UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ARMANDO CARDENAS, *et al.*,

Plaintiff,

v.

A.J. PIEDIMONTE AGRICULTURAL DEVELOPMENT, LLC, *et al.*,

Defendants.

DECISION AND ORDER

1:18-cv-00881 EAW

BACKGROUND

Named plaintiffs Armando Cardenas, Jose F. Cardenas, Juanita Senteno, Veronica Simmons Bailey, Isaiah Alexander, Kathy Alexander, and Shonda Tate (collectively "Named Plaintiffs") commenced the instant action on August 8, 2018, on behalf of themselves and all others similarly situated. (Dkt. 1). The Complaint alleges that Named Plaintiffs are former employees of defendants A.J. Piedimonte Agricultural Development, LLC, James J. Piedimonte & Sons, Inc, James J. Piedimonte & Sons, LLC, MAGC, Inc., Anthony Joseph Piedimonte, and Scott James Bennett (collectively "Defendants"), and that, among other things, they were not paid the minimum hourly rates required by law. (*Id.*).

On September 20, 2018, the Court referred the matter to United States Magistrate Judge Michael J. Roemer for supervision of all pre-trial matters except dispositive motions.

(Dkt. 29).[1] On November 27, 2018, Judge Roemer issued a Decision and Order conditionally certifying the matter as a collective action pursuant to § 216(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b). (Dkt. 48). In addition to Named Plaintiffs, 41 individuals ("Opt-In Plaintiffs") (together with Named Plaintiffs, "Plaintiffs") have opted-in to participation in this lawsuit. *See Myers v. Hertz Corp*., 624 F.3d 537, 542 (2d Cir. 2010) ("Unlike in traditional 'class actions' maintainable pursuant to Federal Rule of Civil Procedure 23, plaintiffs in FLSA representative actions must affirmatively 'opt in' to be part of the class and to be bound by any judgment.").

The parties participated in a mediation session before Nelson Thomas, Esq. on May 21, 2019. (*See* Dkt. 76). On January 14, 2020, Judge Roemer presided over a settlement conference wherein the parties made significant process towards a mutually agreeable resolution of the matter. (*See* Dkt. 95; Dkt. 99 at 3). The parties appeared before Judge Roemer again on February 19, 2020, and engaged in further settlement negotiations. (*See* Dkt. 96; Dkt. 99 at 3-4). On April 10, 2020, the parties submitted to the Court a joint letter request for approval of their negotiated Settlement Agreement and Release. (Dkt. 99).

The Court has reviewed the negotiated Settlement Agreement and Release (Dkt. 99-1) (the "Settlement Agreement"), and approves it—with one modification—for the reasons set forth below.

[1] The referral to Judge Roemer was subsequently modified to include hearing and reporting upon dispositive motions for the consideration of the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). (Dkt. 88).

DISCUSSION

I. Legal Standard

Plaintiffs have not moved to certify this case as a class action pursuant to Federal Rule of Civil Procedure 23 and the deadline for doing so has long since passed. (*See* Dkt. 47 at ¶ 8 (deadline to move for class certification was October 4, 2019)). Accordingly, the Settlement Agreement does not impact the rights of any non-parties, and the Court need not consider whether the requirements to maintain a class action are satisfied. *See Scott v. Chipotle Mexican Grill*, Inc., 954 F.3d 502, 520 (2d Cir. 2020) ("[T]he requirements for certifying a class under Rule 23 are unrelated to and more stringent than the requirements for 'similarly situated' employees to proceed in a collective action under § 216(b)."); *Surdu v. Madison Glob., LLC*, No. 15 CIV. 6567 (HBP), 2018 WL 1474379, at *6 (S.D.N.Y. Mar. 23, 2018) ("[S]ettlement of a collective action does not implicate the same due process concerns as the settlement of a class action because, unlike in Rule 23 class actions, the failure to opt in to an FLSA collective action does not prevent a plaintiff from bringing suit at a later date."). Instead, as an initial matter, the Court must satisfy itself that Opt-In Plaintiffs are "similarly situated" to Named Plaintiffs before it can finally determine that a collective action is appropriate. *See Marichal v. Attending Home Care Servs.*, LLC, 432 F. Supp. 3d 271, 277 (E.D.N.Y. 2020) ("The Court can conclude that the opt-in plaintiffs are in fact similarly situated, either following motion practice by the parties or through its review of a proposed settlement agreement[.]").

Further, "an employee may not waive or otherwise settle an FLSA claim for unpaid wages for less than the full statutory damages unless the settlement is supervised by the

Secretary of Labor or made pursuant to a judicially supervised stipulated settlement," and in the latter case, "before a district court enters judgment, it must scrutinize the settlement agreement to determine that the settlement is fair and reasonable." *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012). Such analysis is frequently referred to as a *Cheeks* analysis, in reference to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). In performing the *Cheeks* analysis, the Court considers the totality of the circumstances, including the following factors:

> (1) the plaintiff's range of possible recovery; (2) the extent to which the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defenses; (3) the seriousness of the litigation risks faced by the parties; (4) whether the settlement agreement is the product of arm's-length bargaining between experienced counsel; and (5) the possibility of fraud or collusion.

Wolinsky, 900 F. Supp. 2d at 335 (quotation omitted). "There is a strong presumption in favor of finding a settlement fair, as the Court is generally not in as good a position as the parties to determine the reasonableness of an FLSA settlement." *Cabrera v. CBS Corp.*, No. 17-CV-6011 CM BCM, 2019 WL 502131, at *5 (S.D.N.Y. Feb. 8, 2019) (quotation omitted).

II. Final Certification of Collective Action

The Court first considers whether Named Plaintiffs and Opt-In Plaintiffs are "similarly situated" such that final certification of the collective action is warranted. As the Second Circuit recently held, in this context "to be 'similarly situated' means that named plaintiffs and opt-in plaintiffs are alike with regard to some material aspect of their litigation." *Scott*, 954 F.3d at 516. The Court easily concludes that this standard is met

here. The record in this matter supports the conclusion that Plaintiffs were employed by Defendants in sufficiently similar roles and that there are common issues of law and fact regarding whether they were paid the minimum wage required by law. (*See, e.g.*, Dkt. 92-1 at 9; Dkt. 92-2; Dkt. 92-3; Dkt. 92-4; Dkt. 93-1). In particular, there are common questions as to the applicability of the FLSA's exemption of agricultural employees from its overtime requirements, *see* 28 U.S.C. § 213(b)(12), and by definition the collective action consists solely of individuals who performed physical labor for Defendants for more than 40 hours in a week and were paid on an hourly basis but did not receive overtime compensation (*see* Dkt. 48 at 9). Accordingly, the Court finds that Named Plaintiffs and Opt-In Plaintiffs share a "similarity with respect to an issue of law or fact material to the disposition of their FLSA claim," *Scott*, 954 F.3d at 516 n.4, and grants final certification of the collective action.

III. Assessment of Settlement Agreement

The Court turns next to the substance of the Settlement Agreement. As an initial matter, the Court notes that "the named plaintiff and his counsel in a collective action cannot settle a case on behalf of an opt-in plaintiff: the affirmative assent of each opt-in plaintiff—as a party to the case—is required." *Marichal*, 432 F. Supp. 3d at 279. Courts often satisfy this requirement by using "a two-tiered procedure: first, the parties file a motion for preliminary approval of the settlement and request approval of a notice. . . . As a second step, the parties file a motion for final approval, and the Court conducts a final fairness hearing, giving all opt-in plaintiffs the opportunity to be heard by the Court." *Id.* at 280. However, such a two-step procedure is not necessary in every case; for example,

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