IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Frederick Hankins, and David Seegars, *individually and on behalf of all others similarly situated*, Plaintiffs, v. Electric-Rooterman and Handyman, Inc., Drain Doctor-Electric Man, Inc., Raye Le Construction and Services, LLC, Raye Le Properties, Inc., *d/b/a/ Raye Le Property Management*, Raymond Fletcher, Glenna Fletcher, and Jackie Knight, Defendants.	)	Civil Action No. 7:14-cv-4094-TMC **ORDER**

This matter comes before the court on a motion for conditional class certification filed by Frederick Hankins ("Hankins") and David Seegars ("Seegars") (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, pursuant to Section 216(b) of the Fair Labor Standards Act ("FLSA"). (ECF No. 12). Plaintiffs seek certification of the following class of persons:

> All current and former plumbers/handymen employed by [Electric-Rooterman and Handyman, Inc. f/k/a The Electric-Rooterman, Inc., Drain Doctor-Electric Man, Inc. d/b/a Rooter-Man, Raye Le Construction and Services LLC, Raye Le Properties, Inc. d/b/a Raye Le Property Management, Raymond Fletcher, Glenna Fletcher, and Jackie Knight] after October 21, 2011 who were not paid minimum wage for all hours worked and who worked overtime hours but were not paid overtime wages during all or part of their employment.

(ECF No. 12-1 at 1). Defendants have filed a response in opposition to the motion for conditional class certification. (ECF No. 18). On September 3, 2015, the court held a hearing on this motion.

Legal Standard

Section 216(b) of the FLSA provides for class certification:

> An action . . . may be maintained against any employer . . . by any one or more employees for and in behalf of himself or themselves and other employees 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 consent is filed in the court in which such action is brought.

29 U.S.C. § 216(b). Therefore, "FLSA class certification requires: (1) that the Plaintiffs in the class be 'similarly situated,' and (2) that the plaintiffs included in the class 'opt in' by filing with the Court their consent to the suit." *Enkhbayar Choimbol v. Fairfield Resorts, Inc.*, 475 F. Supp. 557, 562 (E.D. Va. 2006).

Class certification is a two-stage inquiry. *Syrja v. Westat, Inc.*, 756 F. Supp. 2d 682, 686 (D. Md. 2010). In the first stage, or the "notice stage," the "court makes a threshold determination of 'whether the plaintiffs have demonstrated that potential class members are 'similarly situated,' such that court-facilitated notice to the putative class members would be appropriate." *Id.* (quoting *Camper v. Home Quality Mgmt., Inc.*, 200 F.R.D. 516, 519 (D. Md. 2000)). After discovery, in the second stage, the court determines whether the class is in fact similarly situated. *Id.*

At the notice stage, the standard for permitting class certification is lenient. *Pelczynski v. Orange Lake Country Club, Inc.*, 284 F.R.D. 364, 368 (D.S.C. 2012) (citation omitted). The purpose of the notice stage is to allow notice for similarly situated plaintiffs so that they can opt-in to the class. *Purdham v. Fairfax Cnty. Pub. Sch.*, 629 F. Supp. 2d 544, 547 (E.D. Va. 2009). The plaintiff has the burden of "com[ing] forward with at least some evidence indicating that this is an 'appropriate case' for collective-action status." *Parker v. Rowland Express, Inc.*, 492 F. Supp. 2d 1159, 1164 (D. Minn. 2007) (citation omitted). That burden is not onerous. *Id.*

"Similarly situated" has been defined as:

> "Similarly situated" in this context means similarly situated with respect to the legal and, to a lesser extent, the factual issues to be determined. In FLSA actions, persons who are similarly situated to the plaintiffs must raise a similar legal issue as to coverage, exemption, or nonpayment or minimum wages or overtime arising from at least a manageably similar factual setting with respect to their job requirements or pay provisions, but their situations need not be identical. Differences as to time actually worked, wages actually due and hours involved are, of course, not significant to this determination.

Pelczynski, 284 F.R.D. at 369.

Discussion

Plaintiffs assert that Defendants had a systematic policy whereby they would require their employees to attend a thirty-minute unpaid meeting prior to the employees "clocking-in" for the day, and, in addition, Defendants did not pay their employees overtime pay for hours worked in excess of forty hours in a work week. (ECF No. 12). Plaintiffs assert that the job duties and manner of compensation are similar for all of the plumbers and handymen employed by Defendants. (ECF No. 12 at 2). Plaintiffs state that the job duties for the employees consisted of driving a work van to a specified job location where they would perform plumbing, sewer, drain cleaning, and handymen services. (ECF No. 12 at 2). They claim that Defendants paid all of their plumbers and handymen on an hourly basis. (ECF No. 12 at 3).[1]

