IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARIA D. MALDONADO, on behalf of herself and all others similarly situated, Plaintiff, v. MGM RESORTS INTERNATIONAL, and MARINA DISTRICT DEVELOPMENT COMPANY, LLC d/b/a BORGATA HOTEL CASINO & SPA, Defendants.	:	Case No. 1:20-cv-05599-NLH-KMW Motion Day: November 2, 2020

PLAINTIFFS' NOTICE OF THEIR MOTION FOR LEAVE TO FILE THEIR FIRST AMENDED COMPLAINT

PLEASE TAKE NOTE that on November 2, 2020, or as soon thereafter as the matter may be heard, in the Courtroom of The Honorable Karen M. Williams**,** United States Magistrate Judge for the District of New Jersey, Camden Division, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101 (or by telephonic or videoconference means as directed by the Court), Plaintiff Maldonado will seek leave pursuant to Federal Rule of Civil Procedure 15 to file a first amended complaint and seek the dismissal of 36 current opt-in plaintiffs who worked for Defendants outside New Jersey without prejudice and with tolling as described in the contemporaneously-filed memorandum of law. In accordance with Local Rule 7.1(f), Plaintiffs' proposed First Amended Collective Action Complaint is attached as **Exhibit A**.

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff's motion for leave to amend her complaint, direct Plaintiffs to file with the Clerk of Court the proposed amended

complaint attached hereto, and dismiss the claims of current opt-in plaintiffs who worked for Defendants outside New Jersey without prejudice and with tolling for a period of 60 days to refile their claims in the jurisdictions where they worked.

Dated: October 9, 2020

Respectfully submitted,

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, a copy of the foregoing motion was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

s/ R. Andrew Santillo
R. Andrew Santillo (NJ ID #025512004)

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARIA D. MALDONADO, on behalf of herself and all others similarly situated, Plaintiff, v. MGM RESORTS INTERNATIONAL, and MARINA DISTRICT DEVELOPMENT COMPANY, LLC d/b/a BORGATA HOTEL CASINO & SPA, Defendants.	:	Case No. 1:20-cv-05599-NLH-KMW

FIRST AMENDED COLLECTIVE ACTION COMPLAINT

Plaintiff Maria D. Maldonado ("Plaintiff"), on behalf of herself and all others similarly situated, alleges as follows:

INTRODUCTION

1. Plaintiff brings this wage and hour collective action against her joint employers MGM Resorts International and Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa (collectively, "Defendants"). Defendants paid Plaintiff and other similarly situated employees a sub-minimum direct cash wage and purported to claim a tip credit in the amount necessary to meet the federal minimum hourly wage required by the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*. Defendants, however, failed to adequately inform Plaintiff and other similarly situated employees about Section 203(m)'s tip credit provisions as required by the FLSA and its implementing regulations, 29 C.F.R. § 531.59(b). As a result, Defendants are ineligible to claim a tip credit and are liable to Plaintiff and other similarly situated employees for

the full minimum wage, plus liquated damages, attorney's fees and costs of this action.

JURISDICTION AND VENUE

2. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. This Court possesses subject matter jurisdiction over Plaintiff's FLSA claims based upon 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this claim occurred in this judicial district and Defendants are each subject to personal jurisdiction in this district. Plaintiff worked for Defendants at the Borgata Hotel Casino & Spa, which Defendants operate in Atlantic City, New Jersey.

PARTIES

4. Plaintiff is an individual currently residing in Massachusetts. From approximately January 2015 through April 2019, Plaintiff worked for Defendants as an employee at the Borgata Hotel Casino & Spa located in Atlantic City, New Jersey. Plaintiff's executed Consent to Join was previously filed in this case. *See* Complaint (Doc. 1) at Ex. A.

5. Defendant MGM Resorts International ("MGM Resorts") is a publicly held Delaware corporation with its principal executive office in Las Vegas, Nevada.

