, *4 (S.D. Fla. Aug. 10, 2018) (court need not determine if the hourly rate used by plaintiffs' counsel to calculate the lodestar is reasonable and if a slightly lower rate should be used because "the amount counsel has agreed to accept to facilitate a settlement is less than the amount they would have recovered" under either rate). Plaintiffs' Counsel advised all Plaintiffs of the specific dollar amount of fees and costs to be awarded pursuant to the Settlement Agreement, and no Plaintiff has objected to this award. Faulman Decl. ¶ 16. Significantly, because Cotton has agreed to pay $45,000 in attorneys' fees and costs, Plaintiffs will not pay any contingent fee nor bear any costs of the litigation. *See Arce*, 2017 U.S. Dist. LEXIS 181969 at *3

(a court may deem a fee award unfair "if a plaintiff is sacrificing a portion of his unpaid wages recovery to fund plaintiffs' attorneys' fees"). Cotton does not oppose Plaintiffs' request for fees nor contest their reasonableness.

Cognizant of the relatively small number of Plaintiffs and putative class members, as well as the challenges of representing Plaintiffs who move frequently, many of whom do not speak English as their first language, Plaintiffs' Counsel litigated this case as efficiently as possible. Nevertheless, Plaintiffs' Counsel expended considerable time and resources to litigate the case, including briefing and arguing their Motion for Collective and Class Action Certification and in preparing damage calculations. Faulman Decl. ¶¶ 18, 21. This case has also involved significant paralegal work and time, as all communications with the Plaintiffs required translation into Spanish and vice versa. Faulman Decl. ¶ 38.

Accordingly, the fees and expenses agreed to by the Parties are therefore reasonable, and this Court should approve the Agreement, including the full amount of fees set out therein, as fair and reasonable.

IV. CONCLUSION

As set forth above, the Parties' Settlement Agreement reflects an arm's length negotiation by counsel and is a fair, adequate, and reasonable settlement of a bona fide dispute between Plaintiffs and Cotton. Accordingly, the Parties respectfully request that this Court enter an Order approving the Parties' Settlement Agreement, attached hereto as Exhibit 1, and enter the Parties' Stipulation of Dismissal With Prejudice, attached hereto as Exhibit 3. Pursuant to the Parties' Settlement Agreement, any such Order will not affect the Plaintiffs' ability to continue pursuing claims against the remaining Defendants in this case for the additional amounts they allege to be owed to them.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), I hereby certify that counsel for the movant has made reasonable efforts to confer with the affected Defendant in a good faith effort to resolve the issues raised in the motion. Counsel for Defendant Cotton Commercial USA, Inc. joins the Plaintiffs in submitting the instant motion.

Dated: June 15, 2020

Respectfully submitted,

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