

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VALERIE WALENCIK,

Plaintiff,

v.

Case Number 24-11713

Honorable David M. Lawson

KOSTAL KONTAKT SYSTEME, INC.,

Defendant.

**ORDER CONDITIONALLY APPROVING RENEWED JOINT MOTION
TO APPROVE SETTLEMENT AGREEMENT**

This parties previously filed a joint motion for approval of a settlement agreement, which the Court denied without prejudice because the proposed opt-in procedures did not comport with the requirements of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* ECF No. 24. The parties now have filed a renewed motion to approve the settlement. The Court heard oral argument on the motion on September 30, 2025 during which the Court reiterated its concern — which it had raised earlier at a status conference — that the settlement structure proposed by the parties still did not comport with the FLSA because it did not include a procedure for individuals to opt in to the litigation and be joined as plaintiffs before agreeing to the settlement. The Court directed the plaintiff to review *O’Bryant v. ABC Phones of North Carolina, Inc.*, No. 19-02378, 2020 WL 4493157, *2 (W.D. Tenn. Dec. 22, 2020), which set out in detail problems with a similar settlement structure, and to file a supplemental brief justifying her proposal. The Court has received the supplemental filing.

The plaintiff’s submission does not address the Court’s questions in an entirely satisfying manner. Nevertheless, she represents that the parties are willing to modify the settlement in a way

that the Court believes will be consistent with the FLSA's requirements, as discussed below. The Court will direct the parties to re-submit their settlement protocol and incorporate the changes.

I.

To recap, the plaintiff alleged in a complaint that the defendant failed to compensate employees properly for their overtime work. The parties represent that they engaged in "informal discovery" before mediating the case with attorney Dennis Clifford. During the mediation, the parties apparently reached an agreement to resolve the claims of the plaintiff as well as others employed by the defendant.

The parties have identified approximately 148 non-exempt putative plaintiffs who are presently or were employees of the defendant. Under the agreement, the parties would engage a settlement administrator who will mail a "Notice of Settlement" to "eligible employees" and former employees. ECF No. 23-1, PageID.121.

The structure of the parties' current proposed settlement is relatively straight-forward: the defendant will pay \$35,000 to be divided among the eligible employees and plaintiff's counsel. The Court previously approved the parties' request to designate the eligible employees and former employees entitled to notice of the FLSA collective as:

All of Defendant's current and former hourly employees who worked for Defendant in the United States at any time in the past three years and received shift differential pay in the same workweek(s) as they incurred overtime hours.

ECF No. 29, PageID.156.

The parties again have structured the settlement as a one-step process. All members of the settlement would be mailed notice packets that contain a check for their portion of the settlement fund in an amount based on a formula "that calculates unpaid wages from their payroll during the Relevant Time Period." ECF No. 30-1, PageID.187-88. Every employee would be entitled to a

minimum of \$5. And each check would contain language setting out a release of the employee's claims:

I knowingly and voluntarily release, waive, and discharge Kostal Kontakt Systeme, Inc. and all other Released Parties, from any and all federal, state, and local wage and hour claims of any nature whatsoever that accrued during my employment with Kostal Kontakt Systeme between July 2, 2021 and December 31, 2024, including, but not limited to, all federal, state, and local claims for overtime, minimum wage, and related penalties, interest, liquidated damages, attorneys' fees, and costs.

Id. at PageID.192. The instructions accompanying the mailing would make clear that cashing the check would amount to acceptance of the release. Checks may be re-issued for "good cause." *Id.* at PageID.190. Eligible employees would have 180 days to cash their checks, but this deadline may be extended by 30 days if a check is re-issued. At the conclusion of this period, any undispersed funds will be returned to the defendant. *Ibid.* The proposed settlement procedure does not include any provision for placing the names of the individuals who deposit their settlement checks on the docket as opt-in plaintiffs.

The portion of the settlement that would flow to the employees would be reduced by a \$2,000 service award for named plaintiff Valerie Walencik, \$18,500 in attorney's fees, and \$2,522.38 in litigation costs. In support of the attorney's fees award, attorney Jesse Young filed a declaration indicating that he, attorney Tom Nafziger, and paralegal David Quick, had billed a combined 53.1 hours on the case. ECF No. 30-3, PageID.220. Young's hourly rate is \$725; Nafziger's is \$325; and Quick's is \$195. If assessed at their typical hourly rates, their work in this case would total to \$27,689. *Ibid.* The parties represent that they will stipulate to dismiss the case with prejudice after the Court approves the settlement agreement and the defendant meets its financial obligations.

