

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

SHANELI. TRAVIS, on behalf of herself and others
similarly situated,

v.

ASOCIACION PUERTORRIQUENOS EN MARCHA,
INC.

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STIPULATION AND ORDER

NOW, this 27th day of February 2019, Shanell Travis (“Travis”) and Defendant Asociacion Puertorriquenos En Marcha, Inc. (“Defendant”) **STIPULATE** as follows:

1. The Fair Labor Standards Act (“FLSA”) provides that “[a]n action . . . may be maintained against an employer. . . by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b). In appropriate cases, the United States Supreme Court has supported the use of conditionally certified collective actions through notice to putative class members who may be similarly situated to the named plaintiff in a lawsuit. *See Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989). The FLSA does not define the term “similarly situated.”

2. The Third Circuit has endorsed a two-step approach for determining whether an FLSA case can proceed as a collective action.

a. At the first step, the court makes a preliminary determination as to whether the named plaintiffs have made a “modest factual showing” that the employees identified in their complaint are “similarly situated.” If the plaintiffs have satisfied their burden, the court will “conditionally certify” the collective action for the purpose of facilitating notice to potential opt-in plaintiffs and conducting pre-trial discovery. Those individuals may then “consent in writing” to become a “party plaintiff” in the action by filing their consent with the Court. 29 U.S.C.

§216(b).

b. At the second step, with the benefit of discovery, the court then makes a conclusive determination as to whether each plaintiff who has opted in to the collective action is in fact similarly situated to the named plaintiffs, considering such factors as disparate factual and employment settings, defenses available to the defendant which may be individualized, fairness and procedural considerations. *See Camesi v. Univ. of Pittsburgh Med. Ctr.*, 729 F.3d 239, 243 (3d Cir. 2013).

3. To avoid the expense associated with motion practice on the “first step” conditional certification, the Parties have reached the following agreement:

a. The Parties agree to “first step” conditional certification of all individuals employed as Case Managers during any time since February 27, 2016. Notice will be issued to these individuals (other than Travis), who are referred to as “Putative Collective Members.” These Putative Collective Members who join the action by the deadline specified in the Notice are referred to as “Opt-Ins.”

b. For discovery purposes only, the limitations period applicable to the FLSA claims of Travis and any Opt-Ins will run backwards three years from the date on which his/her Consent Form is filed with the Court. Defendant reserves the right to assert all available defenses, including any and all challenges to the applicable limitations period.

4. As to the second step of conditional certification, Defendant reserves the right to move to decertify the collective or otherwise argue that collective litigation is wholly or partially inappropriate, including because the Opt-Ins are not “similarly situated” with respect to the claims they assert.

5. Travis will not pursue her Pennsylvania Minimum Wage Act (“PMWA”) claim as a class action claim under Federal Rule of Civil Procedure 23. However, Travis and the Opt-Ins will continue to assert PMWA claims, and the limitations period applicable to such PMWA claims is tolled as of November 19, 2018.

6. Within 14 calendar days of the Court's entry of this Order, Defendant's counsel will email to Plaintiffs' Counsel an Excel spreadsheet containing the name and last known mailing address of each Putative Collective Member.

7. Within 28 calendar days of the Court's entry of this Order, Plaintiffs' Counsel will mail to all Putative Collective Members finalized copies of the attached "Notice of Collective Action Lawsuit" form, "Consent to Become Party Plaintiff" form ("Consent Form"), and a postage-paid return envelope (together the "Notice Package"). Plaintiffs' Counsel will pay for any costs associated with the mailing of the Notice Packages. If any Notice Package is returned as undeliverable, Plaintiffs' Counsel will make all reasonable efforts to update the address information and re-send the Notice Package.

8. In order to participate in this action, a Putative Collective Member must complete his/her Consent Form and return it in an envelope postmarked on or before the deadline indicated in the Notice Package, which will be set at 45 calendar days after the initial mailing date.

9. Plaintiffs' Counsel shall file all completed Consent Forms with the Court.

10. Within 90 calendar days of the Court's entry of this Order, the parties will provide the Court with a proposed schedule for the remainder of this litigation.

11. Discovery is **STAYED** pending the completion of the above-described notice and opt-in process.

FOR PLAINTIFFS:

/s/ R. Andrew Santillo
Peter Winebrake, Esq.
R. Andrew Santillo, Esq.
Mark Gottesfeld, Esq.
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491 Telephone

FOR DEFENDANT:

/s/ Jacob E. Brown (with permission)
Michael R. Miller, Esq.
Jacob E. Brown, Esq.
Margolis Edelstein
The Curtis Center, Suite 400E
170 South Independence Mall West
Philadelphia, PA 19106
(215) 922-1100 Telephone

SO ORDERED:

Dated: March 5, 2019


Hon. Robert F. Kelly, U.S.D.J.

