

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

TODD ERLING, on behalf of
himself and others similarly
situated,

Plaintiff,

v.

Case No: 2:17-cv-350-FtM-29MRM

AMERICAN GRILLE WITH SUSHI
LLC, a Florida profit
corporation and CHRIS K.
WHITAKER, individually,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Amended Report and Recommendation (Doc. #75), filed July 2, 2019, recommending that the Revised Joint Motion for Approval of FLSA Settlement and to Dismiss the Case With Prejudice (Doc. #71) be denied without prejudice to electing an option to file a second revised joint motion, or to advise the Court that the parties wish to proceed with trial. No objections have been filed and the time to do so has expired.

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. § 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). 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).

The Magistrate Judge determined that he could not recommend approval because the parties continue to fail to explain the discrepancy between plaintiff's monetary demands in the pleadings and in answers to court interrogatories compared to the lower settlement amount, the allocation to unpaid wages appears to imply that no liquidated damages are included, the mutual general releases are unsupported or otherwise unexplained, and the parties fail to explain why the Court should retain jurisdiction over enforcement for an indefinite period of time. After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation of the magistrate judge. The motion will be denied once more.

Accordingly, it is now


ORDERED:

1. The Order (Doc. #74), docketed as a Report and Recommendation, is **terminated as moot**.

2. The Amended Report and Recommendation (Doc. #75) is hereby **adopted** and the findings incorporated herein.

3. The parties' Revised Joint Motion for Approval of FLSA Settlement and to Dismiss the Case With Prejudice (Doc. #71) is **DENIED** without prejudice to filing an amended revised joint motion that addresses the issues raised, or a notice that the parties will proceed with trial, **on or before July 30, 2019**. **The Court is not inclined to entertain another motion unless all issues are adequately addressed.**

DONE and ORDERED at Fort Myers, Florida, this 18th day of July, 2019.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Hon. Mac R. McCoy
United States Magistrate Judge

Counsel of Record
Unrepresented parties