The basic terms of this settlement are fair, adequate, and reasonable. However, the procedures for notifying each prospective opt-in plaintiff and identifying them with this lawsuit are deficient.

II.

As the Court explained to the parties at the last hearing, the one-step procedure that combines notice, release, and payment of the settlement funds suffers from the defects described by the district court in *O'Bryant v. ABC Phones of North Carolina, Inc.*, No. 19-02378, 2020 WL 4493157, *2 (W.D. Tenn. Dec. 22, 2020). In that case, as here, the parties asked the court to approve a settlement where eligible employees would be mailed a check for their portion of the settlement. *O'Bryant*, 2020 WL 4493157, at *3. Each check would contain language explaining that depositing or cashing the check would amount to a release of their claims against the defendant; on cashing the check, each recipient would be considered an “opt-in” plaintiff. *Id.* at *4. The parties asked the court to dismiss the case with prejudice at the time it approved the settlement. *Id.* at *2.

The *O'Bryant* court expressed four principal concerns with this procedure. First, the court found it to be incompatible with the text of the FLSA, which states that “[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.” 29 U.S.C. § 216(b). The court cited numerous district court decisions holding that cashing a check is not a valid way to satisfy the statute’s requirement that individuals furnish written consent to join the suit. *O'Bryant*, 2020 WL 4493157, at *10 (collecting cases). Second, the court expressed concern that no provision was made in the settlement agreement for the opt-ins to be filed with the court. *Ibid.* Even if the

parties filed a list of all the individuals who had cashed checks, the method would remain deficient, the court explained, because it would not amount to “the written consent of each individual.” *Ibid.*

Third, the court explained that the procedure, as proposed, was “entirely backwards.” *Id.* at *11 (quoting *Douglas v. Allied Universal Sec. Servs.*, 371 F. Supp. 3d 78, 86 (E.D.N.Y. 2019)). Under the settlement, checks would not issue to the potential opt-in plaintiffs until after the court had approved the settlement. But “approv[ing] the settlement on behalf of individuals who are not before the Court and [] dismiss[ing] their claims with prejudice before they have appeared or had the opportunity to be heard” would not be an “‘orderly, sensible,’ or ‘proper way’ to resolve [the] case,” the court reasoned. *Ibid.* (quoting *Hoffmann–La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989)). Finally, the court raised a jurisdictional concern. If the court dismissed the case, there would be no live case or controversy, the case would be moot and there would be no means for the court to supervise the settlement or for plaintiffs to join the suit as opt-ins.

The plaintiff’s discussion of *O’Bryant* in her supplemental brief can be characterized as superficial. She summarizes the case’s holding but does not attempt to deal with its analysis. Instead, she raises a variety of other points. She emphasizes, for instance, that a consent to join an FLSA suit can take a multitude of forms as long as it is in writing and indicates a desire to join the case. She also explains that opt-in rates generally are low when an FLSA settlement requires that all plaintiffs must submit separate forms before the Court ratifies a settlement, but the opt-in rate rises dramatically where the FLSA settlement is a one-step settlement process, i.e., where settlement notices and checks are sent together in one mailing. For that reason and for reasons of judicial economy, she says that courts regularly approve the one-step procedure. ECF No. 32, PageID.321 (citing *Pieber v. SVS Vision, Inc.*, No. 20-13051, 2022 WL 687248 (E.D. Mich. Mar. 2, 2022); *Pham v. QuadGen Wireless Sols., Inc.*, No. 17-2894, 2020 WL 13682299 (E.D. Pa. Mar.

3, 2020); *Sheikh v. Align Commc'ns, Inc.*, No. 15-7549, 2017 WL 192956 (S.D.N.Y. Jan. 18, 2017); *Sarinana v. DS Waters of Am., Inc.*, No. 13-0905, 2014 WL 12770237 (N.D. Cal. June 9, 2014)). The plaintiff also directs the Court to the Third Circuit's recent decision in *Lundeen v. 10 W. Ferry St. Operations LLC*, 156 F.4th 332 (3d Cir. 2025), which she says makes clear that an employee can validly release FLSA claims without opting in to the case.

