

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EILEEN RIZK, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SITUATED,

Plaintiff,

v.
OLD DOMINION FREIGHT LINE, INC.,

Defendant.

) Case No. 1:20-cv-01865
)
) The Honorable J. Philip Calabrese
)
) **DEFENDANT’S MOTION FOR**
) **EXTENSION OF TIME TO OPPOSE**
) **CONDITIONAL CLASS**
) **CERTIFICATION**
)
) **REQUEST TO REFER THE CASE TO**
) **MEDIATION BEFORE THE**
) **MAGISTRATE JUDGE**
)

Defendant, Old Dominion Freight Line, Inc. respectfully moves the Court for an additional 14 days, through and including February 15, 2021, to submit its Brief in Opposition to Plaintiff’s Motion to Certify the Collective Action Class (ECF 12.) In addition, Defendant requests that the Court refer this matter to mediation before Magistrate Judge Thomas M. Parker.

The following procedural history is relevant to both portions of Defendant’s Motion:

Plaintiff, a current employee of Old Dominion, filed her Complaint alleging violation of the Fair Labor Standards Act (“FLSA”) and Ohio state wage and hour law, and violations of the Americans with Disabilities Act, on August 21, 2020. (ECF 1.) In connection with her FLSA and related state claim, Plaintiff alleges, *inter alia*, that in her position of OS&D¹ Supervisor with freight carrier Old Dominion, she was misclassified as an exempt employee, and is therefore due overtime compensation for hours worked in excess of 40 per week during the period she held that position. Plaintiff seeks to represent a nationwide class of OS&D Supervisors who worked for Old Dominion during the three-year period preceding the filing of the Complaint. (ECF 12, PageID 128.)

¹ “OS&D” stands for Over, Short, and Damaged.

The case was set for a Case Management Conference before the Court (The Honorable James S. Gwin) on December 10, 2020 (ECF 8.) On December 9, 2020, Plaintiff filed her First Amended Complaint, voluntarily dismissing her claims under the ADA. (ECF 11.) On the morning of December 10, 2020, just before the Case Management Conference, Plaintiff filed a Motion to Certify the Collective Action Class pursuant to 29 U.S.C § 216(b). The Court inquired at the conference as to whether Defendant intended to stipulate to conditional certification of the collective action class. Defendant advised the Court that it intended to oppose conditional certification. The Court then set a scheduling Order, including a February 1, 2021 deadline for Defendant to submit its Opposition to Plaintiff's Motion, and February 15, 2021 deadline for Plaintiff to submit any reply. (ECF 14.)

In addition, at the Case Management Conference, Judge James Gwin advised that he intended to refer the case to mediation before Magistrate Judge Thomas M. Parker during the month of January 2021. On December 14, 2020, the case was reassigned to this Honorable Court. (Journal Entry). To date, no referral to mediation has occurred.

Plaintiff's deposition is scheduled for January 22, 2021. The parties have stipulated that the deposition will address issues relative to Plaintiff's pending motion for conditional certification, with Defendant reserving the right to continue the remainder of Plaintiff's deposition at a later date, if necessary. Defendant believes that Plaintiff's deposition testimony, which Defendant anticipates will be fully transcribed up to two-weeks thereafter, will bear on the merits of Plaintiff's motion.

Defendant requests the two-week extension in order to permit it time to consider including deposition testimony in its motion. Counsel for Plaintiff has advised that she will not stipulate to

this motion. However, Plaintiff has not cited any prejudice that she would suffer due to a two-week delay. Plaintiff would not be prejudiced by the brief extension that Defendant requests.

Further, while Defendant firmly maintains that Plaintiff's claim is not suitable for treatment on a collective action basis, it remains willing to work towards a resolution of Plaintiff's individual claims. As such, Defendant believes that referral to the Magistrate for mediation could potentially benefit the resolution of this case.

For the reasons set forth above, Defendant requests that this Court (1) permit Defendant an additional 14 days, through and including February 14, 2021, in which to file its Opposition to Plaintiff's Motion to Conditionally Certify the Collective Action Class; and (2) refer this case to the Honorable Thomas M. Parker for mediation of Plaintiff's claims.

Respectfully submitted,

/s/ Monica L. Lacks

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021 a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system, including the following:

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