6. Defendant Marina District Development Company, LLC owns, operates and does business as the Borgata Hotel Casino & Spa ("Borgata"), located in Atlantic City, New Jersey. As of August, 2016, MGM Resorts held a 100% ownership interest in Borgata. Borgata is a wholly-owned consolidated subsidiary of MGM Resorts.

COMMON FACTUAL ALLEGATIONS

Defendants Jointly Employed Plaintiff and All Others Similarly Situated

7. MGM Resorts operates a hub and spoke employment structure whereby, MGM Resorts, at the operational center of the wheel, has spokes leading out to each of its individual

casino subsidiaries, including Borgata and its many other casino resorts throughout the United States (collectively, the subsidiary casino entities). By design, each individual subsidiary casino entity is the acknowledged employer of the employees who physically work at a particular casino property. However, as a matter of economic reality, from its position at the operational center of this structure, MGM Resorts has the ability to and, in fact, does operate its subsidiary casinos and instructs the entities on how and when to execute employment policies controlling the terms and conditions of employment of workers at its subsidiary casinos. The subsidiaries casino entities must and do follow MGM Resorts' operational instructions. Due to the pervasive control MGM Resorts both possesses and exercises over the employees at each of its casinos (both directly and indirectly), MGM Resorts is a joint employer of employees at its subsidiary casino entities, including a joint employer of Plaintiff and the other similarly situated employees at the Borgata.

8. At all relevant times, MGM Resorts, with and through the subsidiary casino entities it controls, jointly employed Plaintiff and other similarly situated employees because:

a. MGM Resorts had the right to and did exercise control over the hiring and firing of Plaintiff and other similarly situated employees;

b. MGM Resorts had the right to and did supervise the work schedules, conditions of employment, and the manner in which Plaintiff and other similarly situated employees performed their jobs;

c. MGM Resorts had the right to and did determine the rate and method of payment for Plaintiff and other similarly situated employees; and

d. MGM Resorts was primarily responsible for and did maintain the employment records for Plaintiff and other similarly situated employees.

Defendants Cannot Claim a Tip Credit Pursuant to the FLSA

9. Under the FLSA, an employer may, in certain circumstances, take a "tip credit"

toward its federal minimum wage obligations for tipped employees. Pursuant to the explicit language of the FLSA, a tip credit may not be taken "with respect to any tipped employee unless such employee has been informed by the employer of the provisions of [29 U.S.C. § 203(m)], and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips." 29 U.S.C. § 203(m)(2).

10. The federal regulation interpreting Section 3(m) of the FLSA explains as follows:

> [A]n employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m) of the Act, i.e.: [1] The amount of the cash wage that is to be paid to the tipped employee by the employer; [2] the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; [3] that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and [4] that the tip credit shall not apply to any employee who has not been informed of these requirements in this section.

See 29 C.F.R. § 531.59(b); *see also* U.S. Department of Labor, Wage and Hour Division, Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA).

11. Defendants employ Plaintiff and other similarly situated tipped employees and pay them a direct cash wage that is less than the FLSA's federal minimum wage ($7.25 per hour) but failed to notify them of the tip credit requirements of the FLSA prior to paying a sub-minimum direct cash wage. Despite this violation of the FLSA's tip credit notice provisions, Defendants have taken a tip credit toward their obligations to pay the federal minimum wage to Plaintiff and other similarly situated tipped employees. During the relevant time period, Plaintiff was paid a direct cash wage of $4.25 per hour (or less) and Defendants improperly claimed a tip credit to bridge the gap between the direct cash wage and the required federal minimum wage. Thus, during Plaintiff's employment at the Borgata, Defendants failed to properly compensate Plaintiff for all

hours worked at a rate equal to at least the required federal minimum wage.

12. Specifically, Plaintiff and other similarly situated employees are not informed, in advance of Defendants' use of the tip credit, of: (1) the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by Defendants, which amount may not exceed the value of the tips actually received the employee; (2) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (3) that the tip credit shall not apply to any employee who has not been informed of these requirements in this section.

