

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KATHERINE ARTEAGA,

Plaintiff,

v.

Case No. 6:16-cv-2045-Orl-37TBS

STEAK N SHAKE OPERATIONS, INC.,

Defendant.

ORDER

Plaintiff initiated this action against her former employer alleging, among other things, that it failed to pay her overtime wages in violation of the Fair Labor Standards Act (“**FLSA**”). (Doc. 2.) Thereafter, the parties jointly moved for approval of their settlement agreement pursuant to *Lynn’s Food Stores, Inc. v. United States ex rel. United States Department of Labor*, 679 F.2d 1350 (11th Cir. 1982). (Doc. 20 (“**Approval Motion**”); *see also* Doc. 20-1 (“**Agreement**”).)

On August 30, 2017, U.S. Magistrate Judge Thomas B. Smith issued a Report, recommending that the Court deny the Motion and reject the Agreement. (Doc. 21 (“**R&R**”).) The parties then moved for an extension of time to file objections to the R&R. (Doc. 22 (“**First Extension Motion**”).) In granting the First Extension Motion, Magistrate Judge Smith extended the objections deadline to September 27, 2017. (Doc. 23.) Rather than file objections on the deadline, Plaintiff filed an unopposed motion for a second extension of time to file objections. (Doc. 24 (“**Second Extension Motion**”).)

For the following reasons, the Court finds that the R&R is due to be adopted, the Agreement is due to be rejected, and both the Approval Motion and the Second Extension Motion are due to be denied.

In his R&R, Magistrate Judge Smith takes issue with four aspects of the Agreement: (1) damages; (2) the release; (3) jurisdiction; and (4) execution of the Agreement. (*Id.* at 5-7.) First, the parties have failed to explain the large disparity between the amount Plaintiff claims she is owed—\$29,401—and the amount she has agreed to accept as “full compensation”—\$1,250. (*Id.* at 5.) Second, the release provision is “exceptionally broad” and includes claims not made by Plaintiff. (*Id.* at 5-6.) Third, the Agreement purports to consent to the subject matter jurisdiction of this Court, which is impermissible. (*Id.* at 6-7.) Finally, it is impossible to discern the signor or his capacity to bind Defendant, as the signature is illegible. (*Id.* at 7.) Although the parties represent that the attorney fees and costs were negotiated separately from Plaintiff’s recovery, this alone does not cure the Agreement’s other deficiencies. (*Id.*)

In her Second Extension Motion, Plaintiff represents that the parties have drafted a new settlement agreement, and presumably this forthcoming settlement agreement corrects the above-identified deficiencies. (*See* Doc. 24, ¶ 3.) As such, the parties do not object to the R&R; rather, they, at least implicitly, agree with it. So, despite Plaintiff’s request, the parties do not need additional time to file objections, and the Second Extension Motion is due to be denied.

In the absence of objections, the Court has reviewed the R&R only for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D.

Fla. Jan. 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).


Finding no clear error, the R&R is due to be adopted in its entirety.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 21) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. The parties' Joint Motion to Approve Settlement Agreement and Dismissal With Prejudice and Accompanying Memorandum of Law (Doc. 20) is **DENIED**.
3. The parties' Settlement Agreement and Release (Doc. 20-1) is **REJECTED**.
4. Plaintiff's Unopposed Motion for Extension of Time to File Written Objections to Report and Recommendation (Doc. 24) is **DENIED**.
5. On or before Monday, **October 30, 2017**, the parties are **DIRECTED** to file a renewed motion for approval of a proposed FLSA settlement agreement that remedies the deficiencies identified in the R&R.

DONE AND ORDERED in Chambers in Orlando, Florida, on September 28, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record