The plaintiff proposes, however, that if the Court remains concerned, she would agree to modify the settlement structure so that copies of the endorsed checks would be filed with the Court before the matter is dismissed, a procedure that apparently has been approved by several courts.

Many of the arguments that the plaintiff presents reacting to the *O'Bryant* court's criticism of the one-step FLSA settlement proposals are focused on policy considerations that perhaps favor her preferred settlement structure. It is true that several cases in this district have approved that settlement structure, and the settlement participation rates in those cases apparently were substantial, according to the materials the plaintiff cites in her brief. However, most of those cases offer little insight into the question of whether a one-step settlement structure procedure is authorized by the FLSA. In some of the cases, the court entered a stipulated order approving the settlement that contained little, if any, reasoning. See ECF No. 55, *Boyer v. Hi-Lex America, Inc.*, No. 23-11429 (E.D. Mich.) (White, J.); ECF No. 35, *Harris v. Armada MI OPCO LLC*, No. 23-10319 (E.D. Mich.) (Drain, J.); ECF No. 25, *Gray v. The Shyft Group USA, Inc.*, No. 23-11336 (E.D. Mich.) (Parker, J.). In others, the court did not weigh in on the terms of the settlement at all. See ECF No. 11, *McCaskill v. Samsung SDI America, Inc.*, No. 24-11719 (E.D. Mich.) (Murphy, J.); ECF No. 22, *Turner v. Creative Foam Corp.*, No. 24-10629 (E.D. Mich.) (White, J.). That those settlements apparently were successful at returning funds to eligible employees is not directly relevant to the question whether the FLSA authorizes the procedure.

Walencik identifies several other district court cases approving the one-step process, but they likewise include little in the way of detailed reasoning. *See Pieber v. SVS Vision, Inc.*, No. 20-13051, 2022 WL 687248 (E.D. Mich. Mar. 2, 2022) (Parker, J.); *Pham v. QuadGen Wireless Sols., Inc.*, No. 17-2894, 2020 WL 13682299 (E.D. Pa. Mar. 3, 2020); *Sheikh v. Align Commc'ns, Inc.*, No. 15-7549, 2017 WL 192956 (S.D.N.Y. Jan. 18, 2017); *Sarinana v. DS Waters of Am., Inc.*, No. 13-0905, 2014 WL 12770237 (N.D. Cal. June 9, 2014). None of these cases include significant analysis of how the one-step method addresses any of the problems identified in *O'Bryant*.

True, the court in *Sheikh* mentioned that “there [was] no reason to require” members of the FLSA collective to submit a claim form, 2017 WL 192956, at *3, but the settlement in that case also included a process for resolving the plaintiffs’ state law claims brought under Civil Rule 23 governing class actions. Moreover, the court’s opinion does not make clear whether the settlement protocol would require the parties to place copies of the endorsed checks on the docket before the court dismissed the case, a procedure the plaintiff proposes as an alternative here that might address one of the *O'Bryant* court’s concerns. In *Sarinana*, the court directed the parties to modify their settlement proposal so that cashing a check could be “construed as an opt-in for purposes of the FLSA,” 2014 WL 12770237, at *2, but there is no concrete explanation for how the process comports with the FLSA. In any event, the opinion does not make clear whether a list of opt-ins would be filed with the court prior to dismissal of the case.

The recent Third Circuit case cited by the plaintiff, *Lundeen v. 10 West Ferry Street Operations LLC*, does offer some support for the proposed one-step process. In that case, the plaintiff brought a hybrid class and collective action, asserting claims under the FLSA and Pennsylvania law. *See* 156 F.4th at 335. After the district court conditionally certified an FLSA

collective action and ten employees opted in to the case by filing written consents, the parties negotiated a settlement, and the plaintiff filed an unopposed motion for conditional class certification of the state law claims under Rule 23(b)(3). The settlement agreement provided that a portion of the settlement fund would be distributed to the class members who had not opted out even when those class members did not submit a claim form; the ten individuals who had opted in to the FLSA collective action would share from an additional pool. *Id.* at 336. In exchange, all class members, except for those who had opted out, would release their state law *and* FLSA claims. *Ibid.*

