UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN BELT, et al., Plaintiffs, v. P.F. CHANG'S CHINA BISTRO, INC., Defendant.	No. 2:18-CV-03831-AB

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL

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INTRODUCTION

The Supreme Court, the United States Court of Appeals for the Third Circuit, and this Court have all recognized that there is a strong presumption of public access to judicial records. That presumption—as this Court has previously held—is particularly appropriate with regard to judicial records pertaining to Fair Labor Standards Act (FLSA) cases.

In this case, the parties successfully moved the Court for approval of a proposed FLSA settlement, but redacted certain information from the proposed settlement agreement. *See* Doc. 203-1. To vindicate the public right of access, to advance the objectives of the FLSA, and to further her research, proposed intervenor Professor Charlotte Alexander seeks to unseal the redacted information. To the extent the Court denies relief as to any of those categories of information, Professor Alexander seeks specific, on-the-record findings as to the Court's reasons for maintaining those portions of the judicial record under seal.

BACKGROUND

In this FLSA collective action, plaintiffs are servers who worked at P.F. Chang's China Bistro (P.F. Chang's) and allege that P.F. Chang's denied them wages to which they were lawfully entitled under the FLSA. Plaintiffs allege that they spent more than 20 percent of their time performing non-tipped work—such as cleaning bathrooms and sweeping dining areas—and were therefore entitled to be

paid the full federal minimum wage. Doc. 203-1 at 7. Plaintiffs moved for conditional certification of a collective action comprised of servers in all states where state law permits the tip credit. *Id.* at 8. This Court conditionally certified the proposed collective, after which more than 6,000 individuals opted in. Doc. 201-1 at 2.

Following discovery, the parties negotiated a proposed settlement. P.F. Chang's filed a motion to seal the settlement agreement "with the settlement fund amounts redacted." *Id.* at 1. Plaintiffs did not oppose. *Id.* And this Court granted the motion. Doc. 202. The parties then filed the proposed settlement in which a host of information is redacted in the public docket. The redacted information includes the total settlement amount, Doc. 203-1 at 10, 18, 23, Doc. 203-3 at 2; the amount of attorneys' fees and costs, Doc. 203-1 at 10, 28, Doc 203-3 at 5; the amount of settlement enhancements for the named plaintiffs, Doc. 203-1 at 10, 28, 29, Doc. 203-3 at 5; the range of settlement amounts for each opt-in plaintiff, Doc. 203-1 at 11, Doc. 203-3 at 5; the average recovery per plaintiff, both gross and net after fees and costs, Doc. 203-1 at 24; the calculation of Defendant's potential exposure in liquidated and unliquidated damages, *id.* at 23; and the calculation of the settlement as a percentage of possible recovery and realistic recovery, *id.*

Following a settlement conference, the Court issued an order granting preliminary approval of the settlement on August 15, 2024. Doc. 213. The Court

determined that the "limitations on publicity and disclosure of monetary amounts do not frustrate the FLSA's purposes," but did not explain how it reached that conclusion. *Id.* Professor Alexander has moved to intervene for the limited purpose of moving this Court to unseal the redacted portions of the proposed settlement agreement and now moves to unseal those portions pursuant to Local Civil Rule 5.1.5(c)(2).[1]

ARGUMENT

Under Local Civil Rule 5.1.5(c)(2), a party seeking access to a sealed document may, "during the pendency of the action for good cause shown … petition the Court to unseal the document." Here, good cause exists to unseal the monetary amounts redacted in the proposed settlement agreement.

"Public access to judicial records is particularly appropriate in the context of the FLSA." *Adams v. Bayview Asset Mgmt., LLC*, 11 F. Supp. 3d 474, 476 (E.D. Pa. 2014). The presumption of public access to FLSA settlement agreements can therefore be overcome only by a showing of extraordinary circumstances. *See Weismantle v. Jali*, No. 2:13-CV-01087, 2015 WL 1866190, at *2 (W.D. Pa. Apr. 23, 2015) ("[A]bsent something very special in a very specific case which generates a very good reason above and beyond the desire of the parties to keep the terms of

[1] Pursuant to Rule 5.1.5(c)(2), Professor Alexander also provided notice to P.F. Chang's counsel on June 21, 2024, that she intended to petition this Court to unseal the redacted information. The parties acknowledged that notice, Doc. 208 at 3 n.1, and sixty days have since elapsed.

an FLSA settlement out of the public's view, if the parties want the Court to approve the substance of an FLSA settlement agreement, it cannot be filed under seal.").

