FILED
2016 Sep-14 PM 05:25
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOPE M. CARR, et al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action Number
	)	**5:15-cv-356-AKK**
AUTOZONERS, LLC; AND AUTOZONE STORES, INC.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter comes before the court on the motion for conditional certification of a collective action, doc. 38, filed by Hope M. Carr, Dwight Bryant, Jr., Allen S. Mobley, Jr., Mark W. Clark, Jr., and Paul Loy. These plaintiffs filed this lawsuit on behalf of themselves and other similarly situated employees. Doc. 1. They now seek to facilitate notice, pursuant to the collective action provision, § 216(b), of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, to all current and former "store managers at employer-defendant Autozoners, LLC and AutoZone Stores, Inc. ("AutoZone"), excluding those store managers from California and Puerto Rico, who have been employed by AutoZone from February 27, 2012 to the present (3 years from the filing of this lawsuit to the present)," for overtime pay due to their purported misclassification as exempt employees by AutoZone. Doc. 38 at 1. Plaintiffs also seek to conditionally certify a nationwide class of

individuals employed as store managers "from July 16, 2008 to February 27, 2012, who filed opt-in consents in the case of *Michael L. Taylor v. AutoZone, Inc.*, Case No.: 3:10-cv-08125-FJM in the United States District Court for the District of Arizona."[1] *Id.* at 1–2. This matter is fully briefed and ripe for review. Docs. 44; 56; 63; 64. For the reasons below, the motion for conditional certification is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

Excluding 800 stores in California, AutoZone owns and operates approximately 4,800 stores in the United States, Puerto Rico, and Mexico, providing automotive parts and accessories. Doc. 47-1 at 1. Plaintiffs are former store managers employed by AutoZone. Docs. 40-6; 39-7; 39-8; 40-8; 40-7. As store managers, AutoZone classified Plaintiffs as exempt, contending that store managers' primary duties consist of managerial activities such as "recruiting, interviewing, hiring and training new employees, . . . monitoring compliance with AutoZone policy and procedure and legal compliance measures, preparing daily/weekly reports and other paperwork related to [his or her] store operations . .

[1] In *Taylor et al. v. AutoZone Inc. et al.*, No. CV 3:10-8125-FJM (D. Ariz. 2015), the court decertified the collective action after the named plaintiffs and AutoZone, Inc. presented a settlement agreement stipulating to the dismissal of the claims of the named plaintiffs with prejudice. Doc. 39-1. The court dismissed the action of the opt-in plaintiffs whose consents had been filed without prejudice and the parties also executed a tolling agreement "so that no opt-in plaintiff would be disadvantaged by the dismissal from a statute of limitations perspective." *Id.* at 2. Plaintiffs have attached declarations from two of the opt-in plaintiffs from the Arizona action. *See* docs. 37-1; 37-2.

." Doc. 47-3 at 4. Plaintiffs were also responsible for ensuring the operation of their store. As a result, Plaintiffs contend they spend or spent time performing routine duties that were identical to those of their subordinates, such as "opening and/or closing the store, entering information into AutoZone's computer system about product shipments, stocking s[h]elves, arranging product . . ., cleaning the store, operating the cash register, [and] customer service . . ." Doc. 39-8 at 3.

Plaintiffs filed the current action alleging that AutoZone improperly classified them as exempt employees, thereby denying them compensation for hours worked in excess of forty (40) hours per week in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* Doc. 1 at 4. Plaintiffs seek a collective action pursuant to section 216(b) of the FLSA to recover unpaid overtime compensation, liquidated damages, attorneys' fees and other costs, and declaratory relief. *Id.* at 10–11. Three months after filing this lawsuit, Plaintiffs moved for conditional class certification, doc. 12, which the court denied as premature, doc. 36. Subsequently, at the close of class-based discovery, Plaintiffs filed this current motion for conditional certification, supported by their declarations and the declarations of twenty-one (21) potential opt-in plaintiffs. Doc. 38. Plaintiffs also submitted a proposed notice to potential class members, which clarified that they seek to certify the following class:

> (1) All individuals who currently hold or previously held the position of Store Manager with AutoZone from February 27, 2012 to the

> present and (2) all individuals who were employed as Store Managers from July 16, 2008 to February 27, 2012 who filed opt-in consents in the case of *Michael L. Taylor v. AutoZone, Inc.*, Case No.: 3:10-cv-08125-FJM in the United States District of Arizona.

