

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PENNIE PROCTOR, on her own behalf  
and on behalf of other similarly  
situated,

Plaintiff,

vs.

Case No. 2:10-cv-623-FtM-29SPC

SOUTH FLORIDA BARBEQUE, INC., also  
known as SONNY'S BBQ PALM BEACH  
BLVD.,

Defendant.

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**OPINION AND ORDER**

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #64), filed June 1, 2011, recommending that plaintiff's Motion to Approve and/or Enforce Settlement (Doc. #60) and defendants' motion to enforce contained in its Response in Opposition (Doc. #61) be denied. No objections have been filed, however after the issuance of the Report and Recommendation, defendants filed a Motion to Enforce Settlement or Dismiss Plaintiffs' Claims as Moot (Doc. #67) and plaintiffs filed a Verified Memorandum in Opposition (Doc. #74)<sup>1</sup>.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. §

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<sup>1</sup>Plaintiff filed a Notice of Striking Docket Entry 74 (Doc. #75) seeking to withdraw the document for unstated reasons.

636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation and finds that no meeting of the minds occurred. For this same reason, the Court finds that the second or renewed motion should be denied. The parties clearly are not agreeable to the same settlement terms, and the Court finds no basis to dismiss the case for plaintiffs' failure to capitulate to defendants' terms as to some of the plaintiffs at the exclusion of newly consenting plaintiffs. The case will proceed on the merits.

Accordingly, it is now

**ORDERED:**

1. The Report and Recommendation (Doc. #64) is hereby **adopted** and the findings incorporated herein.


2. Plaintiff's Motion to Approve and/or Enforce Settlement (Doc. #60) is **DENIED**.

3. Defendants' motion to enforce, contained in its Response in Opposition, (Doc. #61) is **DENIED**.

4. Defendants filed a Motion to Enforce Settlement or Dismiss Plaintiffs' Claims as Moot (Doc. #67) is **DENIED**.

5. The parties shall comply with the FLSA Scheduling Order (Doc. #17).

**DONE AND ORDERED** at Fort Myers, Florida, this 15th day of June, 2011.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
Hon. Sheri Polster Chappell  
United States Magistrate Judge

Counsel of Record  
Unrepresented parties