The district court declined to approve the settlement, reasoning that it would be “neither fair nor reasonable” to require individuals who did not affirmatively opt in to the FLSA collective — i.e. members of the Rule 23(b)(3) class — to release their FLSA claims. *Ibid.* The parties moved for reconsideration, which the court denied. However, the court certified the question for interlocutory review. *Ibid.*

On appeal, the Third Circuit disagreed with the district court’s view that class members who did not opt in to the FLSA collective could not release their FLSA claims. The court held that “§ 216(b) of the FLSA provides only a mechanism for opting into collective litigation” and “does not bar the release of unasserted FLSA claims in a court-approved Rule 23 settlement.” *Id.* at 338. The court observed that while the FLSA “requires written consent to litigate an FLSA claim, [] it says nothing about waiver of such a claim in settlement.” *Id.* at 341. According to the Third Circuit, Congress’s silence on that issue indicated an absence of any restriction on an individual’s ability to waive those claims as part of a class settlement. Moreover, the FLSA’s general policy in favor of worker protection could not support that result given the statute’s lack of ambiguity on the question, the court emphasized. *Ibid.*

The court also explained that section 216(b)'s opt-in scheme was added to the law, "not as a worker-protection measure but 'primarily as a check against the power of unions' and a bar to 'one-way intervention' whereby plaintiffs could wait for a favorable outcome before choosing to opt in and be bound by the judgment." *Id.* at 340-41 (quoting *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 260 (3d Cir. 2012)). However, the court emphasized that the question of whether a court can approve opt-out settlements that release FLSA claims is a distinct question from whether they ought to when scrutinizing a settlement under Rule 23(e), and it remanded the case for the district court to undertake that analysis. *Id.* at 341.

The Sixth Circuit has not weighed in directly on the issues discussed in *Lundeen*. *Id.* at 337 (recognizing that "no other Circuit has yet to squarely address this issue"); *Gilstrap v. Sushinati LLC*, 734 F. Supp. 3d 710, 721 (S.D. Ohio 2024) (observing that the "Sixth Circuit has yet to speak directly to the issue" of cases raising both FLSA claims and state-law claims pursued via a class action); *see also McKnight v. Erico Int'l Corp.*, 655 F. Supp. 3d 645, 654 (N.D. Ohio 2023) (approving class settlement releasing class members' FLSA claims). In any event, *Lundeen* also does not address the reasoning of *O'Bryant*.

The plaintiff maintains that *Lundeen* supports the settlement procedure here because the case makes clear the plaintiffs can release FLSA claims without opting in to the action. But the plaintiff forgets that the settlement in that case occurred as part of a class action and the settlement was subject to the procedural protections of Rule 23(e)(2). Here, the plaintiff already stipulated to dismiss her class claims. ECF No. 26. And even if it were somehow possible for individuals to settle FLSA claims without court supervision, *see Gilstrap*, 734 F. Supp. 3d at 721, that would not address the problem here, where the parties ask the Court to grant judicial approval to a settlement scheme that applies to individuals who never were joined as plaintiffs in the case. *Cf. Logan v.*

MGM Grand Detroit Casino, 939 F.3d 824, 830 (6th Cir. 2019) (“[T]he Supreme Court has already determined that substantive rights under the FLSA cannot be waived.”) (citing *Brooklyn Savs. Bank v. O’Neil*, 324 U.S. 697, 704 (1945)).

Absent clearer authority holding that the parties’ method of settling the case satisfies the concerns raised in *O’Bryant*, the parties must modify the settlement procedures. The path of least resistance likely is the method proposed by the plaintiff in her brief, with some adjustment. She says that the settlement administrator could file copies of endorsed checks, presumably to satisfy § 216(b)’s requirement that plaintiffs file a written consent to join the action, and the Court could dismiss the case after those are filed. She directs the Court to several cases where courts have adopted that procedure:

- In *Nix v. Adams Beverages of N.C., LLC*, No. 19-00669 (W.D.N.C.), the court approved a settlement agreement and kept the docket open so that class counsel could file opt-in forms on behalf of each participating collective member. However, the court also dismissed the case with prejudice in the same order. See ECF No. 27, *Nix*, supra.
- In *Villar v. AHRC Home Care Services, Inc.*, No. 18-9174, 2020 WL 6538750 (S.D.N.Y. Nov. 6, 2020), the court approved a procedure by which “copies of all Settlement Checks will be submitted to the Court under seal, and a list of all individuals that have endorsed, deposited and cashed their Settlement Checks shall be publicly filed on the docket, in order for the Court to issue a final order closing the case.” *Id.* at *2.
- And in *Hart v. Movement Mortgage, LLC*, 2016 WL 11756816, at *3 (C.D. Cal. June 28, 2016), the court provided that at the conclusion of the period by which collective members could cash their settlement checks, “the claims administrator will make a single filing that contains copies of all the check endorsements signed by Class Members, which constitutes those Class Members’ consent to join the FLSA action.” *Id.* at *12 (cleaned up).

