

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

GREGORY BOLDEN,  
and others similarly situated,

Plaintiff,

v.

Case No. 6:09-CV-574-Orl-31- GAP-DAB

UNITED FORMING, INC.,  
a Georgia corporation,

Defendant.

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**JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AND DISMISSAL OF ACTION WITH PREJUDICE AND MEMORANDUM OF LAW**

Plaintiff, GREGORY BOLDEN, and Defendant, UNITED FORMING, INC., jointly notify the Court that the above-styled case has been settled contingent upon approval of said settlement by the Court. The Parties jointly request that the Court approve the Parties' proposed settlement of Plaintiff's claims and enter an Order incorporating the terms and conditions of the Parties' Settlement Agreement and Release and dismissing this matter with prejudice. The Parties premise this motion on the following grounds:

**SUMMARY**

1. Plaintiff filed the instant action against Defendant for overtime wages allegedly due pursuant to the Fair Labor Standards Act ("FLSA") on March 31, 2009. As set forth in his Responses to this Court's Interrogatories, Plaintiff claims that he is due \$11,246.40 in overtime pay, plus liquidated damages and attorney's fees and costs.

2. The Parties jointly confirm that they had a bona fide dispute under the FLSA. Defendant asserted, and continues to assert, that it had reasonable grounds to believe it was in

compliance with the FLSA at all times and acted in good faith and not in willful violation of the FLSA. Specifically, Defendant asserted, and continues to assert, that Plaintiff was exempt from the FLSA's overtime requirements since he was employed as bona fide administrative, executive, and/or professional employee. Plaintiff denies that he was exempt from the FLSA's overtime requirements.

3. There were no written discovery requests, and there were no depositions taken in this matter.

4. This case was in the pre-discovery phase when it was settled, with the exception of the exchange of information and documents that occurred pursuant to and in compliance with the Court's April 27, 2009 Scheduling Order.

5. As a result, Plaintiff and Defendant have agreed to a resolution of all claims in this matter for a sum of \$8,946.00, with the Plaintiff receiving \$8,846.00 for his claims of back pay and liquidated damages pursuant to the FLSA and \$100.00 for any and all other potential claims not related to Plaintiff's claims for unpaid overtime pay pursuant to the FLSA, as provided in the Settlement Agreement and General Release. *See* Exhibit A.

6. As part of the Parties' settlement of this case, although Defendant had and still has reasonable grounds for believing that it was in compliance with the FLSA at all times and that it acted in good faith and not in willful violation of the FLSA, Defendant has agreed to pay liquidated damages to Plaintiff. \$4,423.00 of the total settlement amount of \$8,946.00 represents payment for liquidated damages.

7. The Parties also engaged in discussions relating to the settlement of the issue of attorney's fee and costs. The Parties resolved all issues relating to the payment Plaintiff's attorney's fees and costs. In addition to the total settlement payment of \$8,946.00, Defendant has

agreed to pay an amount not to exceed \$5,000.00 for Plaintiff's attorney's fees and costs expended in prosecuting this matter. Plaintiff represents and Defendant agrees that the agreed amount of up to \$5,000.00 for fees and costs is reasonable. Plaintiff will submit to the Court an accounting of his attorney's fees and costs.

8. The Parties stipulate that they had a bona fide dispute and that they are resolving the matter in order to avoid the cost and time of litigating the issues, as well as the risks associated with continued litigation. All Parties have been represented by counsel throughout the litigation. The Plaintiff is satisfied that the amount he received represents a compromise of his claim for unpaid overtime wages pursuant to the Fair Labor Standards Act of 1938, as amended.

9. Counsel for both Parties represent that the settlement entered into by the Parties was an arms-length compromise, and there was no collusion with regard to the settlement of this matter.

10. Counsel for the Parties also represent that the continuation of this litigation would necessitate further expense necessitating additional expenditures of costs and attorney's fees.

11. Counsel for both Parties agree that, in their respective opinions, the settlement is fair and reasonable under the circumstances.

## MEMORANDUM OF LAW

### **I. Legal Principles**

In general, the overtime provisions of the FLSA are mandatory and not subject to negotiation or bargaining between employers and employees. *See e.g., Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 65 S. Ct. 895, 902, 89 L. Ed. 1296 (1945). This general rule recognizes that there often are inequalities in bargaining power between employees and employers. However, if certain conditions are met, an employee may settle and waive FLSA claims against

an employer.

Currently, there are only two ways in which claims under the FLSA can be settled on a compromised basis and released by employees. First, Section 216(c) of the FLSA specifically allows employees to settle and waive their claims under the FLSA if the payment of unpaid wages by the employer to employee is supervised by the Secretary of Labor. 29 U.S.C. § 216(c); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). Second, in the context of a private lawsuit brought by an employee against an employer under Section 216(b) of the FLSA, an employee may settle on a compromised basis and release FLSA claims against an employer if the parties present the district court a proposed settlement and the district court enters a stipulated judgment approving the fairness of the settlement. *Id.*; see also *Schulte, Inc. v. Gangi*, 328 U.S. 108, 66 S. Ct. 925, 928 n.8, 90 L. Ed. 1114 (1946); *Jarrard v. Southeastern Shipbuilding Corp.*, 163 F.2d 960, 961 (5th Cir. 1947).

Therefore, an employee properly may settle and release FLSA claims against an employer without the supervision of the Secretary of Labor if (1) the settlement agreement between the employer and the employee occurs in an adversarial context, (2) there are issues of FLSA coverage and/or computation that are actually in dispute, and (3) the district court enters a stipulated judgment approving the settlement after scrutinizing the fairness of the settlement. *Lynn*, 679 F.2d at 1354.

## **II. Analysis**

The instant case plainly involves a situation in which the Court may allow Plaintiff to settle and release his FLSA claims against Defendant. The proposed settlement arises out of an adversarial context. All Parties have been represented by counsel throughout the litigation.

Additionally, Plaintiff's claims involve disputed issues, as reflected by the Complaint and

Defendant's Answer. After reviewing the Defendant's payroll records and Answer, Plaintiff is satisfied that the amount of the settlement represents a fair and reasonable compromise of his alleged unpaid wages, liquidated damages, and costs and attorney's fees to which Plaintiff claims or may claim to be entitled, including amounts pursuant to the Fair Labor Standards Act of 1938, as amended. The Parties agreed to the terms of this settlement after they were counseled by their respective attorneys.

WHEREFORE, the Parties respectfully request that the Court approve the Parties' settlement and incorporate the terms of the Parties' Settlement Agreement into an Order dismissing this matter with prejudice.

Dated this 17th day of July, 2009.

Respectfully submitted,

/s/ Mary Anne Ackourey

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system, which will send a notice of electronic filing to the following: K. E. Pantas, Esq., PANTAS LAW FIRM, 250 North Orange Avenue, Eleventh Floor, Orlando, Florida 32801, and John M. Finnigan, Esq., Finnigan Law Firm, 1700 N. Maitland Avenue, Maitland, Florida 32751. This 17th day of July, 2009.

*/s/ Mary Anne Ackourey*  
Mary Anne Ackourey

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**ORDER**

Upon application of the parties and upon review of the private settlement agreement agreed to by the parties in this action, the Court concludes that the terms of the settlement agreement are reasonable and satisfactory and hereby approves of the settlement agreement. This Court thereby orders that the above-styled action be DISMISSED WITH PREJUDICE. Defendant shall pay Plaintiff's attorneys' fees and costs in the amount agreed to by the parties pursuant to the private settlement agreement. The Court shall retain jurisdiction to enforce the terms of the parties' settlement agreement.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JUDGE, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA