UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

BRENDA WATSON, on behalf of herself and on behalf of all others similarly situated,

Plaintiff,

Case No.: 5:19-cv-00515-JSM-PRL

v.

VILLAGES TRI-COUNTY MEDICAL CENTER, INC.,

Defendant.
_____/

PLAINTIFF'S UNOPPOSED MOTION FOR CONDITIONAL CERTIFICATION AND COURT-AUTHORIZED NOTICE PURSUANT TO 29 U.S.C. § 216(B)

Pursuant to 29 U.S.C. § 216(b), Named-Plaintiff Brenda Watson ("Plaintiff"), on behalf of herself and all others similarly-situated (Plaintiffs), requests entry of an Order permitting under supervision of this Court notice to all putative class members affected by the claims in the instant action. In support thereof, Plaintiff states as follows:

INTRODUCTION

This is a collective action to enforce the minimum wage and overtime provisions of the Fair Labor Standards Act ("FLSA"). Defendant operates a hospital in Sumter County, Florida. Named Plaintiff, Brenda Watson, began working for Defendant as a registered nurse in 2013 and is still employed by Defendant today. She brings this action on behalf of herself and a group of similarly-situated registered nurses ("RNs"), licensed practical nurses ("LPNs"), and certified nurse assistants ("CNAs") employed by Defendant who were not paid minimum wage or overtime (time-and-a-half) for hours spent taking Advanced Cardiovascular Life Support ("ACLS") and

Basic Life Support ("BLS") classes required by Defendant.

Plaintiff's counsel has already been retained by a total of three Plaintiffs, including named Plaintiff Brenda Watson, along with opt-in Plaintiffs Mary Hayes and Julie Widman. Each of these Plaintiffs have consented to join this action by virtue of completing the consent forms that have been or will be filed in this lawsuit. Additionally, Named Plaintiff Brenda Watson and Opt-in Plaintiffs Mary Hayes and Julie Widman have also filed sworn declarations in support of this Motion. Due to the uniform nature of Defendant's policies, there exists a class of similarly-situated RNs, LPNs, and CNAs who worked for Defendant who are owed minimum wage and overtime for hours spent taking ACLS and BLS classes which were required by Defendant.

The Parties have engaged in early mediation of this case, prior to conducting discovery. The Parties have come to an agreement to resolve the case on a class-wide basis. Accordingly, pursuant to 29 U.S.C. § 216(b), Plaintiff moves this Honorable Court to conditionally certify and authorize undersigned counsel to mail and e-mail Notice of this lawsuit (Exhibits A and B) and Opt-In Consent Form to become a plaintiff (Exhibit C) to:

> **Current and former registered nurses ("RNs), licensed practical nurses ("LPNs"), and certified nursing assistants ("CNAs") who worked for Defendant at The Villages Regional Hospital in The Villages, Florida from December 15, 2017, through December 15, 2020 who believe they were not paid minimum wage or overtime for hours spent taking Advanced Cardiovascular Life Support ("ACLS") and Basic Life Support ("BLS") classes required by Defendant.**

SUPPORTING FACTS

1. Plaintiffs are registered nurses who work for Defendant at the Villages Regional Hospital in The Villages, Florida. (Watson Decl., ¶¶ 3-5); (Hayes Decl. ¶¶ 3-5); (Widman Decl., ¶¶ 3-5).

2. Plaintiffs' job duties include preparing patients for surgery and monitoring patients

after surgery. (Watson Decl., ¶ 5); (Hayes Decl. ¶ 5); (Widman Decl. ¶ 5).

3. Plaintiffs were neither paid their hourly wage, minimum wage nor overtime for hours spent taking ACLS and BCLS classes required by Defendant. (Watson Decl., ¶ 7); (Hayes Decl. ¶ 7); (Widman Decl. ¶ 7).

4. Decisions made as to Defendant's pay policies and practices are made at Defendant's location in The Villages, Florida. (Watson Decl., ¶ 4); (Hayes Decl. ¶ 4); (Widman Decl., ¶ 4).

5. Each Plaintiff worked for Defendant during the above-proposed collective action time period. (Watson Decl., ¶ 3); (Hayes Decl. ¶ 3); (Widman Decl. ¶ 3).

6. Presently, there are a total of three registered nurses who have consented to join this lawsuit, each of whom have filed Declarations in support of this Motion.

7. Defendant has a uniform policy of failing to pay hourly wages, minimum wage and overtime to all registered nurses who are required to take ACLS and BLS classes. (Watson Decl., ¶ 8); (Hayes Decl. ¶ 8); (Widman Decl. ¶ 8).

8. The parties agree that over the last three years, the total number of RNs, LPNs, and CNAs who were not paid for taking ACLS and BLS classes is approximately 634 total employees.

9. Accordingly, this Court should promptly grant Plaintiff's Motion and authorize their proposed Notice.

MEMORANDUM OF LAW

I. The Fair Labor Standards Act Authorizes Collective Actions.

The FLSA authorizes employees to bring an action on behalf of themselves and others similarly situated. 29 U.S.C. § 216(b). Specifically, the Act provides, in part, that:

> An action to recover the liability [for unpaid wages] may be maintained against

> any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of themself or themselves and others similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such a consent is filed in the court in which such action is brought.

If an employee-plaintiff wants to maintain an opt-in collective action against his employer for violations of the FLSA, she must demonstrate, under the lenient standard articulated in *Hipp v. Liberty National Life Ins. Co.*, that he/she is similarly situated to the proposed members of the collective class and that there is a desire by them to join the lawsuit. 252 F.3d 1208, 1217 (11th Cir. 2001); *see also Dybach v. State of Florida Dept. of Corrections*, 942 F.2d 1562, 1567-68 (11th Cir. 1991).

II. The Eleventh Circuit's "Two-Stage" Procedure for FLSA Collective Actions.

A. Legal Standard for Notice Stage.

To maintain a collective action under the FLSA, Plaintiffs must demonstrate that they are similarly situated. *See Anderson v. Cagle's Inc.*, 488 F.3d 945, 952 (11th Cir. 2007). While not requiring a rigid process for determining similarity, the Eleventh Circuit has sanctioned a two-stage procedure for district courts to effectively manage FLSA collective actions in the pretrial phase. The first step of whether a collective action should be certified is the notice stage. *Anderson*, 488 F.3d at 952-53; *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d at 1218. The second stage, which is inapplicable at this point, is the decertification stage. *Id.*

At the notice stage a plaintiff merely has the burden of showing a "reasonable basis" for his claim that there are other similarly situated employees. *Anderson*, 488 F.3d at 952; *Grayson v. K Mart Corp.*, 79 F.3d at 1097. The Eleventh Circuit has described the standard for determining similarity, at this initial stage, as "not particularly stringent," *Hipp*, 252 F.3d at 1214, "fairly

lenient," *Id.* at 1218, "flexib[le]," *Id.* at 1219, "not heavy," *Grayson*, 79 F.3d at 1097, and "less stringent than that for joinder under Rule 20(a) or for separate trials under 42(b)," *Id.* at 1096. In fact, at the notice stage, courts do not weigh the merits of the underlying claims in determining whether potential opt-in plaintiffs may be "similarly-situated." *Kreher v. v. City of Atlanta*, 2006 WL 739572, at *4 (N.D. Ga. 2006). Likewise, district courts have consistently recognized that discovery at the first notice stage is unnecessary for the similarly situated determination. *See, e.g., Lloredo v. Radioshack Corp.*, 2005 WL 1156030, at *1 (S.D. Fla. 2005); *Harrison v. Enterprise Rent-A-Car Co.*, 1998 WL 422169, at *13 (M.D. Fla. 1998).

Moreover, at the notice stage the Court need not resolve factual disputes or make credibility determinations. *Scott v. Heartland Home Finance*, 2006 WL 1209813, at *3 (N.D. Ga. 2006); *Camper v. Home Quality Mgmt., Inc.*, 200 F.R.D. 516, 520 (D. Md. 2000). Accordingly, an analysis of any individualized defenses is simply not considered at the conditional certification stage, but rather is reserved for the decertification stage. *Simpkins v. Pulte Home Corporation*, 2008 WL 3927275, at *5 (M.D. Fla. 2008).

To meet their burden at the Notice Stage Plaintiffs must show that there are other similarly-situated employees who may desire to join in the action. *See Hipp*, 252 F.3d 1208 at 1217; *Dybach*, 942 F.2d 1562 at 1567-68. Again, the standard is lenient and courts do not employ a magic formula or threshold number of possible joiners as a prerequisite for conditional certification. *See, e.g., Robbins-Pagel v. Wm. F. Puckett, Inc.*, 2006 WL 3393706 (M.D. Fla. 2006) (three affidavits alleging claims of unpaid overtime enough evidence to establish other similarly situated individuals may be interested in joining the action); *Wynder v. Applied Card Systems, Inc.*, 2009 WL 3255585 (S.D. Fla. 2009)(certifying FLSA collective action based on Plaintiff's declaration and only one opt-in declaration); *Goudie v. Cable Communications, Inc.*, 2008 WL

4828394 (D. Or. 2008) (granting company-wide conditional certification based on two affidavits); *Sanders v. MPRI, Inc.*, 2008 WL 5572846 (W.D. Okla. 2008) (granting conditional certification with zero opt-ins or affidavits); *Pendlebury v. Starbucks Coffee Co.*, 2005 WL 84500 (S.D. Fla. 2005) (store managers from two Starbucks' locations in Broward County, Florida established the right to send notice to all similarly situated store managers across the United States who may have been misclassified as "exempt); *Guerra v. Big John Concrete Pumping, Inc.*, 2006 WL 2290512 (S.D. Fla. 2006)(conditional certification of FLSA collective granted based upon two affidavits); *Zhao v. Benihana*, 2001 WL 84500, at *2 (S.D.N.Y. 2001)(one affidavit based on plaintiff's "best knowledge" sufficient); *Gayle v. Jefferson County*, 2010 WL 1418395 (D. Id. 2010) (certifying collective action based on one plaintiff and one additional affidavit); *and Barreda v. Prospect Airport Services, Inc.*, 2008 WL 7431307 (N.D. Ill. 2008) (certifying companywide collective action based on affidavits from only one location).

In this case, Plaintiffs and the FLSA Collective Class Members number a total of 3 and all have submitted declarations. This is more than sufficient to satisfy Plaintiff's burden at this early stage the required showing of a "reasonable basis" for her claim that there are other similarly situated employees. All of these factors weigh heavily in favor of granting this Motion.

B. The "Merits" of Plaintiff's Claims are Not Considered When Determining Whether to Grant Notice to Potential Class Members.

Any argument raised by Defendant as to the "merits" of Plaintiff's claims should be rejected as premature. At the "conditional certification" stage, courts do not weigh the merits of the underlying claims in determining whether potential opt-in plaintiffs may be "similarly-situated." *Kreher v. v. City of Atlanta*, 2006 WL 739572, at *4 (N.D. Ga. 2006)(*citing Young v. Cooper Cameron Corp.*, 229 F.R.D. 50, 54 (S.D.N.Y. 2005)("The focus of [the conditional certification] inquiry is not whether there has been an actual violation of law, but rather on whether

the proposed plaintiffs are 'similarly situated under 29 U.S.C. § 216(b) with respect to their allegations that the law has been violated.'")

In sum, the ultimate question in determining the instant Motion is whether Plaintiff in this case meets the minimal, first-stage burden of showing that there exist RNs, LPNs, and CNAs at the Villages Regional Hospital who: (1) worked for Defendant during the statutory period; (2) who may be interested in joining this case and; (3) who are similarly situated to the named Plaintiff with respect to their job requirements and pay provisions or who were victims of a common decision, policy, plan or practice. *See Bobbitt*, 2012 WL 1898636, at *4 (*citing Dybach*, 942 F.2d at 1567-58). This burden is light, and, as demonstrated below and in the attached opt-in forms and supporting Declarations, Plaintiffs have satisfied it.

III. Plaintiffs Meet the Lenient Standard Required for Conditional Certification.

A. Other Similarly-Situated Individuals Desire to Join this Lawsuit.

Many similarly-situated individuals have already consented to join this lawsuit, including:

1. **Brenda Watson** - *Class Representative with personal knowledge of others who wish to join*;
2. **Mary Hayes** - *Opt-In Plaintiff with personal knowledge of others who wish to join*;
3. **Julie Widman** - *Opt-In Plaintiff with personal knowledge of others who wish to join*;

Collectively, these three individuals listed above have personal knowledge of Defendant's pay practices, including Defendant's failure to pay hourly wages, minimum wage and overtime for hours spent taking the ACLS and BLS classes. They are also aware of other similarly-situated RNs, LPNs, and CNAs who would join this action if given Notice by the Court. Accordingly, Plaintiff and the FLSA Collective Class Members have presented sufficient evidence

demonstrating other registered nurses and CNAs who meet the class definition exist who desire to join this case.

