



but they received no wages. Plaintiffs contend that they are owed \$1,348.42 each in back pay in addition to possible double or treble damages under the FLSA and its Maryland equivalents. (ECF No. 13, at 4).

Plaintiffs commenced this action by filing a complaint on April 5, 2016. (ECF No. 1). The parties did not engage in discovery or mediation, but they filed the pending motion for approval of the Agreement on July 29, 2016. (ECF No. 13). The Agreement provides that, upon court approval, Defendant will pay Plaintiffs and their attorney \$6,741.21. (ECF No. 13-1 ¶ B(1)). Plaintiffs are to receive \$4,741.32, to be divided evenly between each plaintiff. (*Id.* ¶ B(1)(a)). Defendant, pursuant to the Agreement, does not admit liability, but agrees to settle in order to avoid further costs of litigation. (*Id.* at 1). In exchange for the settlement amount, Plaintiffs agree to waive and release all claims against Defendant. (*Id.* ¶ C).

## **II. Analysis**

Because Congress enacted the FLSA to protect workers from the poor wages and long hours that can result from significant inequalities in bargaining power between employers and employees, the statute's provisions are mandatory and, except in two narrow circumstances, are generally not subject to bargaining, waiver, or modification by contract or settlement. See *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945).

Under the first exception, the Secretary of Labor may supervise the payment of back wages to employees, who waive their rights to seek liquidated damages upon accepting the full amount of the wages owed. See 29 U.S.C. § 216(c). Under the second exception, a district court can approve a settlement between an employer and an employee who has brought a private action for unpaid wages, provided that the settlement reflects a "reasonable compromise of disputed issues" rather than "a mere waiver of statutory rights brought about by an employer's overreaching." *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1354 (11<sup>th</sup> Cir. 1982); see also *Duprey v. Scotts Co. LLC*, 30 F.Supp.3d 404, 407-08 (D.Md. 2014).

Although the United States Court of Appeals for the Fourth Circuit has not directly addressed the factors to be considered in deciding motions for approval of such settlements, district courts in this circuit typically employ the considerations set forth by the Eleventh Circuit in *Lynn's Food Stores*. See, e.g., *Duprey*, 30 F.Supp.3d at 407-08; *Lopez v. NTI, LLC*, 748 F.Supp.2d 471, 478 (D.Md. 2010). Pursuant to *Lynn's Food Stores*, an FLSA settlement generally should be approved if it reflects "a fair and reasonable resolution of a *bona fide* dispute over FLSA provisions." 679 F.2d at 1355. Thus, as a first step, the *bona fides* of the parties' dispute must be examined to determine if there are FLSA issues that are "actually in dispute." *Lane v.*

*Ko-Me, LLC*, No. DKC-10-2261, 2011 WL 3880427, at \*2 (D.Md. Aug. 31, 2011) (citing *Dees v. Hydradry, Inc.*, 706 F.Supp.2d 1227, 1241-42 (M.D.Fla. 2010)). Then, as a second step, the terms of the proposed settlement agreement must be assessed for fairness and reasonableness, which requires weighing a number of factors, including: "(1) the extent of discovery that has taken place; (2) the stage of the proceedings, including the complexity, expense and likely duration of the litigation; (3) the absence of fraud or collusion in the settlement; (4) the experience of counsel who have represented the plaintiffs; (5) the opinions of [] counsel . . .; and (6) the probability of plaintiffs' success on the merits and the amount of the settlement in relation to the potential recovery." *Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 08-cv-1310, 2009 WL 3094955, at \*10 (E.D.Va. Sept. 28, 2009); see also *Duprey*, 30 F.Supp.3d at 408 (citations and internal quotation marks omitted).

**A. *Bona Fide* Dispute**

"In deciding whether a *bona fide* dispute exists as to a defendant's liability under the FLSA, courts examine the pleadings in the case, along with the representations and recitals in the proposed settlement agreement." *Duprey*, 30 F.Supp.3d at 408 (citation omitted). Here, there is a *bona fide* dispute. In their joint motion for approval, the parties reaffirm that a genuine dispute of fact remains. Specifically,

"[t]he parties disagree as to whether the Plaintiffs were employed by CMT or a subcontractor and whether or not CMT could legally be considered the Plaintiffs' joint employer." (ECF No. 13, at 3). Defendant is prepared, should the case go to trial, to call witnesses to testify that Defendant had "no authority over the terms and conditions of Plaintiffs employment[,]" and Plaintiffs are prepared to call witnesses to refute such testimony. (*Id.* at 6). Thus, the pleadings, along with parties' representations in court filings, establish that a *bona fide* dispute exists as to Defendant's liability to Plaintiffs for wage and overtime payments under the FLSA.

