

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

DIANA C. BERRIOS,

*

Plaintiff,

*

v.

Case No.: GJH-14-3655

*

GREEN WIRELESS, LLC. et al.,

*

Defendants.

*

* * * * *

MEMORANDUM OPINION

Over two years ago, this Court awarded attorneys’ fees to Plaintiff Diana C. Berrios after entering judgment against Defendant Michael Shin pursuant to this action to recover overtime wages. ECF No. 36. As part of that order, the Court dismissed Co-Defendants Green Wireless, LLC (“Green Wireless”) and Michael Pak from the case. *Id.* Shin appealed the award of attorneys’ fees to the Fourth Circuit; at the same time, Berrios filed a motion to vacate the Court’s dismissal of Green Wireless and Pak. ECF Nos. 37, 40. The parties prepared to brief the case in the Fourth Circuit, but once the Court granted Berrios’ motion to vacate the dismissal of Pak and Green Wireless, ECF No. 42, the earlier order granting attorneys’ fees was no longer a final order from which Shin could appeal. *See* ECF No. 45-1 at 4.¹ Because it was also not an immediately appealable collateral order, the Fourth Circuit dismissed the appeal for lack of jurisdiction. *Id.* Upon remand, Plaintiff secured a default judgment as to Green Wireless and Pak. ECF No. 49. Plaintiff has now filed another motion seeking attorneys’ fees in relation both to the

¹ Pin cites to documents filed on the Court’s electronic filing system (CM/ECF) refer to the page numbers generated by that system.

default judgment secured against Pak and Green Wireless, and to the briefing in the Fourth Circuit.

I. DISCUSSION

The FLSA requires the payment of reasonable attorneys' fees and costs to prevailing employees. *Randolph v. Powercomm Constr., Inc.*, 715 F. App'x 227, 230 (4th Cir. 2017). An employee is a "prevailing party" if "they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). This is a "generous formulation." *Id.* Furthermore, a district court has "discretion over the proper allocation of a fee award among multiple defendants." *Jones v. Southpeak Interactive Corp. of Del.*, 777 F.3d 958, 977 (4th Cir. 2015).

First, Plaintiff seeks fees from Shin for work related to the Motion for Default Judgment filed against Pak and Green Wireless. At the time that work was performed, all of the claims against Shin had been resolved, with the exception of the pending appeal of the Court's first attorneys' fee award. Plaintiff argues that Shin should nonetheless be held liable for these fees because Shin appealed the first attorneys' fee award. This argument is not persuasive. By her own words, Plaintiff sought to secure a default judgment against Pak and Green Wireless in case Shin "declares bankruptcy or is otherwise unable to satisfy the award of attorney's fees." ECF No. 40 at 3. Shin's choice to appeal the attorneys' fee award added no additional incentive for Plaintiff to secure a default judgment against Pak and Green Wireless, so it would be improper to award fees to Shin related to that motion.

Second, Plaintiff seeks fees in connection with the work performed on the Fourth Circuit appeal. There can be no question that "[p]revailing plaintiffs in FLSA cases are entitled to attorneys' fees for prosecuting or defending appeals." *See, e.g., Velez v. Vassallo*, 203 F. Supp. 2d 312, 315 (S.D.N.Y. 2002). But to qualify as prevailing, a plaintiff "must show at least some