Here, none of the reasons offered by P.F. Chang's to justify sealing comes close to meeting this standard. The Court should therefore unseal the redacted portions of the proposed settlement.

I. The right to public access to FLSA settlements can be overcome only by a showing of extraordinary circumstances.

Two independent sources of law support unsealing the settlement figures in this case: the First Amendment to the United States Constitution and the common law. Beginning with the First Amendment: The public has a qualified constitutional right to access judicial records that have "historically been open to the press and general public" and where "public access plays a significant positive role in the functioning of the particular process in question." *United States v. Wecht*, 484 F.3d 194, 208 n. 19 (3d Cir. 2007) (quoting *Press-Enterprise Co. v. Superior Court of Cal.*, 478 U.S. 1, 8 (1986)); *see also United States v. Smith*, 776 F.2d 1104, 1111–12 (3d Cir. 1985) (noting that this analysis applies equally to judicial proceedings and to judicial documents). As this Court has recognized, there has been a strong historical presumption of keeping FLSA settlements open to the public precisely because public access is crucial to safeguarding the public's independent interest in fair wages. *See Adams*, 11 F. Supp. 3d at 476. Thus, any restriction on public access is "evaluated under strict scrutiny." *In re Avandia Mktg., Sales Practices & Prods.*

Liab. Litig., 924 F.3d 662, 673 (3d Cir. 2019). To limit access to the figures in the settlement agreement, then, P.F. Chang's must show that sealing "serves an important governmental interest and that there is no less restrictive way to serve that governmental interest." *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984). It has not offered any such analysis at all. *See generally* Doc. 201-1; *see also* Part II, *infra* (establishing that P.F. Chang's has not offered a basis for sealing that outweighs the public's right of access).

Historically, though, courts in the Third Circuit have applied principles of constitutional avoidance and declined to rule on the constitutional issue because common law principles separately protect access to judicial documents. *See Avandia Mktg.*, 924 F.3d at 679–80 (collecting cases). That path is available here because the common law clearly protects the public's right to access judicial records, and that right is at its strongest in the context of FLSA settlement agreements.

The Supreme Court and the Third Circuit have repeatedly upheld the public common law right of access to judicial records. *E.g.*, *Nixon v. Warner Commc'ns*, 435 U.S. 589, 598 (1978); *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001) ("It is well-settled that there exists, in both criminal and civil cases, a common law public right of access to judicial proceedings and records."); *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993) (discussing "a

pervasive common law right to inspect and copy public records and documents, including judicial records and documents" (internal quotation marks omitted)).

Because they require judicial approval and are filed in court, FLSA settlements are "indisputably" judicial records. *Camacho v. Ess-A-Bagel, Inc.*, No. 14-CV-2592 LAK, 2014 WL 6985633, at *3 (S.D.N.Y. Dec. 11, 2014); *see Adams*, 11 F. Supp. 3d at 477 (holding that the "right of access doctrine" attaches to FLSA settlements). Thus, to override the right of access, the party seeking to seal portions of the judicial record "bears the heavy burden of showing that 'the material is the kind of information that courts will protect' and that 'disclosure will work a clearly defined and serious injury to the party seeking closure.'" *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (quoting *Publicker Indus.*, 733 F.2d at 1071). "Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient" to make this showing. *Cendant*, 260 F.3d at 194. Rather, the "strong common law presumption of access must be balanced against the factors militating against access." *Leucadia*, 998 F.2d at 165 (3d Cir. 1993) (quoting *Bank of Am. Nat. Tr. & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 338, 344 (3d Cir. 1986)).

This balancing analysis favors public access in all but the most extraordinary cases: "[A]bsent something very special in a very specific case which generates a very good reason above and beyond the desire of the parties to keep the terms of an FLSA settlement out of the public's view," the terms of an FLSA settlement cannot

be filed under seal. *Weismantle*, 2015 WL 1866190, at *2 (collecting cases and describing the "prevailing, if not overwhelming" case law to this effect); *see also Mesta v. Citizens Bank, N.A.*, Civ. A. No. 14-703, 2015 WL 4039358, at *2 (W.D. Pa. June 30, 2015) (stating that the "vast majority" of courts to have considered the question have held that FLSA settlements should not be sealed).