[insert date]

NOTICE OF COLLECTIVE ACTION LAWSUIT

Travis, et al. v. Asociacion Puertorriquenos En Marcha, Inc.
2:18-cv-05015-RK
United States District Court, Eastern District of Pennsylvania

TO: [INSERT NAME]

PLEASE READ THIS NOTICE CAREFULLY

INTRODUCTION

This Notice informs you of a collective action lawsuit against Asociacion Puertorriquenos En Marcha, Inc. (“APM”) seeking unpaid overtime wages under federal and Pennsylvania law on behalf of salaried Case Managers. You have a right to participate in the lawsuit.

DESCRIPTION OF THE LAWSUIT

In November 2018, an existing Case Manager for APM named Shanell Travis (“Plaintiff”) started this lawsuit against APM. The lawsuit is proceeding in the United States District Court in Philadelphia, PA and is assigned to Judge Robert F. Kelly.

The lawsuit alleges that APM violated federal and state wage laws by failing to pay overtime compensation when Case Managers work over 40 hours in a week. The lawsuit seeks the recovery of unpaid overtime wages, liquidated damages, attorney’s fees and costs.

APM denies the allegations, and maintains that under governing law, Case Managers are properly classified as “exempt” professionals who are not eligible for overtime pay.

The lawsuit is in its early stages. The Federal Court has not decided who will win.

Individuals employed during any time after February 27, 2016 as Case Managers are eligible to join the lawsuit. According to APM’s records, you were employed as a Case Manager during this period.

HOW TO JOIN THE LAWSUIT

You can join the lawsuit by completing the enclosed “Consent to Become Party Plaintiff” form and returning it in the enclosed envelope to the following address:

WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Fax: (215) 884-2492
Email: pwinebrake@winebrakelaw.com

Your return envelope must be postmarked by [insert date]. If you fail to meet this deadline, you will not be allowed to participate in the lawsuit.

EFFECT OF JOINING THE LAWSUIT

If you join the lawsuit, you will be bound by the judgment of the Federal Court on all issues, including the reasonableness of any settlement. If Plaintiff wins, individuals who join the lawsuit may be eligible for a money payment. If APM wins, individuals who join the lawsuit will be entitled to nothing.

If you join the lawsuit, you may be required to participate in the “discovery” process by, for example, gathering and producing documents, answering some written questions under oath, and, possibly, sitting for a deposition. The law firm described below will represent you throughout the lawsuit.

RETALIATION PROHIBITED

If you join the lawsuit, federal law prohibits APM from retaliating against you as a result of your participation.

EFFECT OF NOT JOINING THE LAWSUIT

If you do not join the lawsuit, you will not be affected by any judgment or settlement resulting from the lawsuit, whether it is favorable or unfavorable.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you join the lawsuit, you will be represented by Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025 (unless and until you retain your own lawyer who enters his or her appearance in the lawsuit on your behalf). The firm’s website is www.winebrakelaw.com, and its phone number is (215) 884-2491.

You are not required to pay any fees to this law firm. The firm has taken this case on a “contingency” basis. If the lawsuit is unsuccessful, the firm will receive nothing. If the lawsuit results in a recovery, the firm will ask the Judge to award legal fees separate and apart from your individual recovery.

Please call the above law firm if you have any questions or desire any additional information about the lawsuit.

THIS NOTICE HAS BEEN AUTHORIZED BY UNITED STATES DISTRICT JUDGE ROBERT F. KELLY. THE COURT HAS TAKEN NO POSITION REGARDING THE LAWSUIT’S MERITS.

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SHANELL TRAVIS, on behalf of herself and others
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ASOCIACION PUERTORRIQUENOS EN MARCHA,
INC.

2:18-cv-05015-RK

CONSENT TO BECOME PARTY PLAINTIFF

I have read the accompanying form entitled "NOTICE OF COLLECTIVE ACTION LAWSUIT" and consent to become a party plaintiff in this action. I agree to be represented by Winebrake & Santillo, LLC (Dresher, PA). I understand that I will be bound by the judgment of the Court on all issues in this action, including the fairness of any settlement.

Signature

Date

Name (Please Print Neatly)

Address

City, State, Zip Code

Phone Number

Email Address

Return to:

Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Fax: (215) 884-2492
Email: asantillo@winebrakelaw.com