AMERICAN ARBITRATION ASSOCIATION

GABRIEL CILLUFFO, et al, Claimants, v. CENTRAL REFRIGERATED SERVICE, INC., CENTRAL LEASING, INC., JON ISAACSON and JERRY MOYES, Respondents.	77 160 00126 13 PLT (Collective Matter) ORDER

On January 8, 2014, the Arbitrator received (1) Claimants' Notice Re Inability to Reach Agreement on Proposed Joint Scheduling Order for Collective Arbitration, with attached Exhibit A; (2) Claimants' [Proposed] Scheduling Order for Collective Arbitration; (3) Respondents' Motion to Stay Pending (1) An Appeal of the Arbitrator's December 9, 2013 Ruling and/or (2) a Decision on Respondents' Motion to Join Each Claimant's FLSA Claim with the Remainder of His or Her Causes of Action; and (4) letter dated January 8, 2014, from Respondents' counsel to the Arbitrator.

The Arbitrator determines that Respondents' Motion to Stay may be decided without requiring a response.

In this case, the collective arbitration will occur not just because of the Arbitrator's decision, but pursuant to an order of the district court, which the appellate court chose not to overrule. Under these circumstances any further action in the courts will not be an appeal, but a request for the courts to reconsider something they have already decided.

Given the clear order of the district court, the Arbitrator will not delay this proceeding pending a further petition to the courts.

Claimants also seek a stay while they petition arbitrators appointed in the individual arbitrations to join the FLSA claims in the individual arbitrations. The Arbitrator has no control over what any arbitrator appointed in those proceedings decides, but the district court order was clear that the FLSA claim could proceed as a collective arbitration. The parties are free, of course, to agree to have all claims by an individual claimant heard in an individual arbitration, or to consolidate all individual claims into a single arbitration. Absent such agreement, the Arbitrator sees no reason to delay this proceeding pending actions in the individual arbitrations.

Respondents also object to Claimants' Proposed Scheduling Order for Collective Arbitration, primarily because it fails to include a certification process. Respondents cite *Theissen v. General Electric Capital Corp.*, 267 F.3d 1095 (10th Cir. 2001) as laying out the process. *Theissen* notes that the overriding question is whether the named claimants and potential opt-in claimants are "similarly situated" for purposes of the FLSA. At the initial "notice stage" nothing more is required than "substantial allegations that the putative class members were together the victims of a single decision, policy, or plan." Id. at 1102 (citations omitted). Other courts have noted that although the standard at this stage is lenient, there must be a "modest factual showing" and more than pure speculation that similarly situated claimants exist. *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527, 536 n.4 (3d Cir. 2012); *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233 (11th Cir. 2008).

The record before the Arbitrator includes numerous pleadings filed in this proceeding, as well as many of the pleadings filed in the original district court action. The collective action asserts it is brought on behalf of "all truckers who lease a truck from Central Leasing, Inc. to drive for CENTRAL REFRIGERATED SERVICE, Inc. during the three years preceding the filing of the initial complaint and up through the date of final judgment … ." Complaint, ¶28. The record includes copies of both the Contractor Agreement and Equipment Leasing Agreement that are represented to be identical or substantially similar to the agreements signed by many others. Respondents have not disputed that the drivers have signed these agreements, and have relied on the arbitration clauses within those agreements to support their arguments that the issues should be arbitrated in individual proceedings.

The facts in the record appear to be sufficient to satisfy the lenient standard applied under the first stage of the certification process. Respondents have not, however, had an opportunity to argue that the Claimants and potential opt-in claimants are not similarly situated, so the Arbitrator will reserve judgment on the issue until Respondents fully lay out their objections. Therefore,

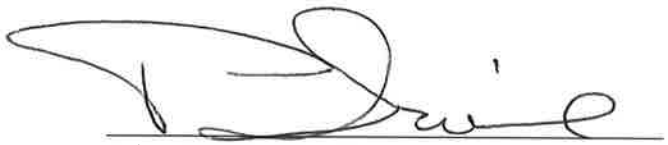
IT IS ORDERED that Respondents' Motion to Stay Pending (1) An Appeal of the Arbitrator's December 9, 2013 Ruling and/or (2) a Decision on Respondents' Motion to Join Each Claimant's FLSA Claim with the Remainder of His or Her Causes of Action, is DENIED.

IT IS FURTHER ORDERED that the Respondents shall submit any objections to the Claimants' Proposed Scheduling Order for Collective Arbitration, including any

objections to notice based on claimants and potential claimants not be similarly situated, on or before January 31, 2014.

IT IS FURTHER ORDERED that Claimants may submit a reply to any objections on or before February 17, 2014.

DATED: January 10, 2014.



PATRICK IRVINE
ARBITRATOR

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