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| DISTRICT COURT, DENVER COUNTY, COLORADO | | DATE FILED: November 29, 2018 1:02 PM CASE NUMBER: 2018CV33524 |
| Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202 | | |
| Plaintiff(s) TAMMY LEYVAS v. Defendant(s) SAGE DENTISTRY II PLLC et al. | △ COURT USE ONLY △ | |
| | | Case Number: 2018CV33524 Division: 368 Courtroom: |
| Order Granting Motion for Conditional Certification of Collective Action Pursuant to Section 216(b) of the Fair Labor Standards Act | | |

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

I. BACKGROUND

In this case, Plaintiff claims that she was employed as a dental hygienist at Defendant Sage Dentistry ("Sage"). She claims that she was required to work more than 40 hours per week without payment of overtime pay as required by the federal Fair Labor Standards Act ("FLSA"). In addition to the Complaint, Plaintiff has submitted a Certification of another former Sage employee, Ms. Amy Stahlecker (Ex. 1 to Motion for Conditional Certification).

On October 12, 2018, Plaintiff moved for conditional certification of a collective action under the FLSA.

On November 8, 2018, Defendant requested additional time to respond to the Motion for Conditional Certification through November 26, 2018. On November 13, 2018, the Court granted that motion. However, no Response has been filed.

II. STANDARDS FOR CONDITIONAL CERTIFICATION UNDER FLSA

In a FLSA action, "[t]he first step is a 'notice stage,' where the court determines whether there are others similarly situated. Plaintiff is required to provide 'nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy or plan.' *Thiessen [v. General Elec. Capital Corp.]*, 267 F.3d [1095,] 1102 [(10th Cir. 2001)]. The plaintiff must establish a 'reasonable basis' for h[er] claim that there are other similarly situated employees. This is a 'lenient standard,' 'which typically results in conditional certification of a representative class.' In the second stage, which comes at the conclusion of discovery and often in the context of a defense motion to decertify the class, the court applies a stricter standard of 'similarly situated,' including application of at least four factors, to determine whether the case can proceed as a class action." *Daugherty v. Encana Oil & Gas (USA), Inc.*, 838 F. Supp. 2d 1127, 1132–33 (D. Colo. 2011)(internal citations omitted). "Collective actions [in federal and state courts] under the FLSA are expressly authorized by 29 U.S.C. § 216(b) in cases where the complaining employees are 'similarly situated.' The Tenth Circuit has approved a two-step approach for determining whether plaintiffs are 'similarly situated' for purposes of § 216(b). First, the court makes an initial 'notice stage' determination of whether plaintiffs are 'similarly situated,' which requires 'nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy or plan.' The standard for certification at this stage is a lenient one. At the conclusion of discovery, the Court makes a second determination of whether the plaintiffs are 'similarly situated' under a stricter standard, which includes analysis of the 'disparate factual and employment settings of the individual plaintiffs.'" *Boldozier v. Am. Family Mut. Ins. Co.*, 375 F. Supp. 2d 1089, 1092 (D. Colo. 2005)(internal citations omitted). See also, e.g., *Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010) and *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1260–61 (11th Cir. 2008).

III. ANALYSIS

The Plaintiff here alleges that she, Ms. Stahlecker, and at least twenty-nine other hourly, non-exempt former and current Sage employees did not receive the overtime pay required by the FLSA. The allegations in the Complaint and Certification adequately satisfy the first stage requirement, in that they allege all of these former and current employees were subject to the same decision, policy or plan, *i.e.*, overtime was only paid if a non-exempt employee worked more than 80 hours during a

consecutive 2-week period. The allegations in the Complaint and Certification provide a reasonable basis for concluding that there are similarly situated Sage employees.

Thus, the Court **GRANTS** the Motion for Conditional Certification.

