

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**MALCOLM WADE, individually and
on behalf of all others similarly situated,**

Plaintiff,

v.

**Case No. 2:10-CV-270
JUDGE EDMUND A. SARGUS, JR.
MAGISTRATE JUDGE MARK R. ABEL**

**WERNER TRUCKING COMPANY a/k/a
WERNER ENTERPRISES, INC.,**

Defendant.

OPINION AND ORDER

WHEREAS:

A. On May 13, 2014, the named Plaintiff, Malcolm Wade, individually and as Representative Plaintiff, and Defendant Werner Enterprises, Inc., (Parties) by their respective counsel of record, presented before this Court for approval a Confidential Settlement Agreement and Release (Agreement);

B. This Court has duly considered representations and all of the submissions presented with respect to the Agreement addressing the collective class claims asserted in the Litigation under the Fair Labor Standards Act (FLSA);

C. All Capitalized terms in this Order with respect to the Agreement addressing the collective class claims asserted under the FLSA that are not otherwise defined have the same meaning as in the Agreement.

NOW THEREFORE, after due deliberation, this Court hereby ORDERS that:

1. For settlement purposes, this case is certified as a collective action under Section 16(b) of the FLSA, *see Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546 (6th Cir. 2006) (regarding initial certification); *id.* at 546–47 (regarding the second stage of certification—whether the class is “similarly situated”); Malcom Wade is appointed as class representative, and Stein, Chapin and Associates are appointed as Class Counsel;

2. This Order (FLSA Approval Order) will be binding on the FLSA Collective Class Members who become Settlement Participating Class Members as defined in the Agreement.

3. Upon review, the Agreement and the circumstances surrounding settlement meet the two requirements for FLSA settlement. *See Kritzer v. Safelite Solutions, LLC*, No. 2:10-CV-0729, 2012 WL 1945144, at *5 (S.D. Ohio May 30, 2012) (noting that courts must first ensure that there is a bona fide dispute between the parties as to the employer’s liability under the FLSA, lest the parties be allowed to negotiate around the FLSA’s requirements concerning wages and overtime”); *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982) (noting that courts must then “scrutinize[e] the settlement for fairness”). The Agreement is fair, reasonable, and is in the best interests of the FLSA Collective Class Members; the Agreement should be, and hereby is, approved, especially in the light of the benefits to the FLSA Collective Class Members accruing therefrom, the substantial discovery and investigation conducted prior to the proposed Settlement, and the complexity, expense, risks, and probable protracted duration of further litigation.

4. The Settlement Notice and Option Form proposed by the Parties fully and accurately informs the FLSA Collective Class Members of all material elements of the Litigation

and the Agreement.

5. The Court approves the Confidential Settlement Agreement and Release of Claims (attached as Ex. A to the Memorandum in Support of the Joint Motion for Approval of FLSA Collective Action Settlement), and approves the Settlement Notice and Option Form (attached as Ex. B to the Confidential Settlement Agreement and Release of Claims);

6. Within fifteen (15) days after entry of this Order, Werner shall mail the Settlement Notice and Option Form and IRS Form W-9 by First Class mail to the last known addresses of each FLSA Collective Class Member. FLSA Collective Class Members must exercise their right to opt-in to the Settlement within sixty (60) days of the mailing or other distribution of the Settlement Notice and Option Form.

7. This Litigation is hereby dismissed in its entirety, on the merits, as against Defendant Werner Enterprises, Inc. with prejudice, and without costs to any party, except to the extent otherwise expressly provided in the Agreement. This Court intends this FLSA Approval Order to be “Final” within the meaning of the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

8. All Settlement Participating Class Members shall conclusively be deemed for all purposes to be permanently barred from commencing, prosecuting, or otherwise maintaining in any court or forum any action against the Released Parties for any and all FLSA Released Claims that were brought or could have been brought in this action.

9. Upon review, Class Counsel’s application for an award of attorneys’ fees and reimbursement of costs as set forth in the Agreement is reasonable and is hereby approved. 29 *see* U.S.C. § 216(b); *see also Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (“In this circuit, we require only that awards of attorney’s fees by federal courts in common fund cases be reasonable under the circumstances.”); *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261,

1280 (S.D. Ohio 1996) (laying out the factors relevant to whether the award qualifies as reasonable). Accordingly, Defendant will pay Class Counsel's fees, as provided in the Agreement, within thirty (30) days of the date the Court issues its Order approving the settlement and Defendant's receipt of an executed and complete IRS Form W-9 from Class Counsel.

10. Without affecting the finality of this FLSA Approval Order, this Court retains exclusive jurisdiction over the consummation, performance, administration, effectuation and enforcement of this FLSA Approval Order. In addition, without affecting the finality of this FLSA Approval Order, this Court retains jurisdiction over Werner, Representative Plaintiff and each Settlement Participating Class Member for the purpose of enabling any of them to apply to the Court for such further orders and directions as may be necessary or appropriate for the construction and implementation of the terms of the Confidential Settlement Agreement and Release of Claims and this FLSA Approval Order. Werner, the Representative Plaintiff and each Settlement Participating Class Member are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute relating to this FLSA Approval Order or the Confidential Settlement Agreement and Release of Claims, except to the extent remitted by the Settlement for resolution in a different forum.

11. The Court finds, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay, and directs the Clerk to enter this Order of Approval.

For the reasons stated, Plaintiffs' unopposed motion for attorneys' fees and costs, doc. 151, is **GRANTED**; the parties' joint motion for approval of their settlement under the FLSA and for dismissal of this action with prejudice, doc. 153, is **GRANTED**; Defendant's motion to decertify the class, doc.125, is thus **DENIED as moot**; and this case is **DISMISSED with prejudice**.

IT IS SO ORDERED.

6-5-2014
DATED


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE