UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| JOHN BAUER, et al., | * | CASE NO. 3:09-CV-194 |
| Plaintiffs, | * | JUDGE WALTER H. RICE |
| vs. | * | |
| SUKHVINDER SINGH, et al., | * | |
| Defendants. | * | PLAINTIFFS' MOTION FOR THE COURT'S APPROVAL OF A NOTICE OF LAWSUIT TO BE SERVED ON POTENTIAL PLAINTIFFS |

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Pursuant to Fair Labor Standards Act Section 216 (29 U.S.C. §216(b)), the named Plaintiffs, John Bauer and Jerry Freeze, move the Court to enter an Order approving the attached Notice of Lawsuit for dissemination to other potential Plaintiffs.

A memorandum in support is attached.

Respectfully Submitted,

/S/ James P. Langendorf

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MEMORANDUM

The Fair Labor Standards Act contemplates actions by plaintiffs for themselves and on behalf of others similarly situated. 29 U.S.C. §216(b). John Bauer and Jerry Freeze, the named plaintiffs in this case, seek to be the representatives of similarly situated plaintiffs.

In order to offer adequate representation, Mssrs. Bauer and Petro wish to notify all current and former similarly situated employees of the Defendants that they have brought a claim seeking the recovery of unpaid overtime wages, liquidated damages, compensatory and punitive damages, interest and attorney's fees. The Plaintiffs would limit their notice to current and former employees who held or hold the same job titles and/or performed job duties substantially similar to those they performed while they were employed by the Defendants.

In Hoffman-La Roche, Inc. v.Sperling, 493 U.S. 165 (1989), the Supreme Court discussed the ADEA's incorporation of part of the Fair Labor Standards Act. The section drawn upon by the ADEA is 29 U.S.C. §216, regarding representative actions. Relying on the text of 29 U.S.C. §216(b) the Court said:

> "Section 216(b)'s affirmative permission for employees to proceed on behalf of those similarly situated must grant the court the requisite procedural authority to manage the process of joining multiple parties in a manner that is orderly, sensible, and not otherwise contrary to statutory commands or the provisions of the Federal Rules of Civil Procedure. *See Fed. Rule Civ. Proc. 83.* It follows that, once an ADEA action is filed, the court has a managerial responsibility to oversee the joinder of additional parties to assure that the task is accomplished in an efficient and proper way."

493 U.S. 165, at 170. The Court then held that a plaintiff in an ADEA, and consequently an FLSA, case was entitled to discover the names and addresses of similarly situated employees and that a district court was authorized to expedite that process. However, the Supreme Court

declined to weigh in on the form of the notice. The notice attached for this Court's approval has been drawn from a notice which was approved and used in a representative ADEA action in the Northern District of Illinois and has since been approved in the Southern District of Ohio, *See* Basford v. MidFirst Credit Union, et al., Case No. C-1-02-741, Judge Susan Dlott.

Mr. Bauer and Mr. Freeze ask the Court to approve this notice and to allow them to send it to the potential plaintiffs in this case. An affidavit from Mr. Bauer shows that there are similarly situated employees whose rights can be vindicated through this collective action.

> "* * * [T]he trial court must first determine whether notice of the action should be given to potential class members. See Thiessen v. General Elec. Capital Corp., 996 F. Supp. 1071, 1080 (D. Kan. 1998). This preliminary pronouncement is 'usually based only on the pleadings and any affidavits that have been submitted' during the initial stages of litigation. Mooney v. Aramco Services Co., 54 F.3d 1207, 1214 (5th Cir. 1995). Because the court has minimal evidence at the 'notice stage,' this determination 'is made using a fairly lenient standard, and typically results in "conditional certification" of a representative class.' Id.; but see, Haynes v. Singer Co., Inc., 696 F.2d 884 (11th Cir. 1983) (district court did not abuse its discretion in refusing to authorize class notice where plaintiff's counsel offered only unsupported assertions of widespread FLSA violations). Courts have held that plaintiffs can meet this burden by simply alleging 'that the putative class members were together the victims of a single decision, policy, or plan' that violated the law. Mooney, supra, at 54 F.3d 1214 n.8 (quoting Sperling v. Hoffmann-La Roche, Inc., 118 F.R.D. 392, 407 (D.N.J. 1988)).

Reeves v. Alliant Techsystems, Inc., 77 F. Supp.2d 242 (D. R.I. 1999).

This is not a class action and thus it does not proceed under the fairly onerous requirements of Fed. R. Civ. P. 23. It is a collective action plainly authorized by 29 U.S.C. §216(b). The Court's initial approval is of the notice is desirable though for the for the plaintiffs' dissemination of the notice that a lawsuit has been filed.

Many collective actions under the FLSA have been filed since Basford, and the form of notice in those cases remains generally consistent with the attached sample.

Mr. Bauer and Mr. Freeze move this Court to approve the proposed Notice. A proposed Order granting this motion has been included for the Court's review.

Respectfully Submitted,

/S/ James P. Langendorf
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I certify that the foregoing Motion, memorandum, exhibits, proposed Notice and proposed Order were all filed today, June 17, 2009, using the court's CM/ECF system and that no other service was made by me.

/S/ James P. Langendorf
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