

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEFFREY WAJERT, on behalf of himself and similarly situated employees,	:	
Plaintiff,	:	2:15-cv-01325-DSC
v.	:	
	:	Judge David S. Cercone
INFOCISION MANAGEMENT CORPORATION,	:	
Defendant.	:	

STIPULATION AND ORDER

Plaintiff Jeffrey Wajert (“Plaintiff”) and Defendant InfoCision, Inc. (d/b/a InfoCision Management Corporation) (“Defendant”), by and through their undersigned counsel, hereby **STIPULATE** as follows:

1. The following Fair Labor Standards Act (“FLSA”) collective is conditionally certified pursuant to 29 U.S.C. § 216(b) on behalf of the following collective: all individuals who, in the three (3) years preceding the filing of this Stipulation,¹ were employed by Defendant in the United States and actively worked more than forty (40) hours as a Communicator during any workweek. Individuals falling within this definition are referred to herein as “Potential Collective Members.”

2. Nothing herein precludes Defendant from moving at a future date to decertify, in-whole or in-part, the FLSA collective or to otherwise limit the scope of the FLSA collective or the applicable statute of limitations period, nor shall Defendant be precluded from asserting any other defenses to the claims in this action.

¹ Nothing herein prevents (i) Plaintiff from seeking to recover from the time period beginning three years prior to the filing of his complaint or (ii) current opt-in plaintiffs Andrew Barstow and Stephanie Kraner from seeking to recover from the time period beginning three years prior to the filing of their consent forms.

3. Plaintiff's request for class certification under Federal Rule of Civil Procedure 23 is **WITHDRAWN WITH PREJUDICE**. However, any current or future Opt-In Plaintiff who was employed by Defendant in Pennsylvania may pursue the Pennsylvania Minimum Wage Act claim asserted in the Complaint.

4. Within fourteen (14) calendar days of the entry of this Order, Defendant will produce to Plaintiff's counsel a list containing the name and last known address (including zip code) for each Potential Collective Member. This list will be accompanied by a sworn declaration attesting that the list is complete and includes all known Potential Collective Members. Defendant shall provide Plaintiff's counsel with the last known telephone number of any individual appearing on the list referred to in this paragraph, whose notice is returned as undeliverable, within forty-eight (48) hours of Plaintiff's counsel's request, excluding weekends and holidays.

5. Within twenty-one (21) calendar days of the entry of this Order, Plaintiff's counsel will mail to all Potential Collective Members finalized copies of the attached "Notice of Collective Action Lawsuit" form (Exhibit A), the attached "Consent to Join" form (Exhibit B), and a postage-paid return envelope bearing Plaintiff's counsel's address (collectively the "Notice Package").² Plaintiff's counsel will pay all postage and printing costs associated with the preparation and mailing of the Notice Packages. Plaintiff's counsel shall notify Defendant's counsel once the Notice Packages have been mailed. If any Notice Package is returned as undeliverable, Plaintiff's counsel will make all reasonable efforts to update the address information and re-send the Notice Package, including contacting Defendant's counsel, as referenced in paragraph 4, above.

² Defendant's counsel shall review and approve the outer and inner mailing envelopes that will be sent with the Notice Packages.

6. In order to participate in this action as an Opt-In Plaintiff, a Potential Collective Member must complete his/her “Consent to Join” form and return it in an envelope postmarked on or before the deadline indicated in the Notice Package, which will be set at forty-two (42) calendar days after the initial mailing date.³

7. Within seven (7) days after the opt-in deadline described in paragraph 6, Plaintiff’s counsel will file with the Court all completed and timely “Consent to Join” forms. Prior to filing, the parties’ counsel will confer in good faith to amicably resolve any disputes concerning the completeness or timeliness of any form.

8. Neither Party shall contact, either directly or indirectly, any of the Potential Collective Members concerning their participation in this matter, except that Plaintiff’s counsel may contact those individuals whose notice was previously returned as undeliverable for the express limited purpose of confirming their current home address and receipt of the Notice Package. Defendant’s management or supervisory-level call center employees who are aware of this matter will be instructed to refrain from communicating with Potential Collective Members regarding this litigation and will not engage in any communications or actions intended to discourage participation in the litigation. If any Potential Collective Member initiates communications about the litigation with Defendant’s managers or supervisors, the Potential Collective Member will be referred to the call center manager that corresponds with that individual’s current or former worksite. Likewise, nothing prohibits Plaintiff’s counsel from discussing the action with Potential Collective Members who affirmatively contact Plaintiff’s counsel with questions or requests for additional information.

9. By virtue of this Order, Plaintiff’s counsel shall be granted leave to file an

³ Because Plaintiff and Opt-In Plaintiffs Stephanie Kraner and Andrew Barstow already have joined the action, they are not required to return a Consent to Join form.

amended complaint within three (3) business days of the entry of the Order reflecting the new definition of the collective described in paragraph 1 above.

FOR PLAINTIFF:

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SO ORDERED this th 15 day of March, 2016.



HON. DAVID S. CERCONE
United States District Court
Western District of Pennsylvania