UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CAROLE KELLER, *et al.*, Plaintiffs, v. EVENT STAGING, INC., et al, Defendant.	Civil No. 2:24cv288

ORDER

Pending before the Court is a Joint Motion to Approve Settlement pursuant to the Fair Labor Standards Act (Mot., ECF No. 24) and a Memorandum in Support thereof (Mem. Supp., ECF No. 25). For the following reasons, the Joint Motion to Approve Settlement is **GRANTED,** and the settlement is **APPROVED**.[1]

I. BACKGROUND

Plaintiffs Carole Keller ("Ms. Keller"), Maggie Price ("Ms. Price"), and Mary Givens ("Ms. Givens") (collectively, "Plaintiffs") filed an Amended Complaint on September 26, 2024 alleging that they and similarly situated employees worked for Defendants Event Staging, Inc. and Robert J. Dymarcik ("Defendants") as stagehands, wardrobe assistants, and other crew positions for specific theatrical productions at venues in Virgina. Am. Compl., ECF No. 11. These productions included nationally

[1] On February 5, 2025, the parties also filed a Joint Motion to Stay this matter, in anticipation that the settlement would be approved. Mot., ECF No. 23. As the settlement is now approved, that Motion (ECF No. 23) is **DISMISSED** as moot.

touring Broadway shows such as Wicked, Hamilton, Jesus Christ Superstar, and Swan Lake, as well as productions by the Alvin Ailey Dance Foundation and WWE. *Id.* Plaintiffs allege that ESI systematically failed to pay them for all hours worked on these productions, including failure to pay overtime wages when their work exceeded forty hours in a work week. *Id.* Plaintiffs alleged that ESI's payroll practices resulted in delayed payments, improper deductions, and unilateral changes to recorded hours. *Id.* Plaintiffs further alleged that when workers raised concerns about unpaid wages, they faced retaliation, culminating in their termination. *Id.*

On January 10, 2025, the Plaintiffs and Defendants (together, the "Parties") attended a Settlement Conference, where, following extensive negotiations, they reached an agreement in principle to resolve the case. Over the subsequent weeks, the Parties finalized the terms, which are now presented to the Court for approval in the present Joint Motion to Approve Settlement. Mot., ECF No. 24. The Parties agreed to settle for a total sum of $82,000. Settlement Agreement at 1–2, ECF No. 24-1 (the "Settlement Agreement"). This consists of $47,000 to the three Plaintiffs, consisting of wage-like payments and additional incentive awards. Defendants will also pay Plaintiffs $35,000 as compensation for their reasonable attorneys' fees and costs. *Id.* at 2. On March 14, 2025, the Parties filed a Joint Motion for Approval of the

Settlement (ECF No. 24), a Memorandum in Support thereof (ECF No. 25), and the Settlement Agreement itself (ECF No. 24-1). The Joint Motion is ripe for adjudication.

II. LEGAL STANDARDS

"A Fair Labor Standards Act ("FLSA") settlement must be approved by the Department of Labor or a federal district court." *LaFleur v. Dollar Tree Stores, Inc.*, 189 F. Supp. 3d 588, 593 (E.D. Va. 2016) (citing *Taylor v. Progress Energy, Inc.*, 415 F.3d 364, 374 (4th Cir. 2005)). "In evaluating a FLSA settlement agreement, the Court must determine three things: (1) that the FLSA issues are actually in dispute; (2) that the settlement is a reasonable compromise over the issues; and (3) if there is a clause on attorneys' fees then the award must [be] reasonable and independently assessed." *Gagliastre v. Capt. George's Seafood Rest., LP*, 2:17cv379, 2019 WL 2288441, at *1 (E.D. Va. May 29, 2019) (citing *Silva v. Miller*, 307 F. App'x 349, 351 (11th Cir. 2009)). Additionally, the Court may approve a service or incentive award, which is a payment to the named plaintiff for his efforts in bringing a class action that is "independent of the back-pay and damages awarded." *Hoffman v. First Student, Inc.*, No. WDQ-06-1882, 2010 WL 1176641, at *3 (D. Md. Mar. 23, 2010).

After evaluating the settlement, "the Court may confirm the agreement, preliminar[il]y grant the agreement but order parties to strike portions that it deems unfair or unreasonable, or deny the agreement if there are too many issues with the agreement." *Brockman v. Keystone Newport News, LLC*, No. 4:15cv74, 2018 WL 4956514, at *3 (E.D. Va. Oct. 12, 2018) (citing *Hendrix v. Mobilelink Virginia, LLC*, 2:16cv394, 2017 WL 2438067, at *4 (E.D. Va. May 26, 2017)) (denying settlement

approval due to unreasonable clauses and settlement amount); *Stephens v. MAC Bus. Sols., Inc.*, No. 15-3057, 2016 WL 3977473, at *3 (D. Md. July 25, 2016) (approving settlement but ordering parties to submit new agreement without unreasonable clause); *Lomascolo v. Parsons Brinckerhoff, Inc.*, 1:08cv1310, 2009 WL 3094955, at *2 (E.D. Va. Sept. 28, 2009) (granting approval of settlement)).