13. Likewise, when Defendants change the amount of the tip credit they claim against their obligation to pay Plaintiff and other similarly situated employees the FLSA's required minimum wage, Defendants do not inform Plaintiff and other similarly situated employees of the change in the amount of the tip credit claimed, as is required and must be in writing. *See* 29 CFR § 516.28(a)(3) ("The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.").

14. Defendants' FLSA violations alleged herein were willful in that Defendants either knew of the specific FLSA requirements and prohibitions at issue at the time of the alleged violations and intentionally did not comply with them, or showed reckless disregard for the matter of whether their conduct violated the FLSA.

15. As a result of Defendants' above-described FLSA violations, Plaintiff and other similarly situated employees are entitled to recover from Defendants during the applicable three-year limitations period the amount of the sum of: (1) the tip credit taken (*i.e.*, the difference between the direct cash wage and the required federal minimum wage), (2) an additional equal

amount as liquidated damages, and (3) a reasonable attorneys' fee and costs of this action.

COLLECTIVE ACTION ALLEGATIONS

16. Plaintiff brings Count I, the FLSA claim arising out of Defendants' failure to comply with the tip credit notice requirement, as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) on behalf of herself individually and the following collective action class:

FLSA Tip Credit Notice Collective

> All persons employed at the Borgata Casino & Hotel in Atlantic City, New Jersey during the relevant time period and paid a direct cash wage of less than $7.25 per hour.

At present, the relevant time period includes the three-year period prior to the filing of the original Collective Action Complaint (filed May 6, 2020) and extends forward to the present. The collective, as defined herein, remains subject to change or modification based on, among other things, certification-related discovery, agreement of the parties and/or Order of the Court.

17. Plaintiff's FLSA claim (Count I) may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b). Plaintiff, individually and on behalf of all others similarly situated, seeks relief on a collective basis challenging Defendants' above-described FLSA violations. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from Defendants' records, and potential opt-in plaintiffs may easily and quickly be notified of the pendency of this action and their right to participate through U.S. Mail, email, text message, and posting.

COUNT I

FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(Failure to Pay Minimum Wage – Violation of FLSA's Tip Credit Notice Requirement)

18. Plaintiff, on behalf of herself and all others similarly situated, re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

19. At all relevant times, Plaintiff and all others similarly situated have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201, *et seq*.

20. The FLSA regulates, among other things, the payment of minimum wage and overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. *See* 29 U.S.C. § 206(a); 29 U.S.C. § 207(a)(1).

21. Defendants are subject to the minimum wage and overtime pay requirements of the FLSA because they are both enterprises engaged in interstate commerce and their employees are engaged in commerce. At all relevant times, each Defendants are or have been enterprises engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1), and, upon information and belief, have had an annual gross volume of sales made or business done of not less than $500,000.

22. At all relevant times, Defendants were "employers" of Plaintiff and all similarly situated employees within the meaning of the FLSA. *See* 29 U.S.C. § 203(d).

23. At all relevant times, Plaintiff and all similarly situated employees were Defendants' "employees" within the meaning of the FLSA. *See* 29 U.S.C. § 203(e).

24. Plaintiff and all similarly situated employees are covered, non-exempt employees within the meaning of the FLSA. Accordingly, Plaintiff and all similarly situated employees must be paid minimum wages in accordance with 29 U.S.C. § 206.

25. Pursuant to the FLSA, employees are also entitled to be compensated at a rate of not less than one and one-half times the regular rate at which such employees are employed for all work performed in excess of 40 hours in a workweek. *See* 29 U.S.C. § 207(a).

26. Although the FLSA contains some exceptions (or exemptions) from the minimum wage and overtime requirements, none apply here.

27. Plaintiff and all similarly situated employees are victims of uniform or substantially similar compensation policies and practices.

28. By paying a sub-minimum direct cash wage and claiming a tip credit without providing Plaintiff and other similarly situated employees the notice required by 29 U.S.C. § 203(m) and its interpreting regulation 29 C.F.R. § 531.39(b), Defendants have violated the FLSA's minimum wage provisions.

29. Plaintiff and all other similarly situated employees are at this time entitled to damages equal to the mandated minimum wage for the three (3) year period preceding the filing of the original Collective Action Complaint (Doc. 1) to the present date, because, as described above, Defendants acted willfully and knew, or showed reckless disregard of, whether their conduct was prohibited by the FLSA. Under principles of equitable tolling or as otherwise warranted under applicable law, the effective date of consents to join this action by similarly situated employees should be deemed retroactive to the date of Plaintiff's filing of the original Collective Action Complaint or such other date as may be determined by the Court.

30. Defendants have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA, and as a result, Plaintiff and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages as described by Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find Defendants acted in good faith or with reasonable grounds in failing to pay minimum wage, Plaintiff and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

31. As a result of these violations of the FLSA's minimum wage provisions, compensation has been unlawfully withheld by Defendants from Plaintiff and all similarly situated employees. Accordingly, pursuant to 29 U.S.C. § 216(b), Defendants are liable for the unpaid

minimum wages along with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff requests the Court enter judgment for Plaintiff individually and on behalf of all similarly situated employees awarding the following relief:

a. damages for unpaid minimum wages and overtime under 29 U.S.C. § 216(b);

b. reasonable attorneys' fees under the FLSA;

c. liquidated damages and/or pre-judgment interest;

d. costs of suit under 29 U.S.C. § 216(b); and

e. any further relief that the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all the issues so triable.

CERTIFICATION

It is hereby certified that, pursuant to L.Civ.R. 11.2, to the best of Plaintiff's counsel's knowledge, the matter in controversy is not presently the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: October 9, 2020

s/ R. Andrew Santillo

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PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF HER MOTION FOR LEAVE TO FILE
A FIRST AMENDED COLLECTIVE ACTION COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15, Plaintiff Maria D. Maldonado ("Plaintiff") seeks leave to file a first amended complaint limiting the scope of this case to Defendants' New Jersey casino property (the "Borgata"). In addition, Plaintiff respectfully moves the Court for an Order dismissing current opt-in plaintiffs who worked for Defendants *outside* New Jersey from the litigation *without prejudice* and *with tolling* to pursue their claims in their home jurisdictions. In support of this Motion, Plaintiff briefly states as follows:

I. Legal Standard for Filing an Amended Complaint

Because more than 21 days has passed since Defendants' responsive pleading, *see* Answer (Doc. 16), Plaintiff must seek leave of Court to file an amended complaint, *see* Fed. R. Civ. P. 15(a)(1-2). Under Federal Rule of Civil Procedure 15, leave to amend the pleadings is generally granted freely. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Alvin v. Suzuki*, 227 F.3d 107, 121

(3d Cir. 2000). In the Third Circuit, the "touchstone" for deciding whether to grant leave to amend is whether the opposing party will be unduly prejudiced. *See Evans Prods. Co. v. West Am. Ins. Co.*, 736 F.2d 920, 924 (3d Cir. 1984) ("The primary consideration in determining whether leave to amend under [Rule 15] should be granted is prejudice to the opposing party."); *see also Feuerstein v. Simpson,* 582 F. App'x 93, 95 (3d Cir. 2014). Where there is no prejudice to the opposing party, a motion for leave to amend a pleading should be liberally granted. *See Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004).

