

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DENNIS BOOM and TABITHA BOOM,
on behalf of themselves and all others
similarly situated

Plaintiffs,

v.

Case No: 2:14-cv-6-FtM-38DNF

TOPS VACUUM & SEWING, INC.
and GREGORY BANK,

Defendants.

ORDER

This matter comes before the Court on consideration of United States Magistrate Judge Douglas N. Frazier's Report and Recommendation ([Doc. #31](#)) filed on May 16, 2014. Magistrate Judge Frazier recommends granting the parties Joint Motion to Review and Approve FLSA Settlement Agreement and Dismiss Action with Prejudice ([Doc. #30](#)) filed on May 15, 2014, and dismissing the case with prejudice. No objections have been filed.

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. See [28 U.S.C. § 636\(b\)\(1\)](#); see also [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 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 adopts the Report and Recommendation of Magistrate Judge Frazier as modified below.

In the Settlement Agreement, the Plaintiffs were given \$5,500.00 in liquidated damages and \$4,500.00 in actual damages. The language of [29 U.S.C. § 216\(b\)](#) is clear that an employer in violation of [§ 206](#) and [§ 207](#) shall be “liable to the employee or employees affected in the amount of their ... unpaid overtime compensation...and in an additional *equal amount as liquidated damages*.” [29 U.S.C. § 216\(b\)](#) (emphasis added). The Court approves the proposed settlement, finding it to be fair and reasonable, but would reduce the the amount of liquidated damages from \$5500.00 to \$4500.00 to conform to the statutory requirements of [§ 216\(b\)](#). The remaining \$1000.00 each to Dennis Boom and Tabitha Boom is acceptable as additional consideration for general release. Additional consideration for general releases has been approved within this district as fair and reasonable, see [Baker v. Sy's Supermarket, Inc.](#), 6:12-CV-1645-ORL-19, 2014 WL 542846 (M.D. Fla. Feb. 11, 2014); [Rotger v. Hot Dog Heaven of Orlando, Inc.](#), 6:11-CV-754-ORL-28, 2011 WL 4946636 (M.D. Fla. Sept. 23, 2011) report and recommendation adopted, 6:11-CV-754-ORL-28DA, 2011 WL 4947726 (M.D. Fla. Oct. 17, 2011); [Laso v. SelectBuild, LLC](#), 608-CV-450-ORL-28KRS, 2009 WL 995470 (M.D.

Fla. Apr. 13, 2009)(report denied as unfair due to attorney's fees, not the additional consideration to the employee within the settlement).

Accordingly, it is now **ORDERED**:

1. United States Magistrate Judge Douglas N. Frazier's Report and Recommendation (Doc. #31) is **ADOPTED as modified herein**.

2. The Settlement Agreement, Waiver and General Release (Doc. #30-1) is restructured to characterize payment of \$5500.00 each to Dennis Boom and Tabitha Boom as \$4500.00 liquidated damages to each and \$1000.00 to each as additional consideration for general release. The Court approves the agreed amount of \$10,000.00 for Attorney's fees and costs as fair and reasonable.

3. To the extent that it conforms with this Order the parties' Joint Motion to Review and Approve FLSA Settlement Agreement and Dismiss Action With Prejudice (Doc. #30) is **GRANTED**.

4. The case is hereby **DISMISSED** with prejudice. The Clerk shall enter judgment accordingly, terminate all pending deadlines, and motions, and **CLOSE** the file.

DONE and **ORDERED** in Fort Myers, Florida this 28th day of May, 2014.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record