

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JAVIER CALIX on his own behalf and others
similarly situated,

Plaintiff,

-vs-

Case No. 2:09-cv-412-FtM-29SPC

CARING TOUCH TOWING, LLC a Florid limited
liability company,

Defendant.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This matter comes before the Court on the Joint Notice of Filing and Joint Motion for Approval of Settlement Agreement as Stipulated Final Judgment (Doc. #24) filed on November 4, 2009.

This case was brought under the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 *et. seq.* The Parties have reached a settlement agreement and seek court approval of that agreement. In Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350, 1352-1355 (11th Cir. 1982), the Eleventh Circuit explained that claims for back wages under the FLSA may only be settled or compromised when the Department of Labor supervises the payment of back wages or when the district court enters a stipulated judgment "after scrutinizing the settlement for fairness." In the Joint Motion for Approval submitted by the Parties, (Doc. # 24), the Parties provide that a settlement of a bona fide good faith dispute was negotiated and is deemed fair and reasonable.

The parties have agreed to a settlement amount of \$3,000.00. The Plaintiff, Javier Calix, has agreed to accept \$500.00 in unpaid overtime wages as a fair and reasonable settlement of his claim. Further, the Plaintiff has agreed to pay his attorney \$2,500.00, which includes costs in the amount of \$410.00, from the total settlement amount of \$3,000.00.

Because the Plaintiff has agreed that the settlement figure was entered into knowingly and voluntarily, after having the opportunity to fully discuss it with his attorney, the Court concludes that the proposed settlement is a fair and reasonable resolution of a bona fide dispute over the FLSA.

Accordingly, it is now

RESPECTFULLY RECOMMENDED:

The Joint Notice of Filing and Joint Motion for Approval of Settlement Agreement as Stipulated Final Judgment (Doc. #24) should be **GRANTED** and the settlement agreement should be **APPROVED** by the District Court. It is further respectfully recommended the case should be **DISMISSED with Prejudice** pursuant to the agreement of the Parties and the Clerk should be directed to close the file.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Respectfully recommended at Fort Myers, Florida, this 10th day of November, 2009.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record