

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

FREDERICK VANORDEN, on behalf of himself and others similarly situated,	:	CIVIL ACTION NO. 1:17-CV-1310
	:	
	:	(Chief Judge Conner)
	:	
Plaintiff	:	
	:	
v.	:	
	:	
LEBANON FARMS DISPOSAL, INC.,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 4th day of April, 2018, upon consideration of the motion (Doc. 21) for conditional certification pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 201 *et seq.*, filed by named plaintiff Frederick Vanorden and opt-in plaintiff Austin Reigel (“Reigel”) (collectively, “plaintiffs”), wherein plaintiffs seek the court’s conditional certification of an FLSA collective action consisting of “[a]ll individuals who have been employed by [d]efendant Lebanon Farms Disposal, Inc. (or any affiliated business entity) as drivers or loaders during any time within the past three years,” (*id.* at 1; Doc. 22 at 1), and the parties’ respective briefs in support of and in opposition thereto, (Docs. 22, 26, 27, 30), and it appearing that certification of a plaintiff’s collective action on behalf of “other employees similarly situated” pursuant to 29 U.S.C. § 216(b), proceeds in two steps: (1) conditional certification and (2) final certification, Zavala v. Wal Mart Stores Inc., 691 F.3d 527, 535-36 (3d Cir. 2012), and that at step one, plaintiffs must make a “modest factual showing” that the putative opt-in employees may be

provisionally categorized as similarly situated to the named plaintiff, id. at 536 n.4 (quoting Symczyk v. Genesis HealthCare Corp., 656 F.3d 189, 192-93 (3d Cir. 2011), rev'd on other grounds, 569 U.S. 66 (2013)); see also Rocha v. Gateway Funding Diversified Mortg. Servs., L.P., No. 15-482, 2016 WL 3077936, at *3 (E.D. Pa. June 1, 2016), for the purpose of “facilitat[ing] the sending of notice to potential class members” and the conducting of pretrial discovery, id. at 536 (quoting Symczyk, 656 F.3d at 194), and the court observing that plaintiffs’ step one burden is a “fairly lenient standard,” Camesi v. Univ. of Pittsburgh Med. Ctr., 729 F.3d 239, 243 (3d Cir. 2013) (quoting Zavala, 691 F.3d at 536 & n.4), requiring the production of “some evidence, beyond pure speculation, of a factual nexus between the manner in which the employer’s alleged policy” affected the named plaintiff and those asserted to be similarly situated, Zavala, 691 F.3d at 536 n.4 (quoting Symczyk, 656 F.3d at 193 (citations and quotations omitted)), and the court finding that plaintiffs have produced sufficient evidence that the putative opt-in employees may be similarly situated to justify granting conditional certification, to wit: (1) the existence of company policies, uniform requirements, mandatory trainings, and pay practices applicable to drivers and loaders, (see Doc. 21-1 at 5-7, 54-56, 58-60, 64-65, 67-68, 70-71, 108-10); (2) documentation that violation of certain company policies will result in deductions to the paychecks of drivers and loaders, (see Doc. 21-1 at 17, 21, 64-65; Doc. 27-1 at 2, 4); (3) a declaration by Reigel stating, *inter alia*, that during the five months he worked for defendant as a loader he: was sent home early without pay on two separate occasions, was not compensated for daily post-shift duties required by supervisors, and witnessed other drivers and loaders perform post-shift

duties, (see Doc. 27-1 at 6-7); and (4) documentation illustrating that drivers and loaders are eligible for overtime pay, (see Doc. 21-1 at 5-7, 34), and the court concluding that the evidence presented by plaintiffs is sufficient to warrant conditional certification of a collective action consisting of drivers and loaders who worked for “a single employer at a single facility performing the primary task of collecting trash and recycling on various routes,” (Doc. 27 at 12-13), it is hereby ORDERED that:

1. The motion (Doc. 21) for conditional certification is GRANTED.
2. The court will approve issuance of a notice which includes the following description of the proposed class:

All individuals who have been employed by Lebanon Farms Disposal, Inc. as drivers or loaders at any time in the past three years.¹

3. The parties are DIRECTED to meet and confer as to content and form of the notice to potential opt-in plaintiffs in accordance with this order. The parties shall submit a joint proposal to the court on or before **Wednesday, April 18, 2018.**

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ See Gervasio v. Wawa Inc., No. 17-CV-245, 2018 WL 385189, at *5 & n.1 (D.N.J. Jan. 11, 2018) (citing 29 U.S.C. §§ 255(a), 256(b)).