The public's right to access judicial records is at its zenith in this context for several reasons. To begin, the Supreme Court has long recognized that the FLSA recognizes both individual and public rights, and that—as a result—the statute does not permit waiver of an individual employee's right to minimum wage, overtime protections, or liquidated damages. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704–07 (1945); *see also* Elizabeth Wilkins, *Silent Workers, Disappearing Rights: Confidential Settlements and the Fair Labor Standards Act*, 34 Berkeley J. Emp. & Lab. L. 109, 113–14 (2013) (explaining that the FLSA was designed to protect both an individual's right to be compensated fairly for his or her labor, and also the right of the public to an economic system that guarantees a minimum standard of living in exchange for a day's work). As the Court explained, "[w]here a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate." *Brooklyn Savings Bank*, 324 U.S. at 704; *see also Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S.

728, 740 (1981) ("FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate." (quoting *Brooklyn Savings Bank*, 324 U.S. at 707)).

Secrecy surrounding FLSA settlement terms threatens to interfere with the public's ability to enforce its rights under the statute. As this Court has held, "the sealing from public scrutiny of FLSA agreements between employees and employers would thwart the public's independent interest in assuring that employees' wages are fair and thus do not endanger 'the national health and well-being.'" *Adams*, 11 F. Supp. 3d at 476 (quoting *Stalnaker v. Novar Corp.*, 293 F. Supp. 2d 1260, 1264 (M.D. Ala. 2003)). Sealing settlement amounts and attorney's fees in particular hampers workers' ability to use "a win to publicize both the wrongdoing of the employer and the possibility of success more generally," Wilkins, 34 Berkeley J. Emp. & Lab. L. at 143, and "confine[s] [and] frustrate[s] every employee's knowledge and realization of FLSA rights," *Dees v. Hydradry, Inc.*, 706 F. Supp. 2d 1227, 1247 (M.D. Fla. 2010). Public access to these terms, on the other hand, promotes "Congress's intent both to advance employees' awareness of their FLSA rights and to ensure pervasive implementation of the FLSA in the workplace." *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 339 (S.D.N.Y. 2012) (quoting *Dees*, 706 F. Supp. 2d at 1245). Public access to settlement information is

particularly important to the low-wage workers the FLSA is designed to protect. "Among the people who require the protection of the FLSA are workers who are poorly educated and non-English speaking. Some of these workers may have an understandable aversion to courthouses and lawyers. At the same time, such persons are especially vulnerable to workplace exploitation and have much to gain from the diffusion of information about their employment rights." *Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170, 179 (S.D.N.Y. 2015).

Moreover, the judiciary's role in approving FLSA settlements means that secrecy as to settlement terms adversely impacts the public's ability to ensure governmental transparency and judicial accountability. As the Third Circuit has explained, as a general matter, the public's right of access to civil proceedings "promotes public confidence in the judicial system by enhancing … the quality of justice dispensed by the court." *Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988); *see also Leucadia*, 998 F.2d at 161 (explaining that public access to judicial records promotes "public respect for the judicial process" and assures the public that "judges perform their duties in an honest and informed manner" (quoting *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 660 (3d Cir. 1991)). These values "are particularly weighty when judges are charged with overseeing the adjudication of rights implicating the public interest" where "the judge is the representative of the public and must make his or her actions available for judgment

by the public." Wilkins, 34 Berkeley J. Emp. & Lab. L. at 119. Thus, in the FLSA context, "shielding FLSA settlement agreements from the public prevents public scrutiny that otherwise attends to judicial documents and contributes to our collective understanding and safeguarding of justice." *Garcia v. Jambox, Inc.*, No. 14-CV-3504, 2015 WL 2359502, at *5 (S.D.N.Y. Apr. 27, 2015); *see Owino v. IBM Corp.*, No. 1:12-CV-1041, 2013 WL 2947146, at *2 (M.D.N.C. June 14, 2013) (collecting cases explaining why the FLSA's "statutory requirement for court approval" creates a "particularly strong" presumption of transparency). As one court succinctly put it: "How can the public ascertain whether the court has properly exercised its authority in approving an FLSA settlement if it does not know the amount of the settlement?" *Mesta*, 2015 WL 4039358, at *2.

In light of these considerations, sealing an FLSA settlement requires a party to show an "extraordinary reason." *Cantu v. Millberger Landscaping, Inc.*, No. SA-13-CA-731, 2014 WL 1778892, at *1 (W.D. Tex. Apr. 25, 2014); *see also Weismantle*, 2015 WL 1866190, at *2 n.3 (surveying caselaw to explain why the moving party must show "something very special in a very specific case which generates a very good reason" to seal); *Rodriguez v. El Pollo Regio, Inc.*, No. 3:11-CV-2276-D, 2012 WL 5506130, at *1 (N.D. Tex. Feb. 23, 2012) (requiring an "extraordinary reason" to seal FLSA settlement agreements); *Stalnaker*, 293 F. Supp. 2d at 1264 (requiring a "compelling reason").

