

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

TAJANAE ANDERSON

v.

LIBERTY HEALTHCARE CORPORATION
and SARGENT'S PERSONNEL AGENCY,
INC.

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STIPULATION AND ORDER

Tajanae Anderson (“Plaintiff”), Liberty Healthcare Corporation (“Liberty”), and Sargent's Personnel Agency, Inc. (“Sargent's”) stipulate as follows:

1. The Fair Labor Standards Act 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. 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). 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 generally Comesi v. University of Pittsburgh Medical Center*, 729 F.3d 239, 243 (3d Cir. 2013); *see, e.g., Carr v. Flowers Foods, Inc.*, 2019 WL 2027299, 2019 U.S. Dist. LEXIS 77541, *10-24 (E.D. Pa. May 8, 2019) (Beetlestone, J.).

3. To avoid the expense associated with motion practice on the “first step” conditional certification, the Parties agree to “first step” conditional certification of all individuals employed as Protective Services Caseworkers in connection with Liberty's contract with the Commonwealth of Pennsylvania to provide Adult Protective Services in accordance with Act 70 during any time since June 22, 2017. Notice will be issued to these individuals (other than Plaintiff), who are referred to as “Putative Collective Members.” Those Putative Collective Members who join the action by the deadline described in paragraph 7 are referred to herein as “Future Opt-Ins.” Liberty and Sargent's reserve the right to assert all available defenses, including any challenges to the applicable limitations period.¹

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

5. Plaintiff and Future Opt-Ins will not pursue their Pennsylvania Minimum Wage Act (“PMWA”) claim as a class action claim under Federal Rule of Civil Procedure 23. However,

¹ With respect to the limitations period, the parties agree that the FLSA claim of each Future Opt-In is tolled as of August 14, 2020. *See* ECF No. 16 at ¶ 1. However, the parties disagree regarding whether a two-year or three-year limitations period applies to the FLSA claim. *See* 29 U.S.C. § 255(a) (FLSA's two-year limitations period extended to three years upon finding of a “willful” FLSA violation).

Plaintiff and Future Opt-Ins will continue to assert PMWA claims, and the limitations period applicable to such PMWA claims is tolled as of June 22, 2020.

6. Within 14 calendar days of the Court's entry of this Order, Liberty and Sargent's will provide to Plaintiff's counsel Excel spreadsheet listing the name and last known address of each Putative Collective Member. Within 21 calendar days of the Court's entry of this Order, Plaintiff's 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 addressed to Plaintiff's Counsel (together the "Notice Package"). The outgoing Notice Packages will be mailed by Plaintiff's counsel in an envelope bearing Plaintiff's counsel's return address. Plaintiff's counsel will pay for any postage associated with the mailing of the Notice Packages. If any Notice Package is returned as undeliverable, Plaintiff's counsel will make reasonable efforts to update the address information and re-send the Notice Package.

7. In order to participate in this action, a Putative Collection 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 35 calendar days after the initial mailing date.

8. Within seven (7) calendar days of the opt-in deadline described in paragraph 7, Plaintiff's counsel shall file all completed Consent Forms with the Court.

9. On or before the date falling 70 calendar days after the entry of this Order, the parties will provide the Court with a proposed schedule for the remainder of this litigation.

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

11. The Parties agree that this stipulation is entered into for reasons that are specific to this case, and that this stipulation shall not be construed as an indication that conditional certification is appropriate in any other lawsuit.

COLEMAN & GOGGIN



BY: _____

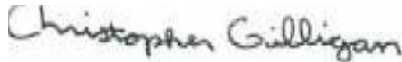
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Attorney for Plaintiff



BY: _____

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Phone: (215) 575-2584
Attorney for Defendant: Liberty
HealthCare Corporation

MARGOLIS EDELSTEIN



BY: _____

CHRISTOPHER J. GILLIGAN
The Curtis Center, Suite 400E
170 S. Independence Mall West
Philadelphia, PA 19106-3337
Phone: (215) 931-5828
Attorney for Defendant: Sargent's
Personnel Agency Inc.

SO ORDERED this 7th day of December 2020.

BY THE COURT:

/s/Wendy Beetlestone, J.

Wendy Beetlestone
Judge, United States District Court

[insert mailing date]

NOTICE OF COLLECTIVE ACTION LAWSUIT

Anderson v. Liberty Healthcare Corporation, et al., 20-3014-WB
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 seeking unpaid overtime wages under federal and Pennsylvania law on behalf of salaried Protective Services Caseworkers who worked on behalf of Liberty Healthcare Corporation. The lawsuit concerns Protective Services Caseworkers who were paid directly by Liberty Healthcare Corporation as well as those who were paid through a staffing agency called Sargent’s Personnel Agency, Inc. For convenience, both companies are referred to together as “Liberty.”

You have a right to participate in the lawsuit because you performed work for Liberty as a Protective Services Caseworker during the time period covered by the lawsuit.

DESCRIPTION OF THE LAWSUIT

In June 2020, a former Protective Services Caseworker named Tajanae Anderson (“Plaintiff”) initiated this lawsuit, which is proceeding in the United States District Court in Philadelphia, PA and is assigned to Judge Wendy Beetlestone.

The lawsuit alleges that, under federal and state wage laws, Protective Services Caseworkers should have received overtime when they worked over 40 hours in a week. The lawsuit seeks the recovery of unpaid overtime wages, liquidated damages, attorney’s fees and costs.

Liberty denies the allegations in the lawsuit and maintains that under governing law, Protective Services Caseworkers are properly classified as “exempt” employees, 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 June 22, 2017 as Protective Services Caseworkers are eligible to join the lawsuit. According to Liberty’s records, you were employed as a Protective Services Caseworker 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 falling 35 days after the mailing 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 Liberty 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 Liberty 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 WENDY BEETLESTONE. THE COURT HAS TAKEN NO POSITION REGARDING THE LAWSUIT'S MERITS.

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

_____	:	
TAJANAE ANDERSON	:	2:20-cv-03014-WB
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v.	:	
	:	
LIBERTY HEALTHCARE CORPORATION	:	
and SARGENT’S PERSONNEL AGENCY,	:	
INC.	:	
_____	:	

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 by [INSERT POSTMARK DEADLINE TO]:

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