IV. ADDITIONAL ORDERS

The Court also **GRANTS** the following requests:

1. Within twenty-one (21) days, Defendants shall provide a list of all nonexempt hourly employees of Defendants who were paid their regular rates of pay for any hours worked in excess of 40 per week at any time from September 1, 2015 to the present, including the employees' names, last known addresses, email addresses, telephone numbers, dates of work, and if foreign nationals, home country addresses and telephone numbers.
2. Plaintiff's counsel is authorized to send the written Notice attached as Exhibit 2 (WITH THE EXCEPTION THAT THE DATE IN ¶ 8 IS INCORRECT AND SHOULD BE 2015 AND NOT 2018) and the Consent to Join form attached as Exhibit 3 to all individuals whose information is provided by Defendants through the addresses within their above-described contact information.
3. The Court sets a one hundred twenty (120) day period, to begin on the date that the Notice is first sent, for each putative class member to opt in to the case.
4. Plaintiff's counsel is authorized to send a reminder notice to potential class members through the addresses within their above-described contact information forty-five (45) days or less before the opt-in period ends. If any potential class member fails to respond to the initial written Notice, that employee/those employees may be contacted by and sent the Notice and Consent to Join by text message.
5. Plaintiff is hereby designated to serve as the representative of the conditional class.
6. Plaintiff's counsel are approved to serve as counsel for the conditional class.

Issue Date: 11/29/2018



EDWARD DAVID BRONFIN
District Court Judge

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| District Court, City and County of Denver, Colorado 1437 Bannock Street Denver, CO 80202 | 2018CV33524 COURT USE ONLY |
| TAMMY LEYVAS, Individually, and on behalf of all others similarly situated, Plaintiff, v. SAGE DENTISTRY II, PLLC, A Colorado company, Defendant. | |
| David H. Miller, Atty Reg. 8405 Adam M. Harrison, Atty Reg. 50553 THE SAWAYA & MILLER LAW FIRM 1600 Ogden Street Denver, Colorado 80218 Telephone: (303) 839-1650 Facsimile : (720) 235-4380 DMiller@sawayalaw.com AHarrison@sawayalaw.com | Case No: 18CV33524 Division: 368 |
| ORDER RE MOTION FOR CONDITIONAL CERTIFICATION OF COLLECTIVE ACTION PURSUANT TO SECTION 216(B) OF THE FAIR LABOR STANDARDS ACT | |

This matter comes before the Court on Plaintiff's Motion for Conditional Certification of Collective Action Pursuant to Section 216(b) of the Fair Labor Standards Act. Having reviewed the Motion and being fully advised, the Court hereby GRANTS the Motion and ORDERS that:

(1) The following class is conditionally certified pursuant to 29 U.S.C. §216(b):

All nonexempt hourly employees of Defendants who were paid their regular rates of pay for any hours worked in excess of 40 per week at any time from September 1, 2015 to the present;

- (2) Plaintiff is designated to serve as the representative of the conditional class;
- (3) Plaintiff's counsel is appointed to serve as counsel for the conditional class.
- (4) Within 10 days of this Order, Defendants shall provide to Plaintiff a list of all nonexempt hourly employees of Defendants who were paid their regular rates of pay for any hours worked in excess of 40 per week at any time from September 1, 2015 to the present including the employees' names, last known addresses, email addresses, telephone numbers, dates of work, and if foreign nationals, home country addresses and telephone numbers;
- (5) Plaintiff's proposed Notice and Consent to Join form are hereby approved;
- (6) Within 14 days of receipt of the information described above, Plaintiff shall send the Notice and the Consent to Join form to all individuals whose information is provided by Defendants through the addresses and phone numbers (via text messages) within their above-described contact information;
- (7) The putative class members shall have a one hundred twenty (120) day period, to begin on the date that the Notice is first sent, to opt in to the case; and
- (8) Plaintiff is authorized to send a reminder notice to potential class members through the addresses and phone numbers within their above-described contact information forty-five (45) days or less before the opt-in period ends.

BY THE COURT:

District Court Judge