

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. [INSERT]:17-CV-[INSERT]-ROSENBERG/[INSERT]**

[INSERT],

Plaintiff,

v.

[INSERT],

Defendant.

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**ORDER OF COURT-MANDATED REQUIREMENTS  
IN FLSA-BASED CASES AND ORDER REQUIRING MEDIATION**

**THIS MATTER** is before the Court upon the filing of an action under the Fair Labor Standards Act, *as amended*, 29 U.S.C. §201 *et seq.* (“FLSA”), by which the Plaintiff seeks unpaid wages. To expedite resolution of this matter, the parties are instructed to comply with the following requirements.

**I. STATEMENT OF CLAIM**

To assist the Court in the management of the case, the Plaintiff is **ORDERED** to file with the Court a statement of claim setting forth the amount of the alleged unpaid wages, the calculation of such wages, and the nature of the wages (*e.g.* overtime or regular) *within twenty-one (21) days from the date of this Order*. The statement of claim shall also include all attorney’s fees and costs incurred to date. With respect to attorney’s fees, counsel must provide the hourly rate sought and the number of hours expended by each person billing time. Also within that allotted time, the Plaintiff shall serve a copy of this Order, the statement of claim, *and copies of all documents supporting the claim (e.g. time slips, pay stubs)* on the Defendant’s counsel. The Plaintiff shall, on that same date, additionally file a notice of full compliance with this Order.

The Defendant, *within fourteen (14) days of service of the Plaintiff’s statement of claim*, is **ORDERED** to file with this Court a response to the Plaintiff’s statement, and provide the Plaintiff

with copies of all documents supporting its defenses. Concurrently, the Defendant shall file a notice of full compliance with this Order. **Failure to comply with this Order may result in default, dismissal, and/or sanctions.**

## II. SETTLEMENT APPROVAL

Because FLSA rights cannot be abridged by contract or otherwise waived, claims arising under the FLSA may be compromised only with the approval of the Court or the Secretary of Labor. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982). In a suit brought by employees under the FLSA, the Court must determine whether a settlement proposed by the employer and employees "is a fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Id.* at 1355. In doing so, the Court considers such factors as "(1) existence of fraud; (2) complexity of the case; (3) the point of the proceedings when the settlement occurs; (4) the probability of success on the merits; (5) the range of possible recovery; and (6) counsel's opinion." *McHone v. Donald P. Hoekstra Plumbing, Inc.*, No. 10-60322-CIV, 2010 WL 4625999, at \*1 (S.D. Fla. Nov. 4, 2010); *see also Leverso v. SouthTrust Bank of Ala., Nat'l Ass'n.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994). Finally, 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." *Silva v. Miller*, 307 F. App'x 349, 351 (11th Cir. 2009).

Confidentiality provisions are, at best, strongly disfavored in the settlement of FLSA claims. *See Dees v. Hydradry, Inc.*, 706 F. Supp. 2d 1227, 1242-43 (M.D. Fla. 2010) ("A confidentiality provision in an FLSA settlement agreement both contravenes the legislative purpose of the FLSA and undermines the Department of Labor's regulatory effort to notify employees of their FLSA rights. . . . The district court should reject as unreasonable a compromise that contains a confidentiality provision, which is unenforceable and operates in contravention of the FLSA."); *see also Webb v.*

*CVS Caremark Corp.*, No. 5:11-CV-106 (CAR), 2011 WL 6743284, \*3 (M.D. Ga. Dec. 23, 2011) (holding that, “in light of the Court’s ruling that it will not seal any settlement agreements, it is likely that the confidentiality provisions are unenforceable” and, moreover, such a provision “contravenes the legislative purpose of the FLSA”). However, some courts have approved FLSA settlement agreements with a confidentiality clause upon a showing of a “compelling reason.” *Crabtree v. Volkert, Inc.*, No. 11-0529-WS-B, 2013 WL 593500, \*4 (S.D. Ala. Feb. 14, 2013).

Accordingly, it is hereby **ORDERED** that any motion for settlement approval filed in this case should do the following:

- a. Attach a copy of the settlement agreement.
- b. State whether the settlement agreement would result in a complete recovery of all wages that plaintiff(s) claimed to be owed.
- c. Explain, with specificity, the nature of the parties’ bona fide dispute and why the settlement agreement represents a fair and reasonable resolution of that dispute, in light of the factors outlined above.
- d. If the settlement agreement provides for the recovery of attorney’s fees, explain how the fees were calculated and why the amount of the fees is reasonable. If the fees were calculated on an hourly basis, records of counsel’s time should be attached.
- e. If the settlement agreement contains a confidentiality provision, explain why the parties believe such a provision is warranted.

**Failure to comply with these requirements may result in denial of the motion for settlement approval.**

### III. MEDIATION

Pursuant to Local Rule 16.2, this case is referred to mediation as follows:

- a. Mediation shall be completed **within twenty (20) days** after the date that Defendant's response is due to Plaintiff's statement of claim;
- b. The parties shall, **within fourteen (14) days** of the rendition of this Order,<sup>1</sup> agree upon a mediator and file a Notice with the Court naming the chosen mediator and stating the date, time, and location for which mediation has been scheduled. If the parties are unable to agree upon mediator, they shall ask the Clerk of Court to designate a mediator from the list of certified mediators on a blind random basis;
- c. Counsel for Plaintiff shall be responsible for coordinating a mediation date, time, and location agreeable to the mediator and all counsel of record; and
- d. **Within one (1) day** of the mediation conference, the mediator shall file a Mediation Report indicating who attended the mediation and the result thereof.

The mediation deadline imposed by this Order may not be extended without prior approval of the Court and **this requirement is in addition to, and not in lieu of, the mediation required prior to trial pursuant to the Court's Order Setting Status Conference, Calendar Call, Pretrial Deadlines, and Trial Date and Order of Reference to Magistrate.** Nothing in this Order shall preclude the parties, however, from seeking to be exempted from additional mediation, should the parties conclude that additional mediation would not help to resolve this case.

**DONE and ORDERED** in Chambers, Fort Pierce, Florida, this [DATE] day of [MONTH], [YEAR].

Copies furnished to:  
All counsel of record

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ROBIN L. ROSENBERG  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> If no Defendant has appeared within fourteen (14) days of the rendition of this Order, Plaintiff shall, as an alternative, file the required notice within seven (7) days of an appearance by any Defendant.