

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 12-cv-02987-RM-MJW

BUCK HOWARD, individually and on behalf of all others similarly situated, and
PAT MARTIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

J&A SERVICES, L.L.C.,
TEXAS J&A SERVICE, L.L.C.,
JAMES WHITELY, and
ANN MARIE WHITELY,

Defendants.

**ORDER GRANTING MOTION,
APPROVING AMENDED SETTLEMENT AGREEMENT, AND
DISMISSING CASE WITH PREJUDICE**

THIS MATTER is before the Court on the parties' Joint Motion for Approval of Amended Settlement Agreement ("Joint Motion"), which requests this Court to approve an Amended Settlement Agreement and Release of All Claims (with Exhibit 1) ("Amended Settlement Agreement") and dismiss this case with prejudice. (ECF No. 95.) The Joint Motion was filed after a March 6, 2014 hearing ("Hearing"), where the Court addressed the fairness and reasonableness of the parties' initial request for approval of the original settlement agreement. (ECF Nos. 88, 89 and 94.) At that hearing, the Court denied the parties' initial request for approval of the original settlement agreement and directed the parties to address certain matters raised by the proposed settlement.

A review of the Joint Motion, and attachments, shows the parties have addressed the matters raised by the Court. Upon consideration of the representations of counsel during the Hearing, the Joint Motion, the Amended Settlement Agreement, the original Motion (ECF No. 89), the case file, and the applicable law, the Court approves the Amended Settlement Agreement as stated herein.

In the operative Complaint, Plaintiffs alleged that Defendants violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, by misclassifying a portion of their workforce as independent contractors and failing to pay the correct amount of overtime for hours worked in excess of forty hours in a workweek. The case was conditionally certified as a collective action and notice was issued. More than 70 individuals filed consents to join the action and remain part of this action. The parties conducted discovery, Representative Plaintiffs Howard and Martin filed a Motion for Partial Summary Judgment, and then the parties engaged in mediation where they agreed to settle all claims.

The FLSA provides that “[a]ny employer who violates the provisions of section 206 or 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be” 29 U.S.C. § 216(b). FLSA claims may be compromised after the court reviews and approves a settlement in a private action for back wages under 29 U.S.C. § 216(b). *Lynn’s Food Stores, Inc. v. United States, U.S. Dep’t of Labor*, 679 F.2d 1350, 1353 (11th Cir.1982). If the settlement reflects “a fair and reasonable resolution of a bona fide dispute,” the court may approve it. *Id.* at 1355.

In this case, there was a conditional certification of collective class members consisting of current and former workers who performed flow testing services for oil and gas wells serviced by Defendants during the operative time period. Based on the record, the Court finds the Representative Plaintiffs and Opt-In Plaintiffs who are covered by the proposed settlement are similarly situated. In addition, the parties provided sufficient information to show there is a bona fide dispute over whether Defendants violated the FLSA and the amount, if any, of overtime pay due. The Court has reviewed the Amended Settlement Agreement and finds the amounts to be paid to the Opt-In Plaintiffs and Representative Plaintiffs (including the incentive awards to the Representative Plaintiffs), and the amount of attorney's fees and expenses provided for in the Amended Settlement Agreement, are fair and reasonable under the facts and circumstances of this case. It is therefore

ORDERED that the Joint Motion (ECF No. 95) is hereby GRANTED and the Amended Settlement Agreement and Release of All Claims (with Exhibit 1) is hereby APPROVED; and

FURTHER ORDERED that this action is DISMISSED WITH PREJUDICE.

DATED this 8th day of April, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE
United States District Judge