

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

BRIAN CAMPBELL, \*

Plaintiff, \*

v. \* Civil Action No. RDB-14-621

CENTER FOR SOCIAL CHANGE, \*  
INC. \*

Defendant. \*

\* \* \* \* \*

**MEMORANDUM OPINION**

Plaintiff Brian Campbell (“Mr. Campbell”) has filed this action against Defendant Center for Social Change, Inc. (“the Center”) for alleged violations of the anti-retaliation provision of the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3), and the Maryland Wage Payment and Collection law, Md. Ann. Code, Labor & Employment §§ 3-501 *et seq.*; wrongful discharge; and defamation. Currently pending before this Court is the parties’ Joint Motion to Approve Settlement (ECF No. 18) and Joint Motion for Reconsideration and to Seal the Joint Motion to Approve Settlement, construed as a Motion to Seal (“Joint Motion to Seal”) (ECF No. 19). The parties’ submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2014). For the reasons that follow, the Joint Motion to Approve Settlement (ECF No. 18) is GRANTED and the Joint Motion to Seal (ECF No. 19) is GRANTED.

## BACKGROUND

The parties have stipulated to the following facts. In December 2013, Plaintiff Brian Campbell received a jury summons from the Circuit Court for Baltimore County. Joint Mot. to Approve Settlement Ex. 1, 1, ECF No. 18-1. At this time, Mr. Campbell was employed as an “IP Specialist” by Defendant Center for Social Change. *Id.* On January 7, 2014, he was selected as a juror for a four-week trial, but the Center did not pay him during the duration of his service. *Id.* Believing this failure to pay to be a violation 29 C.F.R. 541.602,<sup>1</sup> Mr. Campbell’s attorney wrote to the Center to demand payment. *Id.* When Mr. Campbell returned to work after the conclusion of the trial, the Center paid him the unpaid wages at issue, but then terminated him for “serious performance issues.” *Id.* at 1-2.

As a result of his termination, Mr. Campbell filed the present action, asserting claims under the anti-retaliation provision of the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3), and the Maryland Wage Payment and Collection Law, Md. Ann. Code, Labor & Employment §§ 3-501 *et seq.*, as well as wrongful discharge and defamation. *See* Compl. ¶¶ 13-21, ECF No. 1. The Center answered Mr. Campbell’s Complaint, arguing that it fired him for legitimate, non-retaliatory motives.<sup>2</sup> Def.’s Answer, 6, ECF No. 6. The parties commenced discovery, but quickly realized that comprehensive discovery would be lengthy

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<sup>1</sup> 29 C.F.R. 541.602, a regulation promulgated under the authority of the Fair Labor Standards Act, protects jury duty-related employee absences.

<sup>2</sup> In particular, the Center alleges that Mr. Campbell was frequently late completing his assignments, and that he “misrepresented that his work was complete in response to quality assurance inquiries.” Joint Mot. to Approve Settlement Ex. 1, at 2. According to the Center, Mr. Campbell’s alleged performance deficiencies endangered the Center’s various government contracts. *Id.* at 2-3. Although the Center claims that it was aware of these issues before Mr. Campbell served on the jury, the severity of his failings became clear during his service. *Id.* at 3.

and expensive given Mr. Campbell's allegations and the Center's defenses. Joint Mot. to Approve Settlement Ex. 1, at 3. At that point, Mr. Campbell had been unable to find employment, thus he was further motivated to settle with the Center.<sup>3</sup> *Id.* at 4.

The parties reached a settlement in which the Center would pay Mr. Campbell a total sum of \$90,000 in return for his release of all claims.<sup>4</sup> Joint Mot. to Approve Settlement Ex. 2, 1-2, ECF No. 18-2. The Center's insurer does not provide coverage of legal fees, thus the settlement agreement did not include a specific provision for attorney's fees.<sup>5</sup> Joint Mot. to Approve Settlement Ex. 1, at 7.

Although the parties dispute whether this Court's approval is required, they filed the pending Joint Motion to Approve Settlement (ECF No. 18) to achieve finality in their dispute. The parties subsequently filed the Joint Motion to Seal (ECF No. 19).

## STANDARDS OF REVIEW

### **A. Approval of Fair Labor Standards Act Settlements**

The Fair Labor Standards Act ("the FLSA") protects workers from the low wages and long hours that may arise from the significant inequality in bargaining position between an employer and the employees. The requirements of the FLSA are thus mandatory, generally precluding the parties from bargaining, modifying, or waiving the terms by contract

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<sup>3</sup> In addition, significant disputes of material fact remained, thereby precluding both parties from filing motions for summary judgment. *Id.* The only options, according to the parties, were a trial or a settlement. *Id.*

<sup>4</sup> Mr. Campbell's expert witness calculated the maximum potential recovery under the FLSA provision of liquidated damages to be \$203,656, plus attorneys' fees. Joint Mot. to Approve Settlement Ex. 1, at 4-5. The settlement sum thus is approximately one-half of that maximum figure. For tax purposes, the total sum is divided into back pay (\$45,000) and compensatory damages (\$45,000). *See* Joint Mot. to Approve Settlement Ex. 2, at 1.

<sup>5</sup> According to the parties, they understood that Mr. Campbell's counsel was to receive a portion of the award, pursuant to the terms of a separate retainer agreement between Mr. Campbell and his counsel. Joint Mot. to Approve Settlement Ex. 1, at 7-8.

or settlement. *See Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 706 (1945). An exception to this general rule is court-approved settlement. *See Saman v. LBDP, Inc.*, No. DKC-12-1083, 2013 WL 2949047, at \*2 (D. Md. June 13, 2013). A court may approve settlement under the FLSA only if the “settlement reflects a ‘reasonable compromise of disputed issues’ rather than a ‘mere waiver of statutory rights brought about by an employer’s overreaching.’” *Id.* (quoting *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)).<sup>6</sup>

## **B. Sealing of Court Records**

The “public and the press” possess a “qualified right of access to judicial documents,” as judicial proceedings are “presumptively open to public scrutiny.” *Doe v. Public Citizen*, 749 F.3d 246, 265 (4th Cir. 2014); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). A court, however, may seal the specified documents if “competing interests” dwarf public access concerns. *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984); *see also Kianpour v. Restaurant Zone, Inc.*, No. DKC-11-0802, 2011 WL 3880463, at \*1 (D. Md. Aug. 30, 2011). In the Fourth Circuit, parties moving to seal must satisfy the requirements of Local Rule 105.11 and provide the court with “(a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection.” *See Kianpour*, 2011 WL

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<sup>6</sup> The United States Court of Appeals for the Fourth Circuit has not yet provided clear direction as to whether court approval is mandated for cases subject to dismissal under Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure. In contrast, the United States Court of Appeals for the Eleventh Circuit *does* require court approval for all FLSA settlements. *Lynn’s Food Stores*, 679 F.2d at 1354. As comprehensively canvassed in *Duprey v. Scotts Co. LLC*, No. PWG-13-3496, 2014 WL 2174751, at \*2 n.2 (D. Md. May 23, 2014), this Court has applied the guidance of *Lynn’s Food Stores* without explicitly holding that court-approval is required. *See, e.g., Gionfriddo v. Jason Zink, LLC*, No. RDB-09-1733, 2012 WL 1077765 (D. Md. Mar. 29, 2012). In this case, the parties requested court approval, thus it is not necessary to settle address this issue.