A procedure similar to the one employed in *Villar* and *Hart* will satisfy the Court’s concerns here. Notably, the FLSA has little to say about the format of the opt-in process. *O’Bryant*, 2020 WL 4493157, at *10 (“[T]he FLSA does not specify the form that this written consent must take.”). And there is no reason to think a signed check could not serve as a valid

opt-in, provided that it includes language indicating a consent to join the case as a plaintiff. *See Hart*, 2016 WL 11756816, at *3. Critically, the text of § 216(b) does not require that an opt-in plaintiff file his or her own consent with the court for it to be effective. And the Court already has the information it needs to scrutinize the fairness of the settlement as to all individuals who may opt in. Any dissatisfied individual would be free not to cash their check.

Accommodating these changes will require several alterations to the parties' settlement agreement terms that outline the process. For one, the release language proposed for each settlement check must be amended to include a statement that endorsing and cashing the check will amount to a consent to join the lawsuit as a plaintiff. Presently, the settlement provides that the checks will include only information setting out the scope of the waiver. *See* ECF No. 30-1, PageID.192. A model of a check that contained information about joining the lawsuit can be found in *Hart*. There, each check contained the following language:

PAYEE'S ENDORSEMENT REQUIRED. My signature constitutes consent to join in the Federal Fair Labor Standards Act ("FLSA") portion of this action and have the Named Plaintiff and her counsel represent me and file a copy of my endorsement/consent with the court in this action pursuant to 29 U.S.C. § 216(b). By signing, I am also agreeing to a full and final release and discharge of Defendant from the "Released Claims" as described in the Second Amended Joint Stipulation of Settlement and Release in United States District Court Case Number SACV 14-01168 JLS (PLAx).

Id. at *12.

The settlement also must be modified to require the settlement administrator to file copies of the endorsed checks with the Court. Presently, the settlement agreement prescribes a deadline of 180 days from the date the settlement notice packets are mailed for eligible employees to deposit their settlement checks, allowing for an extension of 30 days if a check must be reissued. ECF No. 30-1, PageID.190. That period is consistent with the period approved in *Hart*. *See* 2016 WL 11756816, at *12. The settlement agreement must state that the administrator must file the

consents at the conclusion of the check-cashing period and also file a notice that the case may be dismissed at that time.

III.

The Fair Labor Standards Act authorized collective actions, but similarly-situated employees must consent in writing before they are joined in the action and become bound by it. 29 U.S.C. § 216(b) (“No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.”). However, courts have held that nothing in the FLSA prohibits simultaneous joinder and settlement approval, as long as the written consent is “filed in the court.” The parties’ proposed settlement must be modified to accommodate those requirements, but otherwise it eligible for approval.

Accordingly, it is **ORDERED** that renewed joint motion to approve the settlement agreement (ECF No. 30) is **CONDITIONALLY APPROVED**.

It is further **ORDERED** that the parties must submit an amended settlement agreement that incorporates the following changes to the opt-in. consent, and notice procedures:

- The settlement checks must include a notice that endorsing and cashing the check will signify consent to join the case, agreement to the settlement, and a waiver of rights, using language substantially similar to that approved in *Hart v. Movement Mortgage, LLC*, No. 14-1168, 2016 WL 11756816, at *12 (C.D. Cal. June 28, 2016); and
- The settlement administrator must file all consent forms on the docket, which may consist of the endorsed back of each check with the endorser’s name legibly typed or printed under the signature, in a single filing that contains copies of all the check endorsements signed by each opt-in plaintiff.

It is further **ORDERED** that at the conclusion of the check-cashing period, the parties shall file a motion certifying that they have complied with the procedures in the modified

settlement agreement and this Court's orders, listing the census of the opt-in plaintiffs and those eligible to opt in who have not done so, and moving for dismissal of the case.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 14, 2025