III. ANALYSIS

A. FLSA Issues in Dispute

To determine whether the FLSA issues are actually in dispute, "courts examine the pleadings in the case, along with the representations and recitals in the proposed settlement." *Brockman*, 2018 WL 4956514, at *2 (quoting *Duprey v. Scotts Co. LLC*, 30 F. Supp. 3d 404, 408 (D. Md. 2014)). The FLSA issues are actually in dispute when "the employees seek to enforce their FLSA rights and . . . the parties demonstrate an actual disagreement as to the factual allegations that undergird the action." *Id.* (citing *Lynn's Food Stores Inc. v. United States*, 679 F.2d 1350, 1354 (11th Cir. 1982)); *see also Houston v. URS Corp.*, 1:08cv203, 2009 WL 2474055, at *9 (E.D. Va. Aug. 7, 2009) ("A bona fide dispute exists when an employee makes a claim that he or she is entitled to overtime payment.").

This Court finds that the FLSA issues are in dispute. Plaintiffs allege that ESI systematically failed to pay them for all hours worked on these productions, including failure to pay overtime wages when their work exceeded forty hours in a workweek. Mem. Supp. Mot. Approve Settlement at 2, ECF No. 25 ("Mem. Supp."). Plaintiffs further allege that ESI's payroll practices resulted in delay payments, improper

deductions, and unilateral changes to recorded hours. *Id.* Finally, Plaintiffs allege that when workers raised concerns about unpaid wages, they faced retaliation, culminating in their termination. *Id.* Defendant "vigorously denies these allegations." *Id.* at 8. In its Answer, Defendant disagrees by arguing that all employees were fully paid for all work performed, that any payroll discrepancies were inadvertent and were promptly corrected, and that no employee was subjected to unlawful retaliation. *See generally* Answer, ECF No. 8.

The Settlement Agreement states that Defendants "deny that Employer, its ownership, its employees, or Mr. Dymarcik violated the law, Employees' rights, or the rights of the Proposed Class Members." Settlement Agreement at 1. It also states that "[t]he parties agree that neither the payment of any sums nor the execution of this Agreement are admissions of liability or fault by either Party. Each of the parties expressly denies any liability." *Id.* at 5. This further shows that the FLSA issues in this case are actually in dispute. *See Brockman*, 2018 WL 4956514, at *3 ("The settlement agreements specifically state that the document 'shall not be deemed or construed at any time for any purpose as an admission by [Defendants] of wrongdoing or evidence of any liability or unlawful conduct of any kind.'").

B. Fair and Reasonable

In analyzing whether a settlement agreement is fair and reasonable, the Court examines six factors:

> (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 probability of plaintiffs' success on the merits; and (6) the amount of the settlement in relation to the potential recovery.

Patel v. Barot, 15 F. Supp. 3d 648, 656 (E.D. Va. 2014) (citations omitted).

i. Extent of Discovery Conducted

This factor weighs in favor of approving the settlement when the parties have engaged in enough discovery to "fairly evaluate the liability and financial aspects of [the] case." *Lomascolo*, 2009 WL 3094955, at *11 (quoting *In re A.H. Robins Co., Inc.,* 88 B.R. 755, 760 (E.D. Va. 1988)). While the Parties here did not complete formal discovery, Plaintiffs had access to Defendants' timesheets during negotiations, which allowed them to evaluate their claims without extensive document production. Mem. Supp. at 9. Furthermore, Plaintiffs' initial disclosures confirmed that their unpaid wages were minimal, which allowed for predictable wage loss calculations. Ex. 1, ECF No. 25-1. Completion of formal discovery is not an absolute requirement of an FLSA settlement, and settlement prior to discovery can have benefits. *See, e.g., Kuntze v. Josh Enter., Inc.*, No. 2:18cv38, 2019 WL 2179220 at *5 (E.D. Va. May 20, 2019) ("[I]t can be beneficial to settle a case before discovery as a way to save resources, especially in a case like this where some documents and information have already been shared between the parties.") Here, the Parties settled prior to formal discovery, thereby

preserving litigation resources for the Parties and ensuring that more funds were available for settlement. This does not weigh against settlement approval.

