

PRIORITY SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 12-00886 VAP (OPx)

Date: November 8, 2012

Title: CILLUFFO, et al. -v- CENTRAL REFRIGERATED SERVICES, INC., et al.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFFS:

ATTORNEYS PRESENT FOR
DEFENDANTS:

None

None

PROCEEDINGS: MINUTE ORDER RE: CLARIFICATION OF ORDER
COMPELLING ARBITRATION (IN CHAMBERS)

Before the Court are requests filed by Plaintiffs (Doc. No. 59) ("Plaintiffs' Statement") and Defendants (Doc. No. 58) ("Defendants' Statement") seeking clarification from the Court on a number of issues.¹ For the reasons set forth below,

¹Defendants were the first to file their statement, and Plaintiffs filed theirs in response. Defendants did not file an ex parte application nor a duly noticed motion. The vehicle by which Defendants are pursuing their request -- a "Position Statement" -- is not supported by the FRCP, Local Rules, or this Court's Standing (continued...)

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the Court finds: 1) Plaintiffs' Fair Labor Standards Act ("FLSA") claims shall be collectively arbitrated under the Utah Uniform Arbitration Act ("UUAA"); 2) the statute of limitations on Plaintiffs' FLSA claims remains tolled; and 3) Plaintiffs' may continue to file notices of consent to sue on behalf of putative class members with this Court, as well as with the arbitrator.

On September 24, 2012, the Court issued an order compelling arbitration under the Utah Uniform Arbitration Act ("UUAA"). (See Minute Order Granting Motion to Compel Arbitration (Doc. No. 53) ("Arbitration Order").)

On September 27, 2012, the Court, based on a stipulation signed by both parties, issued an order stating:

1. Plaintiffs' deadline to file a Motion to Certify a Rule 23 Class Action under Local Rule 23-3 shall be continued from the current date of September 14, 2012, up through and including the date Defendants' Motion to Compel Arbitration has been finally resolved by the District Court and a new deadline is set by order of the Court following submission of a proposed briefing schedule to the Court that sets forth the parties' respective positions as to when such a motion should be heard;
2. Plaintiffs shall defer filing a Motion to Conditionally Certify a FLSA Collective Action up through and including the date Defendants' Motion to Compel Arbitration has been finally resolved by the District Court and a new deadline is set by order of the Court following submission of a proposed briefing schedule to the Court that sets forth the parties' respective positions as to when such a motion should be heard;
- ...
4. The statute of limitations on Plaintiffs' (including putative class

¹(...continued)

Order. Nevertheless, as both sides have now briefed the issues raised, the Court addresses them herein.

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members) FLSA claims shall be tolled from September 14, 2012, up through and including the earlier of the following: (1) the date the Court sets as the new deadline for Plaintiffs to file a Motion to Conditionally Certify a FLSA Collective Action after it reviews the respective briefing schedules proposed by the parties, or (2) the date Plaintiffs actually file a Motion to Conditionally Certify a FLSA Collective Action. Under no circumstances, however, shall Plaintiffs' (including putative class members) FLSA claims be tolled after the date Defendants' Motion to Compel Arbitration has been finally resolved, including any appellate rights; and

5. Once the Court issues its ruling regarding Defendants' Motion to Compel Arbitration, the parties shall promptly meet and confer, and submit their proposed briefing schedules to the Court with respect to both the Motion to Certify a Rule 23 Class Action under Local Rule 23-3, and the Motion to Conditionally Certify a FLSA Collective Action.

(Order to Extend Time to File Motion to Certify Rule 23 Class Action and to Defer Filing of Motion to Conditionally Certify FLSA Collective Action (Doc. No. 54) ("Order to Extend Time").)

In accordance with the Order to Extend Time, the parties met and conferred from October 5, 2012 until October 24, 2012. (Defendants' Statement at 2.) There are, however, three issues that the parties could not resolve: whether 1) the Court ordered arbitration under the UUAA of all claims, including Plaintiffs' FLSA claims, on an individual basis; 2) the tolling of the statute of limitations for Plaintiffs' FLSA claims has ended; and 3) Plaintiffs are permitted to continue filing notices of consent to sue forms on behalf of putative class members in this Court.

A. Arbitration of All Claims on an Individual Basis

Plaintiffs argue that the Court did not order arbitration of all claims on an individual basis, especially not Plaintiffs' claims for violations under the FLSA. First, Plaintiffs argue that the class arbitration prohibition does not prohibit collective arbitration of Plaintiffs' FLSA claims. (Plaintiffs' Statement at 3-4.) Plaintiffs argue that class actions under Rule 23 and collective actions under the FLSA are distinct.