Doc. 40-26. Defendants challenge the motion because Plaintiffs and the opt-ins have purportedly filed "cookie-cutter declarations" and the proposed opt-in plaintiffs are not "similarly situated" to each other on a nationwide basis. Doc. 44 at 11–12. In their reply, Plaintiffs submitted supplemental filings from the collective action case against AutoZone in the District Court of Arizona, to demonstrate that AutoZone treated its store managers similarly. Doc. 56. In sum, fifty-three store managers nationwide have filed Consent to Joint forms, and twenty-one of those individuals have submitted declarations in support of Plaintiffs' claims.

II. CONDITIONAL CLASS CERTIFICATION STANDARD OF REVIEW

Section 216(b) of the FLSA authorizes actions for unpaid overtime compensation 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). Thus, to maintain a collective action under the FLSA, the employees must demonstrate that they are "similarly situated." *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1258 (11th Cir. 2008). Further, would-be plaintiffs in a

section 216(b) collective action must affirmatively "opt-in" to the suit.[2] 29 U.S.C. § 216(b) ("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."). "That is, once a plaintiff files a complaint against an employer, any other similarly situated employees who want to join must affirmatively consent to be a party and file written consent with the court." *Morgan*, 551 F.3d at 1259. The FLSA does not provide specific procedures by which potential plaintiffs may opt-in, but the Supreme Court has held that "district courts have discretion, in appropriate cases, to implement 29 U.S.C. § 216(b) . . . by facilitating notice to potential plaintiffs." *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989); *see also Haynes v. Singer Co.*, 696 F.2d 884, 886 (11th Cir. 1983). Indeed, the Supreme Court has endorsed the practical benefits of FLSA collective actions, as follows:

> A collective action allows . . . plaintiffs the advantage of lower individual costs to vindicate rights by the pooling of resources. The judicial system benefits by efficient resolution in one proceeding of common issues of law and fact arising from the same alleged discriminatory activity. These benefits, however, depend on employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate.

Hoffman-La Roche, 493 U.S. at 170.

---

[2] In this way, section 216(b) collective actions differ from Fed. R. Civ. P. 23 class actions because under Rule 23, a person must affirmatively "opt out" if he or she wishes to abstain from the lawsuit. *See Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1216 (11th Cir. 2001).

The Eleventh Circuit has suggested a two-tiered process for district courts to manage collective actions. *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1218–19 (11th Cir. 2001).[3] At the conditional certification or the "notice" stage, based on the pleadings and affidavits on file, the district court makes a determination of whether it should authorize notice of the action to potential class members. *Id*. at 1218. The standard is lenient because the court has minimal evidence. *Id*. The district court must merely ascertain whether there are other employees who wish to opt-in, and that they are similarly situated to the original plaintiff "with respect to their job requirements and with regard to their pay provisions." *Morgan*, 551 F.3d at 1259 (quoting *Dybach v. Fla. Dep't of Corr*., 942 F.2d 1562, 1567–68 (11th Cir. 1991)). Indeed, this inquiry "typically results in 'conditional certification' of a representative class." *Hipp*, 252 F.3d at 1218. If the court conditionally certifies a class, court-supervised notice of the pendency of the action is then provided to the potential class members, and they are afforded an opportunity to opt-in to the action. *Id*.

The second stage of the process is activated by the defendant's filing of a motion to decertify following the completion of discovery. *Id*. At this stage, based on a fully-developed record, the court makes a determination of whether the named

[3] Although *Hipp* addresses a collective action brought under the Age Discrimination in Employment Act, the same analysis applies to FLSA collective actions. *Cameron-Grant v. Maxim Healthcare Servs., Inc.*, 347 F.3d 1240, 1243 n. 2 (11th Cir. 2003).

plaintiffs and the opt-ins are similarly situated. *Id*. The plaintiff has a heavier burden to show similarity at the second stage. *Morgan*, 551 F.3d at 1261. If the court finds the plaintiffs are not similarly situated, it decertifies the action, dismisses the opt-in plaintiffs without prejudice, and the named plaintiffs proceed to trial on their individual claims. *Hipp*, 252 F.3d at 1218. At all times, the decision to certify an opt-in class under section 216(b) "remains soundly within the discretion of the district court." *Id*. at 1219.