II. Summary of Proposed Amendments

Plaintiff was an hourly, non-exempt, tipped employee at the Borgata Hotel, Casino & Spa in Atlantic City, New Jersey (the "Borgata"). *See* Complaint (Doc. 1) at ¶ 4. The Borgata is owned by Defendant Marina District Development Company, LLC ("Marina"), which was Plaintiff's acknowledged employer. *Id*. at ¶¶ 4, 6. Defendant Marina is a wholly-owned subsidiary of Defendant MGM Resorts International ("MGM"). *Id*. at ¶ 6. Plaintiff alleges that she was jointly employed by both Defendants and asserts that they failed to satisfy the FLSA's tip credit notice requirements in violation of 29 U.S.C. § 203(m) and 29 C.F.R. 531.59(b), *id*. at ¶¶ 7-31.

In her original Complaint, Plaintiff sought to represent a collective of tipped employees at the Borgata and four other of MGM's casino properties located outside of New Jersey. *Id*. at ¶ 16. In her First Amended Collective Action Complaint, Plaintiff has limited the scope of her putative collective to similarly situated employees at *only* the Borgata.

III. There is No Prejudice to Defendants Because Defendants Sought to Limit the Scope of the Case to New Jersey

By amending her complaint to limit the scope of this case to only New Jersey (*i.e.*, the Borgata), Plaintiff is mooting a significant procedural dispute that will not result in Defendants experiencing any prejudice. Plaintiff's Motion arises out of the parties' disagreement during the

Federal Rule of Civil Procedure 26(f) conference and subsequent hearing with the Court regarding how to properly phase discovery in this proposed Fair Labor Standards Act ("FLSA") collective action case. *See* Joint Proposed Discovery Plan (Doc. 23). This dispute centered over Defendant MGM Resorts International's joint employment relationship with Plaintiff, which Defendants considered a threshold issue that needed to be decided prior to conditional certification. Plaintiff, on the other hand, asserted that joint employment was a merits issue that should be reserved until after a ruling on Plaintiff's anticipated motion for conditional certification.[1] Under the specific circumstances of this case, Plaintiff and her counsel have elected to pursue casino-by-casino lawsuits in an effort to promote efficiency by mooting a procedural issue that has the potential to consume significant time and resources. Given that Defendants sought to limit the scope of the case to the Borgata, *see* Doc. 23, there is (by definition) no prejudice to Defendants. The Court should grant Plaintiff leave to amend her complaint as described.

IV. The Court Should Toll the Statute of Limitations for Opt-In Plaintiffs who did not work at the Borgata

There are currently 36 opt-in plaintiffs who filed consents to join this case who worked for

[1] Although Plaintiff is confident joint employment is a merits issue that does not play a role in conditional certification, Plaintiff elected to avoid the time and expense of litigating this procedural dispute that ultimately is not relevant to whether Plaintiff and similarly situated employees were properly compensated under the FLSA. *See, e.g., Manning v. Goldbelt Falcon, LLC*, 2010 WL 3906735, at *3 (D.N.J. Sept. 29, 2010) ("In instances where a motion for conditional certification involves a potential class of employees that worked for separate, but related, employers, courts have reserved consideration of whether the separate employers are joint employers for a final, stage two determination."); *Nobles v. State Farm Mut. Auto. Ins. Co.*, 2011 WL 3794021, at *8-12 (W.D. Mo. Aug. 25, 2011) (holding that plaintiff's allegations of joint employment were sufficient permit conditional collective action certification); *Bowman v. Doe Run Res. Corp.*, 2014 WL 3579885, at *4 (E.D. Mo. July 21, 2014) (same); *Arnold v. DirecTV, Inc.*, 2012 WL 4480723, at *5 (E.D. Mo. Sept. 28, 2012) (same); *Lang v. DirecTV, Inc.*, 2011 WL 6934607, at *3 (E.D. La. Dec. 30, 2011) (same).

one of Defendants' casinos *outside* New Jersey. As a result of Plaintiff's amendment limiting the scope of this case to only the Borgata, these opt-in plaintiffs should be dismissed *without prejudice* from this case. However, their limitations periods should be equitably tolled for a period of sixty (60) days so that their claims may be refiled in the jurisdictions where they worked.