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(Id.) The arbitration prohibition in the individual Contractor Agreements and Equipment Leasing Agreements (collectively, the "Agreements") states that "no consolidated or class arbitrations will be conducted" (the "Prohibition"), but does not state that collective actions are also prohibited. (Id.; see also Arbitration Order at 12.) Second, Plaintiffs argue that the Court ordered arbitration, in general, and not specifically "individual arbitration." (Plaintiffs' Statement at 4.)

The key difference between a collective action brought under the FLSA and a Rule 23 class action is that, in the former, "class members must opt into the suit in order to be bound by the judgement in it, while in a class action governed by Fed. R. Civ. P. 23 they must opt out not to be bound by the judgment." Espenscheid v. Direct Sat USA, LLC, 688 F.3d 872, 874 (7th Cir. 2012) (emphasis in original); see also Wilkie v. Gentiva Health Servs., Inc., 2010 WL 3703060, *3 n. 5 (E.D. Cal. Sep. 16, 2010); Ferrell v. ConocoPhillips Pipe Line Co., 2010 WL 1946896, *3 (C.D. Cal. May 12, 2010).

In order to compel arbitration under the UUAA, the Court determined whether the Agreements were enforceable. (Arbitration Order at 11-12.) In their opposition to the motion to compel arbitration, Plaintiffs challenged as unenforceable the Prohibition in the Agreements. (Id. at 12.) The Court analyzed the Prohibition and found it enforceable. (Id. at 12-14.)

As Plaintiffs note, however, the Prohibition does not prohibit collective arbitrations. An action brought under the FLSA is a collective action, not a class action. The Prohibition only prohibits consolidated or class arbitrations. Therefore, the Prohibition does not prohibit collective arbitration of Plaintiffs' FLSA claims; Plaintiffs' FLSA claims should be collectively arbitrated.

With regard to Plaintiffs' forced labor claim, arbitration is to proceed on an individual basis. The Court specifically found that the Prohibition was enforceable. The Prohibition prohibits consolidated or class arbitration. Plaintiffs' forced labor claim was brought as a Rule 23 class action. Therefore, arbitration of the forced labor claim must be pursued on an individual basis.

B. Tolling of the Statute of Limitations

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Defendants are under the impression that the parties agreed to end the tolling of the statute of limitations on Plaintiffs' (including putative class members) FLSA claims. (Defendants' Statement at 2-3.) Plaintiffs dispute this. (Plaintiffs' Statement at 2-3; see also Ex. A to Plaintiffs' Statement).

In the Order to Extend Time, the Court ordered that "[t]he statute of limitations on Plaintiffs' (including putative class members) FLSA claims shall be tolled from September 14, 2012, up through and including the earlier of the following: (1) the date the Court sets as the new deadline for Plaintiffs to file a Motion to Conditionally Certify a FLSA Collective Action after it reviews the respective briefing schedules proposed by the parties, or (2) the date Plaintiffs actually file a Motion to Conditionally Certify a FLSA Collective Action." (Order to Extend Time.) The parties agree that setting a briefing schedule on the motion to conditionally certify is inappropriate at this time in light of this Court's order compelling arbitration. (Plaintiffs' Statement at 2; Defendants' Statement at 2). Therefore, the Court will not yet set a deadline for the motion to conditionally certify, and the statute of limitations on the FLSA claims remains tolled, on that basis alone.

Alternatively, "[c]ourts have equitably tolled the statute of limitations in a FLSA action when doing is in the interest of justice." Castle v. Wells Fargo Fin., Inc., 2007 WL 1105118, *1 (N.D. Cal. Apr. 10, 2007) (tolling statute of limitations until stay was lifted); see also Koval v. Pacific Bell Telephone Co., 2012 WL 3283428, *7-8 (N.D. Cal. Aug. 10, 2012) (same). The Court has ordered the parties to arbitrate, and has stayed the proceedings pending arbitration of all claims. Accordingly, the Court equitably tolls the statute of limitations until the stay is lifted.

C. Notices of Consent to Sue

Although the Court has stayed the proceedings pending arbitration of all claims, Plaintiffs shall continue to file notices of consent to sue on behalf of putative class members with this Court. Plaintiffs' counsel shall also file these notices with the arbitrator.

IT IS SO ORDERED.

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