Presently, Plaintiffs are at the first step, seeking initial conditional certification and judicial approval of a proposed notice to potential members. As such, Plaintiffs' burden at this stage hinges on their ability to show that they are "similarly situated" to the prospective opt-in plaintiffs. *Morgan*, 551 F.3d at 1259 (citation omitted). Where, as here, the parties have engaged in limited discovery, the court will "carefully consider the submissions of the parties with respect to the class allegations." *White v. Osmose, Inc.*, 204 F. Supp. 2d 1309, 1313 n.2 (M.D. Ala. 2002).

III. ANALYSIS

The FLSA does not define "similarly situated," *see* 29 U.S.C. § 216(b), and while the Eleventh Circuit has refused to adopt a precise definition, *see Morgan*, 551 F.3d at 1259, it has provided some guidance. To maintain a collective action, the named plaintiffs "need only show that their positions are similar, not identical,

to the positions held by the putative class members." *Grayson v. K-Mart*, 79 F.3d 1086, 1096 (11th Cir. 1996). Yet, the "similarities necessary to maintain a collective action under § 216(b) must extend 'beyond the mere facts of job duties and pay provisions.'" *Anderson v. Cagle's, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007). "Otherwise, 'it is doubtful that § 216(b) would further the interests of judicial economy, and it would undoubtedly present a ready opportunity for abuse.'" *Id*. (citation omitted). Essentially, a plaintiff must demonstrate a "reasonable basis" for his claim of class-wide discrimination. *Grayson*, 79 F.3d at 1097. This burden, "which is not heavy,[4] [is met] by making substantial allegations of class-wide discrimination, that is, detailed allegations supported by affidavits which successfully engage defendants' affidavits to the contrary." *Id*. (citation omitted); *see also Morgan*, 551 F.3d at 1261 ("The district court's broad discretion at the notice stage is thus constrained, to some extent, by the leniency of the standard for the exercise of that discretion. Nonetheless, there must be more than 'only counsel's unsupported assertions that FLSA violations [are] widespread and that additional plaintiffs would come from other stores.'") (citation omitted).

Plaintiffs contend that conditional class certification is appropriate because they have established that there are other employees who desire to opt-in and who

[4] The Eleventh Circuit has also described plaintiff's burden at this initial stage of the litigation as "'not particularly stringent,' 'fairly lenient,''flexib[le],'. . . and 'less stringent than that for joinder under Rule 20(a) or for separate trials under 42(b).'" *Morgan*, 551 F.3d at 1260-61 (citations omitted).

are similarly situated with regard to the violation alleged in their complaint, i.e., that AutoZone has a policy and practice of misclassifying their store managers as exempt and failing to pay them overtime. Plaintiffs have submitted affidavits and declarations on this issue, and have submitted twenty-one declarations from prospective opt-in plaintiffs and fifty-three consent to join forms. Plaintiffs' evidence generally shows the following:

Plaintiffs and the opt-ins state that they are all current or former store managers who worked for AutoZone during one of the proposed time periods in the notice and whom AutoZone purportedly misclassified as exempt. *See, e.g.*, docs. 40-3 to 40-10. Their job duties consisted of performing managerial duties and purported non-managerial tasks, i.e., removing or installing parts, performing routine clerical duties, and receiving and unloading freight. Docs. 40-3 to 40-10; 40-14 at 4. The plaintiffs and opt-ins state that they spend or spent the majority of their work day performing substantially the same work as their non-exempt subordinates and that they frequently work or worked over forty hours each week without receiving overtime pay. *Id.*

More specifically, all plaintiffs state that AutoZone utilized the same policies and practices nationwide and any distinctions in pay occurred based on the uniform application of a predetermined formula. To support this contention, the plaintiffs cite to the declaration of Curtis Allen, the Regional Manager for