ii. Stage of the Proceedings

This factor weighs in favor of approving a settlement when the case has "advanced to a stage sufficient to permit the Parties and their counsel to obtain and review evidence, to evaluate their claims and defenses and to engage in informed arms-length settlement negotiations . . . ." *Lomascolo*, 2009 WL 3094955, at *11. The parties can satisfy this factor by showing that without settlement, the defendants would defend the action vigorously, and by "establishing [that] the amount of damages each Plaintiff may be entitled to under the FLSA . . . would be complex and costly" to determine. *Id.* "When 'several briefs have been filed and argued, courts should be inclined to favor the legitimacy of a settlement.'" *Winingear v. City of Norfolk*, No. 2:12cv560, 2014 WL 3500996, at *3 (E.D. Va. July 14, 2014) (citation omitted).

The proceedings in this case "are still in the preliminary stages, with much left to proceed should the parties decide to litigate." *Brockman*, 2018 WL 4956514, at *3. Although the Parties have not litigated any motions since the inception of the case, the early stage of this case warrants settlement approval, as settlement would enable the Parties "to avoid the time and expense of further litigation to resolve the moving plaintiffs' claims, whether through summary judgment or trial." *In re Dollar Gen. Stores FLSA Litig.*, No. 5:09md1500, 2011 WL 3841652, at *3 (E.D.N.C. Aug. 23, 2011). Furthermore, the opt-in settlement structure ensures that Settlement Class

Members can "assess their individual recoveries before waiving claims." Mem. Supp. at 10. Furthermore, "because no class or collective action has been certified yet, only those Settlement Class Members who opt into the Settlement Agreement will be bound by its terms." *Id.* at 11. Accordingly, the Court finds that this factor weighs in favor of approving the Settlement Agreement.

iii. Absence of Fraud or Collusion in Settlement

This factor weighs in favor of settlement approval when there is no evidence of fraud or collusion. *Patel*, 15 F. Supp. 3d at 656; *Lomascolo*, 2009 WL 3094955, at *10. "In the absence of any evidence to the contrary, it is presumed that no fraud or collusion occurred." *Gagliastre*, 2019 WL 2288441, at *3. Fraud is unlikely where parties are "zealously represented by their counsel and a settlement is the product of arms-length negotiation in an adversarial process . . . ." *Lomascolo*, 2009 WL 3094955, at *12.

The Parties assert that because settlement negotiations were conducted under the supervision of Magistrate Judge Douglas E. Miller on January 10, 2025, this ensured that discussions were fair, transparent, and at arm's length. Mem. Supp. at 11. Given that the negotiation process was court-supervised, there is no indication that fraud or collusion occurred. This, too, supports a finding that the Settlement Agreement should be approved by this Court.

iv. Experience of Counsel Representing Plaintiffs

Factor four weighs in favor of approving the settlement when "[t]he pleadings, briefs, and arguments . . . exhibited a high level of experience and competence" and

"experienced counsel [] exhibited a knowledge of the applicable law [and] the procedures to be followed in this Court . . . ." *Lomascolo*, 2009 WL 3094955 at *12.

Plaintiffs' counsel, Jacob Madison Small ("Mr. Small"), has extensive experience in employment and wage-and-hour litigation. Mem. Supp. at 11. Over the past decade, he has litigated numerous employment law cases in federal and state courts, including claims under the FLSA, Title VII, the ADA, and Virginia employment statutes. *Id.* Mr. Small was directly involved in settlement negotiations and offers his informed opinion to this Court that the settlement is fair and in the best interest in the Settlement Class. *Id.* at 13. Taken together, the Court is satisfied that Mr. Small has knowledge of the applicable law and therefore finds that this factor weighs in favor of approving the Settlement Agreement.

v. Probability of Plaintiff's Success on the Merits

Courts may consider whether a plaintiff would have "significant hurdles to overcome to affect any recovery under the FLSA." *Patel*, 15 F. Supp. 3d at 656. Here, ESI routinely corrected payroll errors when raised. Mem. Supp at 13. Furthermore, the unpaid wage amounts were small. *Id.* Therefore, Plaintiffs faced uncertain prospects of proving liability on a class-wide scale. *Id.* Plaintiffs were likely to face difficulties as the case progressed, and therefore "this factor weighs heavily in favor of finding the settlement fair." *Patel*, 15 F. Supp. 3d at 656.

vi. Amount of Settlement

This factor weighs in favor of settlement where a settlement offer is not "grossly inadequate" and where the parties are likely to incur significant costs if the

case proceeds. *Flinn v. FMC Corp.*, 528 F.2d 1169, 1172 (4th Cir. 1975) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)); *Lomascolo*, 2009 WL 3094955 at *16.