Under the FLSA's statute of limitation framework, the limitations period for opt-in plaintiffs continues to run until each opt-in plaintiff files a consent to join the case. *See* 29 U.S.C. §§ 256-57. Because of this, "[o]pt-in plaintiffs' FLSA claims are therefore particularly vulnerable to the running of the statute of limitations." *Depalma v. Scotts Co. LLC*, 2017 WL 1243134, at *2 (D.N.J. Jan. 20, 2017).

In *Depalma*, Judge McNulty and Magistrate Judge Dickson analyzed the equitable tolling of FLSA claims in the District of New Jersey and the Third Circuit. The party seeking tolling must establish "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Depalma*, at *3. The Court recognized the types of events that can constitute extraordinary circumstances:

> There are three classic, but nonexclusive, scenarios in which the inequity of enforcing a statute of limitations against an unwary plaintiff is so obvious that tolling may be appropriate: (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.

Depalma at *3 (quoting *Hedges v. United*, 404 F.3d 744, 751 (3d Cir. 2005)).

In this case, the 36 opt-in plaintiffs certainly have diligently pursued their rights by filing consents to join in this case even before the issuance of notice. More importantly, in response to Defendants' request that the scope of this case be limited to New Jersey, the current opt-in plaintiffs' claims are no longer appropriately pursued in this case. As such, Plaintiff's counsel plans to file casino-by-casino cases in the jurisdictions where those casinos are located. However,

the opt-in plaintiffs should not be penalized by the running of their limitations periods simply because Plaintiff is limiting the scope of this case in an effort to promote efficiency.

Under these circumstances, equitable tolling is both appropriate and necessary to protect the opt-ins' limitations periods. Moreover, district courts both in and outside of the Third Circuit regularly provide tolling of opt-in plaintiffs' statute of limitations so that they can pursue their claims in other jurisdictions. *See*, *e.g.*, *Arnold v. Directv, LLC*, 2017 WL 1251033, at *14 (E.D. Mo. Mar. 31, 2017) (dismissing opt-in plaintiffs' claims without prejudice from decertified collective action and ordering that "the applicable statute of limitations for the FLSA claims of the Plaintiffs who have opted into the collective action is tolled for period of 120 days."); *Buehlman v. Ide Pontiac, Inc.*, 345 F. Supp. 3d 305, 314 (W.D.N.Y. 2018) (granting 30 days of tolling to dismissed opt-in plaintiffs); *Scott v. Chipotle Mexican Grill, Inc.*, 2017 WL 1434498, at *1 (S.D.N.Y. Apr. 19, 2017) (same with 90 days of tolling).

V. Conclusion

For the reasons stated above, Plaintiff respectfully requests the Court grant Plaintiff's motion for leave to amend her complaint, direct Plaintiffs to file with the Clerk of Court the proposed amended complaint attached hereto, and dismiss the claims of current opt-in plaintiffs who worked for Defendants outside New Jersey without prejudice and with tolling for a period of 60 days to refile their claims in the jurisdictions where they worked.

Dated: October 9, 2020

Respectfully submitted,

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Counsel for Plaintiff

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[PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION FOR LEAVE
TO FILE A FIRST AMENDED COLLECTIVE ACTION COMPLAINT

AND NOW, this _____ day of _____, 2020, upon consideration of Plaintiffs' Motion for Leave to File a First Amended Collective Action Complaint (Doc. 27), it is hereby **ORERED** that the motion is **GRANTED**. Plaintiff shall file her First Amended Collective Action Complaint within seven (7) days of this Order. It is further **ORDERED** that all current opt-in plaintiffs who worked at MGM casino properties outside New Jersey are dismissed without prejudice and their limitations periods under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*., are tolled for a period of 60 days from the date of this Order.

BY THE COURT:

_____
Hon. Karen M. Williams
United States Magistrate Judge