B. Plaintiff and the Putative Class Members are Similarly-Situated.

One way to determine whether the putative Plaintiff in this action are "similarly-situated" for the purpose of facilitating notice is by evidence (albeit minimal) that the class members shared similar job requirements and pay provisions. *Bobbitt*, 2012 WL 1898636, at *4 (*citing Dybach*, 942 F.2d at 1567-58). Plaintiff and the FLSA Collective Class Members have demonstrated through record evidence, including three declarations, that Plaintiff and the FLSA Collective Class Members were similarly-situated in that they: (1) performed similar duties; (2) were required by Defendant to take ACLS and BLS classes; and (3) were neither paid minimum wage nor overtime for hours spent taking required ACLS and BLS classes. Accordingly, Plaintiff and the FLSA Collective Class Members have met the lenient burden contemplated in *Hipp* for establishing the "similarly situated" prong.

C. Plaintiff Alleges a Common Policy that Violated the FLSA.

Another way for the Court to determine whether the notice-stage "similarly situated" requirement has been met is by evidence that the putative class members were victims of a common decision, policy, plan or practice. *Bobbitt*, 2012 WL 1898636, at *4 (*citing Dybach*, 942 F.2d at 1567-58). The record evidence establishes that Plaintiffs were neither paid their set hourly wage, minimum wage nor overtime for hours spent taking required ACLS and BLS classes. Accordingly, Plaintiffs and the FLSA Collective Class Members have presented sufficient evidence to satisfy this Court that there exist other RNs, LPNs, and CNAs at The Villages Regional Hospital who were part of a common policy or practice.

IV. Plaintiff's Notice is Accurate and Should Be Posted at Defendant's Business Locations.

Plaintiffs' Proposed Notice Form is attached hereto as Exhibit A. Plaintiff's Notice is "timely, accurate, and informative." *See Hoffman La Roche*, 493 U.S.C at 172. The Proposed Notice achieves the ultimate goal of providing current and former employees with accurate and timely notice concerning the pendency of the collective action and should be adopted by this Court.

Plaintiffs and the FLSA Collective Class Members request that the Proposed Notice be mailed, with a self-addressed return envelope to each potential class member via First Class Mail and that a copy of the notice be posted at The Villages Regional Hospital. *See Whitehorn v. Wolfgang's Steakhouse, Inc.*, 2011 WL 420528, at *2 (S.D.N.Y. Feb. 8, 2011)("Courts routinely approve requests to post notice on employee bulletin boards and in other common areas, even where potential members will also be notified by mail."); *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 493 (E.D. Cal. 2006)(finding that first class mail, combined with posting, provided for the "best notice practicable" to the potential class).

Also, due to the transient nature of the putative class members and the possibility that Defendant does not have accurate physical addresses for its former employees, Plaintiff and the FLSA Collective Class Members further request that Defendant send, via Electronic Mail, a "Follow-up" Notice (attached hereto as Exhibit B) to each of the potential class members who does not respond to the initial Notice mailing. Plaintiff and the FLSA Collective Class Members propose that the "Follow-up" Notice be sent to the remaining class members on the fourteenth day prior to the close of the Court-ordered Notice Period. See *Weathersby v. Technology Training Systems, Inc.*, Case No. 1:12−cv−09963, Docket Entry 32 (N.D. Ill. April 9, 2013)(granting

Plaintiff's motion to approve "reminder" notice to potential opt-ins in FLSA collective action involving multiple locations nationwide).

V. Notice Within a Three-Year Statute of Limitations Period is Appropriate.

The FLSA allows plaintiffs to collect damages within a three-year statute of limitations if that can show that a defendant's violation of the FLSA was "willful," meaning the "employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). Whether Defendant's violations of the FLSA here were willful is an issue that goes to the merits of the case and not whether notice should be issued to potential claimants. *Villatoro v. Kim Son Restaurant, L.P.* 286 F.Supp. 807, 811 (S.D. Tex. 2003). Plaintiffs and the FLSA Collective Class Members have alleged sufficient facts to raise an inference of willfulness in this case and the pleadings, declarations and citations to concurrent litigation submitted in support of this Motion support the same. Additional facts concerning a willfulness determination are an appropriate focus for discovery in this case and Defendant may challenge the three-year statute of limitations again at a later time. Thus, for purposes of the initial stages of this proceeding, notice should go to all individuals similarly-situated to the Plaintiffs who were employed by Defendant in Florida during the three-year period preceding the Court's ruling on the instant Motion. *See Resendiz-Ramirez v. P&H Forestry, LLC*, 515 F.Supp. 2d 937 (W.D. Ark. 2007).

VI. Limited Discovery of Names, Addresses and Email Addresses of the Putative Class is Necessary to Effectuate Notice.

The opt-in provision of the FLSA requires some procedure for identifying and notifying potential class members. *Morden v. T-Mobile USA, Inc.*, 2006 WL 1727987, at *3 (W.D. Wash. 2006)(compelling defendant to produce the names and addresses of potentially similarly situated employees despite the fact that no conditional class certification motion was pending before the

court.). "The first step is to identify those employees who may be similarly situated and who may therefore ultimately seek to opt in to the action." *Id.* As such, early discovery of a mailing list is routinely disclosed in FLSA collective actions because the lists are necessary, and in fact really the only effective way, by which to facilitate notice. *See, e.g. Hoffmann-La Roche*, 493 U.S. at 165; *see also Dietrich v. Liberty Square*, 230 F.R.D. 574, 581 (N.D. Iowa 2005); *Gieseke v. First Horizon Home Loan Corp.*, 406 F.Supp.2d 1164, 1169 (D. Kan. 2006). Further, discovery of the putative class members' last known e-mail addresses is warranted. *See Weathersby v. Technology Training Systems, Inc.*, Case No. 1:12−cv−09963, Docket Entry 32 (N.D. Ill. April 9, 2013).

CONCLUSION

In light of the broad remedial provisions of the FLSA, coupled with the Eleventh Circuit's lenient standard for conditional certification, Plaintiffs' allegations and the declarations attached hereto, along with the additional evidence of record are more than sufficient to satisfy Plaintiffs' relatively light burden of showing this Court that "there are [similarly situated] persons . . . who have suffered wage and hour violations who would join this suit if they had notice of the suit." *See Barron, supra.*

WHEREFORE, Plaintiffs request that this Court issue an order:

A. Conditionally certifying a Florida class of current and former RNs, LPNs, and CNAs who worked for Defendant at The Villages Regional Hospital in The Villages Florida from December 15, 2017, through December 15, 2020 who believe they were not paid minimum wage or overtime for hours spent taking ACLS and BLS classes required by Defendant.

B. Directing Defendant to produce, in an electronic readable format, to the undersigned counsel within fourteen (14) days of the Order granting this Motion a list containing the full names, last known addresses, telephone numbers, and e-mail addresses of putative class

members who worked for Defendant for the three years preceding the filing of Plaintiff's Complaint and the present who fits the class-defined parameters;

C. Directing Defendant to send initial notice, in the form attached hereto as Exhibit A, to all individuals whose names appear on the list produced by the Defendant's counsel by first-class mail;

D. Directing Defendant to post at all of its business locations located a copy of the initial notice in the form attached hereto as Exhibit A;

E. Directing Defendant to send a follow-up notice, in the form attached hereto as Exhibit B, to all individuals whose names appear on the list produced by the Defendant's counsel but who, by the fourteenth (14th) day prior to the close of the Court-approved notice period, have yet to opt in to the instant action; and

F. Providing all individuals whose names appear on the list produced by Defendant's counsel a total of sixty (60) days from the date the notices are initially mailed to file a Consent to Become Opt-In Plaintiff form, in the form attached hereto as Exhibit C; and,

G. Such other and further relief as the Court deems just under the circumstances.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 3.01(G)

The undersigned counsel conferred with counsel for Defendant regarding this Motion, and Defendant does not object to the relief requested.

DATED this 19th day of January, 2021.

Respectfully submitted,

s/ Christopher J. Saba
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to all counsel of record via the Court's CM/ECF filing system.

s/ Christopher J. Saba
CHRISTOPHER J. SABA