## ANALYSIS

### **A. Joint Motion to Approve Settlement**

The first issue to be addressed is the parties' Joint Motion to Approve Settlement. The Fourth Circuit has not yet determined the parameters of FLSA settlement approval, but "district courts in this circuit typically employ the considerations set forth by the Eleventh Circuit in *Lynn's Food Stores*." *Saman*, 2013 WL 2949047, at \*3 (internal citations omitted). Overall, the settlement must "reflect[] a fair and reasonable resolution of a *bona fide* dispute over FLSA provisions." *Saman*, 2013 WL 2949047, at \*3. To that end, a court first must determine that FLSA issues are actually in dispute. *See id.*; *see also Duprey*, 2014 WL 2174751, at \*2. The court is directed to examine each parties' pleadings, as well as the representations made in the pending settlement agreement. *See Duprey*, 2014 WL 2174751, at \*3; *see also Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 08-1310, 2009 WL 3094955, at \*16-17 (E.D. Va. Sept. 28, 2009). If such a dispute exists, then the court will consider the "fairness and reasonableness of the settlement in light of the relevant factors in [Federal Rule of Civil Procedure] Rule 23,"<sup>7</sup> as well as the "reasonableness of the attorneys' fees, if included in the

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<sup>7</sup> Specifically, the pertinent factors are:

- (1) the extent of discovery that has taken place;
- (2) the stage of the proceedings, including the complexity, expense and likely duration of the litigation;
- (3) the absence of fraud or collusion in the settlement;
- (4) the experience of counsel who have represented the plaintiffs;
- (5) the opinions of [] counsel . . . ;
- and (6) the probability of plaintiffs' success on the merits and the amount of the settlement in relation to the potential recovery.

*Saman*, 2013 WL 2949047, at \*3 (quoting *Lomascolo*, 2009 WL 3094955, at \*10).

agreement.”<sup>8</sup> *Duprey*, 2014 WL 2174751, at \*2 (internal citations omitted).

In this case, the parties’ settlement agreement demonstrates a fair and reasonable resolution of a *bona fide* dispute under the FLSA. First, the pleadings and representations establish a *bona fide* FLSA dispute. Mr. Campbell argued that, among other charges, the Center had retaliated against him for serving on a jury, thereby violating the anti-retaliation provision of the FLSA, 29 U.S.C. § 215(a)(3). In response, the Center presented a non-retaliatory motive for the termination and provided substantial documentation to support its claim. The parties agree that Mr. Campbell required substantial discovery to carry his burden of proving that the Center’s non-retaliatory was mere pretext. *See* Joint Mot. to Approve Settlement Ex. 1, at 9. Such discovery would unlikely be necessary if a *bona fide* dispute did not exist.

Second, the settlement agreement reflects a fair and reasonable resolution of this dispute under the relevant Rule 23 factors. At the time of settlement, the parties had conducted extensive and costly discovery, including the answering of interrogatories, producing requested documents, and ESI discovery. *See id.* Although the parties anticipated further discovery was needed for trial preparation, they had a reasonable appreciation of the major issues and the maximum potential damages at the time of settlement. *See id.* at 9-10.

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<sup>8</sup> Under 29 U.S.C. § 216(b), “the wronged employee should receive his full wages plus the [liquidated damages] penalty without incurring any expense for legal fees or costs.” *Silva v. Miller*, 307 F. App’x 349, 351 (11th Cir. 2009) (quoting *Maddrix v. Dize*, 153 F.2d 274, 275-76 (4th Cir. 1946). Although contingent fees are permitted, such fees disregard the FLSA-mandated damages and exclusion of attorneys’ fees. A district court thus may abuse its discretion if it does not conduct an independent evaluation of the reasonableness of the fee. *Lyle v. Food Lion, Inc.*, 954 F.2d 984, 988 (4th Cir. 1992). The court must consider whether the fees (1) were negotiated apart from the settlement damages; and (2) are reasonable under the lodestar approach. *See Silva*, 307 F. App’x at 351; *see also Winingear v. City of Norfolk, Va.*, No. 2:12cv560, 2014 WL 3500996, at \*6 (E.D. Va. July 14, 2014) (holding that a contingency fee may be reasonable even if it is higher than the lodestar figure); *Lyle*, 954 F.2d at 989 (permitting an upward departure from the lodestar figure when the contingency fee is reasonable). In this case, the settlement agreement does not include a specific provision for attorneys’ fees, thus there is no legal fee for this Court to analyze.

The settlement agreement relieves both parties of the burdens of lengthy litigation with an uncertain outcome.

