

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:16-cv-00087-FL

SALVADOR REYES,)
)
 Plaintiff,)
)
 v.)
)
 FIESTA MEXICANA VI, LLC, and ANDRES)
 ESCAMILLA,)
)
 Defendants.)

CONSENT ORDER AND JUDGMENT

This is a purported class and collective action brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§201 *et seq.*, and the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.1 *et seq.* Plaintiff Salvador Reyes ("Plaintiff") asserts claims under the FLSA and the NCWHA, alleging that during the applicable time period Defendants Fiesta Mexicana VI, LLC and Andres Escamilla ("Defendants") employed him and other potential members of the class and collective action as kitchen workers at the Fiesta Mexicana restaurant in Holly Springs, NC. Plaintiff further alleges that the Defendants failed to pay him all of his promised wages when due at the wage rate that the Defendants allegedly disclosed to the Plaintiff and his co-workers for that same work. The Plaintiff further alleges that the Defendants did not compensate them for at the overtime rate required by the FLSA when they worked in excess of 40 hours per week. Lastly, Plaintiff alleges that Defendants falsified the earning statements of Plaintiff.

The defendants named in the Plaintiff's Complaint are Fiesta Mexicana VI, LLC and Andres Escamilla. During at least 2011, 2012, 2013, 2014, and 2015, Plaintiff alleges that these same Defendants were his employers and that they employed other persons similarly situated to the

Plaintiff.

The allegations of the Complaint essentially allege that Defendants violated the rights of Plaintiff and the members of the class and collective action that Plaintiff formerly sought to represent under the FLSA and the NCWHA in a number of different ways. Those alleged ways included, but are not limited to, the failure to pay the Plaintiff's wages at the overtime rate required by § 207(a)(1) of the FLSA and the failure to pay the Plaintiff's promised wages when due at the rate and in the amount disclosed pursuant to N.C. Gen. Stat. §§ 95-25.6 and 95-25.13(1)-(2).

Defendants have at all times denied, and continue to deny, any violation of the FLSA and the NCWHA in the manner and to the extent alleged by the Plaintiff. Nothing in this consent order or in the settlement of this action should be construed as an admission or finding of any violation of the FLSA or the NCWHA or wrongdoing of any kind or nature by these same Defendants, and that therefore, upon the date that final payment is made and all other actions specified in this Consent Order are taken in compliance with its terms, Defendants shall be fully released and forever discharged from any and all claims, demands, charges, complaints, rights, and causes of action by the Plaintiff Salvador Reyes that arise or may arise against Defendants Fiesta Mexicana VI, LLC and Andres Escamilla under the FLSA or the NCWHA for the period from July 1, 2011 through the date that this Court enters that consent order.

Plaintiff and Defendants have decided to enter into this consent order and to settle all of the individual claims of the named Plaintiff against Defendants in this case in an effort to avoid further protracted and costly litigation. To that end, Plaintiff and Defendants have mutually stipulated to the entry of this Consent Order, and the Court, therefore, upon consideration of the record herein and being fully advised of the premises,

THE COURT HEREBY ORDERS and DECREES:

(1) By consent of the Plaintiff Salvador Reyes and Defendants Fiesta Mexicana VI, LLC and Andres Escamilla, the terms of this Consent Order shall be subject to enforcement by any person(s) who would receive any benefit from a full and complete execution of its terms.

(2) Prior to July 26, 2016, but following the entry of the Order of the Court finally approving the Settlement Agreement among the parties, Defendants Fiesta Mexicana VI, LLC and Andres Escamilla, jointly and severally, are obligated to pay and shall pay the total amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to the Law Office of Sommers Schwartz, PC for deposit into the trust account of the Law Office of Sommers Schwartz, PC and disbursement by that law firm pursuant to the terms of the Settlement Agreement that is agreed upon by Plaintiff and Defendants. Specifically, the Fifteen Thousand and 00/100 Dollars (\$15,000.00) payment shall be distributed as follows: a) Eight Thousand Two Hundred and 00/100 Dollars (\$8,200.00) to Plaintiff, Salvador Reyes; b) Six Thousand and 00/100 Dollars to the Law Office of Sommers Schwartz, PC, for attorneys' fees; and c) Eight Hundred and 00/100 Dollars (\$800.00) to the Law Office of Sommers Schwartz, PC, for reimbursement of costs.

The undersigned parties agree and stipulate that this Consent Order resolves all matters between Defendants Fiesta Mexicana VI, LLC and Andres Escamilla and Plaintiff Salvador Reyes that are alleged in the Plaintiff's Complaint that was filed in the above-captioned action to the extent and only to the extent that individual claims and individual relief were sought in that Complaint, and the Plaintiff's individual claims against all Defendants are dismissed with prejudice except that the Court retains jurisdiction over this action to the extent necessary to enforce the terms of this Consent Judgment and Consent Order.

This the 27th day of June, 2016.

Louise W. Flanagan

U.S. District Court Judge Louise W. Flanagan