**B. Fairness & Reasonableness**

Upon review of the parties' submissions and after considering the relevant factors, *see Duprey*, 30 F.Supp.3d at 409, the Agreement appears to be a fair and reasonable compromise of the parties' *bona fide* dispute. Although the parties agreed to settle at an early stage in the proceedings and before conducting any formal discovery, they "informally exchanged information about CMT's business arrangement with its subcontractor." (ECF No. 13, at 7). The parties also represent that they believe resolution through motions practice is unlikely, given the conflicting accounts of Defendant's relationship with its subcontractors. Moreover, the parties wish to avoid the cost, risks, and uncertainties of proceeding

forward. There is no evidence that the Agreement is the product of fraud or collusion, and it appears to be the result of negotiations between experienced counsel.

As to the relationship between the amount of the settlement and Plaintiffs' potential recovery, the Agreement appears to be fair and reasonable. The Agreement provides Plaintiffs \$2,370.66 each, \$1,185.33 for actual wages owed and \$1,185.33 in liquidated damages. The parties assert, at different points in their motion, both that this amount "compensates [Plaintiffs] for the entire back pay they seek," and also that Plaintiffs "maximum back wage recover[y] in this case is \$1,348.42 each. (*Id.* at 4). Regardless, the settlement amount either provides Plaintiffs their full wages or approximately eighty-eight percent of the wages owed, in addition to double liquidated damages. Although the Agreement does not provide treble damages, it appears to "reflect[] a reasonable compromise over issues actually in dispute" in light of the risks and costs associated with proceeding further and Defendant's potentially viable defenses. *Lomascolo*, 2009 WL 3094955, at \*8.

In light of the risks and costs to both parties in proceeding with this lawsuit, the Agreement appears to be a reasonable compromise over issues that remain in dispute.

### **C. Attorney's Fees and Costs**

In addition to assessing the reasonableness of the settlement amount to be received by Plaintiffs, the court must also assess the reasonableness of the Agreement's provisions regarding attorney's fees and costs. See 29 U.S.C. § 216(b). The awarding of attorney's fees to Plaintiffs turns on application of the traditional lodestar methodology factors. The starting point in the lodestar calculation is multiplying the number of hours reasonably expended by a reasonable hourly rate. *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4<sup>th</sup> Cir. 2009). "An hourly rate is reasonable if it is 'in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'" *Duprey*, 30 F.Supp.3d at 412 (quoting *Blum v. Stenson*, 465 U.S. 886, 890 n.11 (1984)). This court has established presumptively reasonable rates in Appendix B to its Local Rules. See, e.g., *id.* (citing *Poole ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 509 (D.Md. 2000)). In addition, the specific facts of the case are to be considered in calculating a reasonable figure.

The Agreement provides that – separate and apart from the payments to Plaintiffs – Defendant will pay Plaintiffs' counsel \$2,000.00, which includes \$1,500.00 in legal fees and \$500.00 in filing and service of process fees. The parties assert that

counsel's actual lodestar value is more than three times higher than the requested fees, in excess of \$6,000.00. Although this reduced amount strikes the court as reasonable, Plaintiffs must provide at least some documentation for the court to affirm that the amount is reasonable. Plaintiffs have not provided declarations, invoices, billing records, or any documentation that would permit the court to assess the reasonableness of counsel's hourly rate or the number of hours expended on the case. See *Poulin v. General Dynamics Shared Resources, Inc.*, No. 3:09-cv-00058, 2010 WL 1813497, at \*2 (W.D.Va. May 5, 2010) (denying settlement in part, because "[t]he parties have offered no justification underlying their request for an award of attorney's fees, much less the factual basis required for the Court to apply the lodestar analysis as a guide in determining the reasonableness [of] the requested attorney's fees"). Moreover, the parties have not stated the number of hours expended on the case or counsel's hourly rate. Where, in the context of a settlement, the court "finds there is insufficient information to make a lodestar analysis, the local Rules permit an order for the production of appropriate documentation." *Gionfriddo v. Jason Zink, LLC*, No. RDB-09-1733, 2011 WL 2791136, at \*3 (D.Md. July 15, 2011) (citing Local Rules, App. B(1)(d) ("[u]pon request by the Judge . . . counsel . . . shall turn over . . . statements of time and the value of that time in the



'litigation phase' format provided in Guideline 1.b"')). Because the parties have provided no documentation, Plaintiffs shall provide additional information before final approval of the Agreement.

Accordingly, it is this 8<sup>th</sup> day of August, 2016, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiffs shall supplement the record within fourteen (14) days, providing supporting information regarding the reasonableness of the requested attorney's fees as described in the memorandum opinion; and

2. The clerk will transmit copies of the Memorandum Opinion and this Order to counsel for the parties.

/s/  
\_\_\_\_\_  
DEBORAH K. CHASANOW  
United States District Judge