Moreover, the remaining factors reflect a fair and reasonable settlement of the dispute. Beginning with the third factor, the record reveals no indication of any fraud or collusion. As the court concluded in *Lomascolo*, “in the absence of any evidence to the contrary[,] . . . [t]here is a presumption that no fraud or collusion occurred.” 2009 WL 3094955, at \*12. Next, Mr. Campbell’s counsel has extensive experience representing plaintiffs in employment-related cases, as he has been an “active member of the employment bar for twenty years” and regularly represents FLSA plaintiffs. Joint Mot. to Approve Settlement Ex. 1, at 10. Further, since the parties, through counsel, submitted the pending Joint Motion to Approve Settlement together, this Court will assume that counsel for both parties endorse the agreement. Finally, Mr. Campbell’s probability of success on the merits if he had taken his case to trial is uncertain. The Center had presented a non-retaliatory motive for the termination, supported by significant documentation. Mr. Campbell thus bore a heavy burden of disproving this motive as pretext. Although the settlement sum is approximately one-half of the maximum potential recovery set by Mr. Campbell’s expert, this figure is reasonable in light of the costly future discovery, the inevitable burdens of litigation, and Mr. Campbell’s continuing unemployment. *See id.*

In sum, the proposed settlement agreement demonstrates a fair and reasonable resolution of a *bona fide* FLSA dispute. Given the lengthy and expensive discovery, Mr. Campbell’s eagerness to accept a settlement, and the existence of the Center’s substantiated

non-retaliatory justification for Mr. Campbell's termination, the settlement agreement represents a sound compromise. As previously noted, the agreement does not include a specific provision regarding attorneys' fees, thus it is not necessary for this Court to analyze the reasonableness of such fees. Accordingly, the pending Joint Motion to Approve Settlement (ECF No. 18) is GRANTED.

### **B. Joint Motion to Seal**

The second issue to be examined is the parties' Joint Motion to Seal. As a general rule, a court should refrain from sealing court documents in a FLSA case due to the public interest in such cases. The Fair Labor Standards Act has an inherently "private-public character," as the public "has an independent interest in assuring that employees' wages are fair and thus do not endanger the national health and wellbeing." *Kianpour*, 2011 WL 3880463, at \*2. Although settlements are typically confidential, the requirement of court approval ensures that the public is aware of any violations of employee rights. *See id.* at 1. This general rule, however, is not absolute. As previously noted, parties may successfully petition a court to seal relevant filings if they demonstrate that "competing interests" outweigh the public access interest. *See id.*

In this case, the parties' desire for confidentiality outweighs the public's interest in disclosure of the terms of settlement and circumstances of Mr. Campbell's termination. The heart of Mr. Campbell's claim is the alleged violation of the anti-retaliation provisions of the FLSA, 29 U.S.C. § 215(a)(3). This claim is employee-specific, rather than a class action



raising minimum wage and overtime violations. Such class actions serve the public interest by notifying other similarly-situated employees of potential claims and remedies for their own violations. In contrast, this retaliation claim is unique to Mr. Campbell and his jury duty service.

Moreover, disclosure of the settlement and underlying circumstances could negatively affect both the Center *and* Mr. Campbell. As the parties explained, they each “have an interest in moving on from their dispute with a clean slate.” Joint Mot. to Seal, at 4. To that end, the Center agreed, as a term of settlement, to provide Mr. Campbell with a neutral letter of recommendation. Joint Mot. to Approve Settlement Ex. 2, at 1. If the court documents remain unsealed, then a potential employer of Mr. Campbell could learn of the allegations levied by the Center in its non-retaliatory motive for the termination. The parties Joint Motion to Seal (ECF No. 19) is thus GRANTED.

#### CONCLUSION

For the reasons stated above, Plaintiff Brian Campbell and Defendant Center for Social Change, Inc.’s Joint Motion to Approve Settlement (ECF No. 18) is GRANTED and their Joint Motion for Reconsideration and to Seal the Joint Motion to Approve Settlement, construed as a Motion to Seal (ECF No. 19), is GRANTED.

A separate Order follows.

Dated: November 13, 2014

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Richard D. Bennett  
United States District Judge