II. P.F. Chang's has not shown an extraordinary reason to support sealing.

P.F. Chang's offered two reasons for sealing the settlement amounts: the amounts "only affect the opt-in plaintiffs," and P.F. Chang's has an interest in being protected from "speculation as to the merits of the case." Doc. 201-1 at 6–7. Neither argument supports sealing.

First, P.F. Chang's is wrong that the settlement figures only affect the opt-in plaintiffs. The amounts are, as this Court has correctly observed, important information for the public to have, so that it may vindicate its independent interest in fair wages, healthy workplaces, and a functional economic system. *See Adams*, 11 F. Supp. 3d at 476. The mere fact that P.F. Chang's claims that the settlement is premised on redacting information from the public docket does not alter this conclusion. This Court, following what it described as an "overwhelming majority" of courts, held that the "strong presumption of public access to an FLSA settlement agreement" is not overcome by the parties' stipulation to the contrary. *Adams*, 11 F. Supp. 3d at 477; *see Owino*, 2013 WL 2947146, at *2 ("General interests in promoting settlements and privacy are insufficient to outweigh the strong interest in transparency in FLSA cases. The parties' own agreement has routinely been held to be insufficient to overcome the presumption of public access, even under the lower common-law standard."); *Wilkins*, 34 Berkeley J. Emp. & Lab. L. at 125 ("Courts that have weighed [the stipulation] justification against the public right to access

have rejected it."); *see also Miles v. Ruby Tuesday, Inc.*, 799 F. Supp. 2d 618, 624 (E.D. Va. 2011) (stating that "allowing employees to thwart public review of FLSA settlement decisions may be just as detrimental to the FLSA as allowing employees to waive their FLSA minimum wage or overtime rights").

Second, P.F. Chang's suggestion that an interest in being protected from "speculation" justifies sealing and that settlement hinged on sealing should not be credited. *See* Doc. 201-1 at 7. To begin with, the signed settlement did not guarantee sealing the settlement figures, but rather specified that Defendant would request sealing and that Plaintiffs would not oppose. Doc. 203-3 at II.A.2. The agreement does not suggest that it would become void if the Court denied the motion to seal. *Id.* at II.G.1.b (agreeing that only changes to "material aspects of the Settlement" itself will void the agreement). Moreover, even outside the FLSA context, the Third Circuit has held that "the generalized interest in encouraging settlements does not rise to the level of interests that [the court has] recognized may outweigh the public's common law right of access." *Bank of Am.*, 800 F.2d at 346. Courts considering this justification in the FLSA context have regularly rejected it because "fear that disclosure will prompt additional litigation or embarrassment is too speculative" and therefore is "insufficient to justify sealing." *Wolinsky*, 900 F. Supp. 2d at 339 (internal citations omitted) (observing that "A business's interest in keeping legal proceedings private does not overcome the presumption of openness[.]" (quoting

Stalnaker, 293 F. Supp. 2d at 1264)); *see also* Wilkins, 34 Berkeley J. Emp. & Lab. L. at 125 ("An employer's desire to limit future litigation through confidentiality is actively contrary to the purpose of the statute, as it inhibits other workers from learning about and vindicating their FLSA rights."). Further, "[a]part from the fact that there is no backup provided as to the type, magnitude and source of the alleged embarrassment, and the reality that the settlement agreement could certainly include a clause declaring (as loudly as the parties want) that the settlement is not an admission of any wrongdoing by any party," nearly every case in which "a federal court is asked to substantively consider the terms of an FLSA settlement and then approve it, [concludes] as a general matter that agreement (which is at the heart of the Court's judicial activity) is not to be sealed." *Weismantle*, 2015 WL 1866190, at *1 (collecting cases).

Because no extraordinary circumstances justify sealing, the information redacted on the public docket should be unsealed. If the Court does not unseal the information, it should articulate specific findings as to the extraordinary circumstances that warrant continued sealing of these figures. *See Indiana Hosp.*, 16 F.3d at 551 (noting that before taking the "unusual step" of sealing a record, the district court "should have articulated the compelling countervailing interests to be protected, made specific findings on the record concerning the effects of disclosure, and provided an opportunity for interested third parties to be heard").

CONCLUSION

The motion to unseal should be granted.

Dated August 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true and correct copy of the foregoing document upon counsel of record for all parties by filing via the Court's Electronic Case Filing (ECF) system.

Dated: August 21, 2024

/s/ *Michael J. Quirk*
Michael J. Quirk