

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SANTIARY RIVERA; and HECTOR L.
BURGOS,

Plaintiffs,

v.

Case No. 6:16-cv-2158-Orl-37TBS

U.S.A. TRANSPORTER SERVICES,
INC.,

Defendant.

ORDER

Plaintiffs initiated this putative collective action against Defendant alleging that it failed to pay them overtime and minimum wages in violation of the Fair Labor Standards Act (“FLSA”). (Doc. 1.) On April 4, 2017, the parties submitted their first motion 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). (See Doc. 18). Plaintiffs first four attempts at settlement have failed. (See Docs. 18, 20, 22, 24.) Now – on their fifth iteration – the parties once again move for approval of their operative settlement agreement. (Doc. 28 (“**Approval Motion**”); see also Doc. 28-1 (“**Agreement**”).)

On August 31, 2017, U.S. Magistrate Judge Thomas B. Smith issued a Report recommending that the Court deny the Approval Motion and reject the Agreement. (Doc. 29 (“**R&R**”).) Neither party filed timely objections, which were due on September 14, 2017. Instead, on September 15, 2017, Plaintiffs moved for an extension of time to file

objections to the R&R. (*See* Doc. 32 (“**Extension Motion**”).) Complicating matters, on September 19, 2017, Plaintiffs filed a Notice of Filing Revised Settlement Agreement in Support of Motion to Approve Settlement (Doc. 33), and attached another version of a proposed settlement agreement (Doc. 33-1).

To begin, Magistrate Judge Smith concludes in his R&R that, while the Agreement corrects some of the problems identified in prior iterations, (*see* Doc. 29, pp. 2-3 (describing deficiencies in previous versions)), it too is deficient (*see id.* at 11). Specifically, Magistrate Judge Smith takes issue with the Agreement’s: (1) language preventing Plaintiffs’ from bringing claims against Defendant “for any other reason”; (2) jurisdiction-retention provision that the Court previously instructed the parties to strike; and (3) provision where Plaintiffs’ damages are not classified as wages that enables Defendant to not issue W-2s as appropriate. (*Id.* at 5-10.)

Given these deficiencies, Plaintiffs’ untimely Extension Motion is moot, and warrants no further discussion. (*See* Doc. 32.) Hence, in the absence of timely objections, the Court has examined 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 Court concludes that the R&R is due to be adopted in its entirety.


As to Plaintiffs’ last-ditch effort to cure the Agreement’s deficiencies by notice, this is wholly improper and due to be stricken. *See* Local Rule 3.01(f) (requiring all requests for relief to be submitted by motion). To the extent Plaintiffs seek the Court’s approval of a sixth iteration of their proposed settlement agreement, they must do so by motion.

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

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 29) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. The parties' Amended Joint Motion to Approve FLSA Settlement and to Dismiss with Prejudice (Doc. 28) is **DENIED**.
3. The parties' Settlement Agreement and Mutual Release (Doc. 28-1) is **REJECTED**.
4. Plaintiffs Santiary Rivera and Hector L. Burgos' Amended Motion for Extension of Time to File Objections to the Report and Recommendations (Doc. 31) is **DENIED AS MOOT**.
5. The Clerk is **DIRECTED** to **STRIKE** Plaintiffs Santiary Rivera and Hector L. Burgos' Notice of Filing Revised Settlement Agreement in Support of Motion to Approve Settlement (Doc. 33).
6. On or before Wednesday, **September 27, 2017**, the parties may file an amended motion for approval that remedies the defects identified in the Report and Recommendation (Doc. 29). Failure to timely file a motion will render any settlement agreement reached by the parties unenforceable.

DONE AND ORDERED in Chambers in Orlando, Florida, on September 20, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record