Plaintiffs have attached affidavits to their motion for conditional class certification. Plaintiffs aver that they were required to attend an unpaid thirty-minute meeting each morning prior to the start of the official work day. (ECF Nos. 14-4 at 2; 14-5 at 2). Plaintiffs further aver that plumbers and handymen were not paid an "overtime wage" for hours worked in excess of forty hours in a given work week. (ECF Nos. 14-4 at 2; 14-5 at 2). Plaintiffs attached pay stubs to their motion, which show that they worked in excess of forty hours without being paid an

[1] After the hearing, Plaintiffs filed a letter with an attached "consent to be a party to a collective action" by Danny Black, who appears to have worked for Defendants. (ECF No. 50).

overtime wage. (ECF No. 14-6). At the hearing, Plaintiffs introduced, without objection from Defendants, a printout of a policy of Defendants concerning overtime pay: "The competitiveness of our industry does not allow us to pay over time." In light of this evidence, Plaintiffs have made a sufficient showing, for purposes of conditional class certification, that other employees had similar job duties and compensation, as well as that the employees were not paid a minimum wage for the pre-shift meetings or overtime pay for hours worked in excess of forty hours. Therefore, at this stage of class certification, the notice stage, the court finds that Plaintiffs have made the requisite showing that the class should be conditionally certified.

Defendants oppose the motion on three grounds: (1) the request is conclusory; (2) the request seeks to include employees from defendant companies that plaintiffs were not employed with; and (3) Hankins presents individual claims against Defendants. (ECF No. 18).

Defendants argue that Plaintiffs' request is conclusory because it requires Defendants to identify the alleged victims of the FLSA violations. (ECF No. 18 at 3). Plaintiffs seek to conditionally certify the following class: "all current and former plumbers/handymen . . . who were not paid minimum wage for all hours worked and who worked overtime hours but were not paid overtime wages during all or part of their employment." Defendants assert that they should not have to identify their own alleged violations. The court agrees. The court is mindful that Plaintiffs sought to narrow the pool of recipients of the notice for class certification, but the court finds that Defendants should not have to identify any alleged violations. Therefore, the court modifies the request for employee names and contact information to include all current and former plumbers/handymen who worked for Defendants after October 21, 2011.

Defendants next contend that Plaintiffs should not be able to conditionally certify a class for "separate" entities they did not work for. (ECF No. 18 at 3). Plaintiffs worked for Electric-

Rooterman and Handyman, Inc., not for the other entities. However, at the hearing, Plaintiffs submitted evidence that the other entities are interrelated. They introduced a letterhead that shows Raye-Le Construction & Services, LLC "owns and manages these franchised identities:" Rooter-Man, Total Handy Man, and Drain Doctor. Raye-Le Construction is owned and operated by Raymond Fletcher, Glenna Fletcher, and Jackie Knight (collectively, the "Individual Defendants"). According to Plaintiffs, Raye-Le Properties, Inc. is owned and operated by the Individual Defendants. Plaintiffs contend that these corporate entities are essentially the same and are only separated in an attempt by the Individual Defendants to shield themselves from liability. At the notice stage, Plaintiffs have introduced sufficient evidence to show that Defendants had a policy of not paying overtime wages or minimum wage to plumbers and handymen, and the court finds, based on the lenient standard, that such a policy may extend to Defendants' treatment of plumbers and handymen at the other closely-related entities. Therefore, the court finds Defendants' argument without merit at this time.

And finally, Defendants contend that Hankins has presented individual claims that are not representative of the class. (ECF No. 18 at 4). Hankins seeks money withheld from his final paycheck by Defendants. A letter from Raymond Fletcher informs Hankins that:

> During your last week of employment you had several incidents resulting in the following charges:
>
> Jet nozzle missing after the job at Upwards $65.00
> Tamper missing from Church's Chicken $55.00
> Uniform Pants lost $32.22
> Traffic Accident with property damage Insurance deductible $500.00

(ECF No. 1-4 at 2). These charges resulted in Hankins receiving $0.00 for 46.48 hours of work. (ECF No. 1-4 at 3). Plaintiffs contend that this shows Defendants failed to pay the minimum wage, and that further evidence could show that Defendants engage in a systematic policy of

failing to pay a minimum wage by making deductions from final paychecks of employees. This claim appears to require the individualistic analysis that is not amenable to class certification. However, to the extent that Plaintiffs can show a systematic policy of failing to pay a minimum wage due to deductions from final paychecks, this claim is amenable to class certification. Therefore, at the notice stage, the court will not allow this claim to prevent the conditional class certification.

Conclusion

Accordingly, the motion for conditional class certification (ECF No. 12) is **GRANTED** as modified in this order.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

September 11, 2015
Anderson, South Carolina