

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA, STATE
OF ILLINOIS, STATE OF DELAWARE, DISTRICT
OF COLUMBIA, STATE OF MARYLAND,
COMMONWEALTH OF MASSACHUSETTS, DANA
NESSEL, *on behalf of the People of Michigan*, STATE
OF NEW JERSEY, AND STATE OF NEW YORK,

No. 2:21-cv-258

Plaintiffs,

v.

MARTIN J. WALSH,¹ *in his official capacity as
Secretary of the United States Department of Labor;*
UNITED STATES DEPARTMENT OF LABOR; and
UNITED STATES OF AMERICA,

Defendants.

JOINT STIPULATION OF DISMISSAL

The Parties hereby submit the following Joint Stipulation of Dismissal pursuant to
Federal Rule of Civil Procedure 41(a)(1)(A)(ii):

1. Plaintiffs filed this lawsuit on January 19, 2021, to challenge the following DOL
regulation: *Tip Regulations Under the Fair Labor Standards Act (FLSA)*, 85 Fed. Reg. 86,756
(Dec. 30, 2020) (to be codified at 29 C.F.R. §§ 10, 516, 531, 578-80) (“2020 Tip Rule”).

Plaintiffs brought their claims under the Administrative Procedure Act (APA), 5 U.S.C.

§§ 706(2)(C), (2)(A). Compl., Doc. No. 1, ¶¶ 8, 176-85.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary of Labor
Martin J. Walsh is automatically substituted as a Defendant sued in his official capacity for
Former Acting Secretary of Labor Milton Al Stewart and the originally named Former Secretary
of Labor, Eugene Scalia.

2. On January 20, 2021, due to the change of administration, new leadership assumed responsibility for the U.S. Department of Labor (“DOL”).

3. The effective date of the 2020 Tip Rule originally was March 1, 2021. However, on February 24, 2021, DOL issued a final rule that delayed the effective date of the 2020 Tip Rule by 60-days, to April 30, 2021, to give new leadership at DOL additional time to review issues of law, policy, and fact raised by the 2020 Tip Rule before it goes into effect. *Tip Regulations Under the Fair Labor Standards Act (FLSA): Delay of Effective Date*, 86 Fed. Reg. 11632-01 (published on February 26, 2021) (“Initial Delay Final Rule”).² Thereafter, DOL sought a stay in this action to allow the new administration the time needed to consider the 2020 Tip Rule. ECF No. 23.

4. On March 19, 2021, the Court placed this matter in suspense and directed DOL to file a status report every sixty days. Ahead of this joint stipulation of dismissal, DOL has filed three status reports (ECF Nos. 25, 26, and 31), and the parties have submitted one joint status report (ECF No. 32).

5. On April 29, 2021, after notice and comment, DOL issued a final rule that further delayed the effective date of the three portions of the 2020 Tip Rule that Plaintiffs challenged in this action by another eight months, until December 31, 2021. *Tip Regulations Under the Fair Labor Standards Act (FLSA); Delay of Effective Date*, 86 Fed. Reg. 22,597-01 (published on April 29, 2021) (“Partial Delay Final Rule”). Specifically, the three portions that were further delayed are: (1) the portion that addressed the assessment of civil monetary penalties for

² This delay was consistent with a January 20, 2021 Presidential Memorandum to Heads of Executive Departments and Agencies to consider delaying effective dates for certain regulations, such as the Tip Rule, to allow the incoming administration to review new or pending rules. *See Regulatory Freeze Memorandum*, 86 Fed. Reg. 7424 (published on January 28, 2021).

violations of section 3(m)(2)(B) of the FLSA, see 29 CFR 578.3(a)-(b), 578.4, 579.1, 580.2, 580.3, 580.12, and 580.18(b)(3); (2) the portion that amended the Department's CMP regulations, see 29 CFR 578.3(c) and 579.2, to address when a violation of the FLSA is "willful"; and (3) the portion that amended the "dual jobs" regulations, see, e.g., 29 CFR 53156(e).

6. DOL did not delay the effective date of the remaining portions of the 2020 Tip Rule. Accordingly, those portions went into effect on April 30, 2021.

7. As noted in the Partial Delay Final Rule, DOL reviewed legal, policy, and factual issues raised by the three portions of the 2020 Tip Rule identified above and, in part, DOL's review included consideration of the issues raised by this litigation.

8. On September 24, 2021, after notice and comment, DOL issued a final rule withdrawing two of the three portions (identified as nos. 1-2, above) of the 2020 Tip Rule that had not yet gone into effect, finalizing proposed changes to those portions of the rule, and modifying regulatory provisions adopted by the 2020 Tip final rule addressing managers and supervisors. *Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal*, 86 Fed. Reg. 52,973 (published on Sept. 24, 2021) ("Partial Withdrawal Final Rule").

9. On October 29, 2021, after notice and comment, DOL issued a final rule withdrawing the third and final portion (identified as no. 3, above) of the 2020 Tip Rule that had not yet gone into effect, finalizing proposed changes to that portion of the rule, and modifying regulatory provisions adopted by the 2020 Tip final rule addressing the "dual jobs" regulations, which address when a tipped employee is engaged in a tipped occupation and may still be paid using a partial credit, known as the tip credit, toward the employer's minimum wage obligation.

Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal, 86 Fed. Reg. 60,114 (published on Oct. 29, 2021) (“Second Partial Withdrawal Final Rule”).

10. Plaintiffs have reviewed the Partial Withdrawal Final Rule issued on September 24, 2021, and the Second Partial Withdrawal Final Rule issued on October 29, 2021, and determined that they resolve the Parties’ dispute in this case related to the challenged portions of the 2020 Tip Rule.

11. Accordingly, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the Parties stipulate to the voluntary dismissal of this case with prejudice, each party to bear their own attorneys’ fees and costs.

DATED: November 15, 2021

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CERTIFICATE OF SERVICE

I, Ryan B. Smith, hereby certify that the foregoing Joint Stipulation of Dismissal has been filed electronically on November 15, 2021 and is available for viewing and downloading from the Court's Electronic Case Filing system by all counsel of record.

Date: November 15, 2021

By: /s/ Ryan B. Smith

Ryan B. Smith
Deputy Attorney General