The Parties agreed to settle for a total sum of $82,000. Settlement Agreement at 1. This consists of: (a) two separate checks to Ms. Keller, including a wage-like payment of $12,400, and an incentive award of $3,000, totaling $15,400 (b) two separate checks to Ms. Price, including a wage-like payment of $12,600, and an incentive award of $3,000, totaling $15,600 and (c) two separate checks to Ms. Givens, including a wage-like payment of $13,000, an incentive award of $3,000, totaling $16,000 and (d) $35,000 as compensation for Plaintiffs' reasonable attorneys' fees and costs incurred in bringing the Civil Action. *Id.* at 1–2. The Parties agree that the "settlement amount is reasonable in light of the claims asserted, the risks of litigation, and the opt-in structure available to the Settlement Class Members." Mem. Supp at 13. Given that the settlement amount is not grossly inadequate, all six factors weigh in favor of finding the Settlement Agreement fair and reasonable.

C. Attorneys' Fees

If a defendant is found to have violated FLSA, the statute provides for "a reasonable attorney's fee to be paid by the defendant, and costs of the action" in addition to any judgment awarded to the plaintiff. 29 U.S.C. § 216(b). "The FLSA 'requires judicial review of the reasonableness of counsel's legal fees to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a Settlement Agreement.'" *Devine v. City of*

Hampton, No. 4:14cv81, 2015 WL 10793424, at *3 (E.D. Va. Dec. 1, 2015) (quoting *Poulin v. Gen. Dynamics Shared Res., Inc.*, No. 3:09cv58, 2010 WL 1813497, at *1 (W.D. Va. May 5, 2010)).

The Court determines the reasonableness of the attorney's fees after giving deference to the parties' voluntary agreement and uses the lodestar principles to "cross check" fairness. *Id.* "The lodestar amount is calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate." *Kianpour v. Rest. Zone, Inc.*, No. DKC 11-0802, 2011 WL 5375082, at *3 (D. Md. Nov. 4, 2011) (citing *Robinson v. Equifax Info. Servs., LLC*, 560 F. 3d 235, 243 (4th Cir. 2009)).

In assessing reasonableness of attorneys' fees, the Fourth Circuit has directed district courts to consider the following factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Robinson, 560 F.3d at 243–44.

The fees sought by the attorney in this case are reasonable. The Complaint was filed on May 7, 2024, so this case has now been pending for over one year. Compl., ECF No. 1. Under Counsel's contingency fee agreement with Plaintiffs, Mr. Small is entitled to the greater of forty percent of the recovery or the value of his time at hourly rates. Mem. Supp. at 15. Here, forty percent of the $82,000 settlement would amount

to $32,800, slightly less than the $35,000 agreed upon in the Settlement Agreement. *Id.* Mr. Small asserts that he has invested over eighty (80) hours in this matter, which, at his hourly rate of $440, amounts to $35,200. *Id.* Therefore, the $35,000 fee requested by Mr. Small is less than what he would bill at an hourly rate and also remains consistent with the contingency agreement. *Id.* This rate is consistent with rates in the Eastern District of Virginia and is lower than market rates in some instances in the Richmond and Norfolk divisions. *See, e.g.*, *Smith v. Q.E.D. Sys. Inc.*, No. 2:19cv215, 2020 WL 975368 at *4 (E.D. Va. Feb. 11 2020), *adopted* 2020 WL 974416 (E.D. Va. Feb. 28, 2020) (approving fees of $400 per hour); *Carr v. Rest Inn, Inc.*, No. 2:14cv609, 2015 WL 5177600, at *3–4 (E.D. Va. Sept. 3, 2015) (approving rate of $500 for senior attorney). The $35,000 allotted in the Settlement Agreement to Mr. Small is reasonable pursuant to these rates.

After giving deference to the Parties' voluntary agreement, the Court finds the attorneys' fees reasonable under these circumstances. Accordingly, the Parties have satisfied all the requirements for settlement approval.

IV. CONCLUSION

For the foregoing reasons, the Court finds that the settlement memorialized in the Settlement Agreement and filed with the Court (*see* Settlement Agreement, ECF No. 24-1) meets the requirements for settlement approval, and it is therefore **APPROVED**. The Parties' Joint Motion to Approve Settlement (ECF No. 24) is **GRANTED**. The Parties' Joint Motion to Stay (ECF No. 23) is **DISMISSED as**

moot. This civil action is **DISMISSED with prejudice**, with jurisdiction being retained solely for purposes of enforcing the settlement agreement if needed.

The Clerk is **REQUESTED** to forward a copy of this Order to counsel of record for all parties.

IT IS SO ORDERED.

/s/
Arenda L. Wright Allen
United States District Judge

May 19, 2025
Norfolk, Virginia