AutoZone's Birmingham Region, and his reliance on the "corporate policies and procedures that are intended to guide Store Managers regarding their duties and responsibilities." *See* doc. 47-1. Plaintiffs claim that Allen's declaration proves that AutoZone treats store managers similarly regardless of location. *See* doc. 47-1 at 6. Plaintiffs also note that AutoZone has also provided copies of its policies for its store managers and has indicated that it uniformly applies these policies. *See generally* docs. 47-1; 47-2. For example, the policies state that "[h]iring managers must obtain [District Manager] approval prior to making a job offer to a store AutoZoner," doc. 40-22, and that store managers must contact the district or regional human resources manager to determine the type of corrective action required for disciplinary actions for their employees, doc. 40-23. According to Plaintiffs, these directives purportedly establish that the store managers are not in charge of their stores. In fact, Plaintiffs add that their authority to schedule employees for work is limited because AutoZone restricts them by tying payroll dollars to a store's sales history and by requiring that the district manager approve the store managers' final schedule. *See* doc. 47-1 at 69–71.

While reasonable minds may disagree and might argue convincingly that it is prudent to have centralized human resources policies, for the analysis necessary at this juncture, this evidence demonstrates that AutoZone expected its store managers to follow the same polices, practices, and procedures in performing their

duties. Moreover, because AutoZone requires its store managers to ensure that their assigned stores operate smoothly, it is reasonable at this juncture to infer that Plaintiffs and the opt-ins spent a significant amount of their time performing purported non-managerial duties, and that their primary duties were not management. In short, under a reasonable view of the evidence, the named plaintiffs have demonstrated sufficiently that there are others who are similarly situated to them, who were or are subject to AutoZone's unified practice of allegedly misclassifying its store managers as exempt. *See Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1263 (11th Cir. 2008) (finding store managers similarly situated for FLSA purposes where the employer "exempted all store managers from overtime pay requirements without regard to store size, sales volume, region, district, or hiring and firing authority."). Furthermore, the number of opt-ins supports a conclusion that there are sufficient similarly situated individuals who wish to participate in this litigation to justify conditional certification. *See, e.g.*, *Guerra v. Big Johnson Concrete Pumping, Inc.*, No. 05-14237-CIV, 2006 WL 2290512, at *4, (S.D. Fla. May 17, 2006) (one named plaintiff and one affidavit from an additional employee sufficient to show interest); *Pendlebury v. Starbucks Coffee Co.*, 2005 WL 84500, at *3 (S.D. Fla. Jan. 3, 2005) (conditionally certified nation-wide collective action based on two plaintiffs and declarations from four employees); *Morgan*, 551 F.3d at 260 (stating that "before

facilitating notice, a 'district court should satisfy itself that there are other employees . . . who wish to opt-in'") (quoting *Dybach*, 942 F.2d at 1567–68). Consequently, Plaintiffs have met their initial burden and their motion for conditional certification is due to be granted.

IV. PLAINTIFFS' PROPOSED NOTICE TO OPT-IN PLAINTIFFS

AutoZone opposes Plaintiffs' proposed opt-in period, notice, and methods of distribution, because the proposed notice is purportedly "misleading and fails to inform potential opt-in plaintiffs of the full range of their rights in connection with this action. . . . [and] lacks . . . balance and neutrality." Doc. 44 at 81. "By monitoring preparation and distribution of the notice, a court can ensure that it is timely, accurate, and informative." *Hoffman-La Roche*, 493 U.S. at 171-72. The court does not need to get involved at this juncture because, although Plaintiffs maintain that their notice is sufficient, Plaintiffs are willing to meet and confer with AutoZone to reach an agreement. Doc. 56 at n.28. Accordingly, the parties are **ORDERED** to confer within thirty (30) days and to submit a mutually agreeable form of notice of opt-in rights for the court's approval by November 4, 2016. To the extent that the parties are unable to agree, they must file separate proposals on or before that deadline, explaining the specific differences in their proposals and providing justification for the same.

CONCLUSION

Whether Plaintiffs and the opt-ins can survive a motion for decertification or prevail on the merits are matters that are not presently before the court. Rather, the court is tasked solely with ascertaining whether Plaintiffs have satisfied their minimal burden at this notice stage of the proceedings—i.e. whether they can show that there are other employees who wish to opt-in and that these individuals are similarly situated. Plaintiffs have made such a showing and have satisfied their burden. Therefore, the court **GRANTS** the motion for conditional class certification and notice.

DONE the 14th day of September, 2016.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE