

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

**CORTNEY JOHNSON, Individually
and on Behalf of All Others Similarly
Situated**

PLAINTIFF

v.

No. 4:16-cv-577-DPM

**A AND R MOBILE HOME SUPPLY
AND SERVICE INC.; JAN McGOUGH
and RUSSELL McGOUGH, Both Individually
and as Officer and Director of A and R Mobile
Home Supply and Service Inc.**

DEFENDANTS

ORDER

Johnson has moved for conditional certification of a collective action under the Fair Labor Standards Act and approval of related notices. The motion is mostly unopposed. It is granted as modified.

1. Johnson and the other HVAC employees in the potential group are similarly situated under the fairly lenient governing standard. *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 169 (1989); *Freeman v. Wal-Mart Stores, Inc.*, 256 F. Supp. 2d. 941, 944-45 (W.D. Ark. 2003). Johnson has made the modest factual showing required. Considering all the material circumstances, the Court concludes that any HVAC installer employed by any of the Defendants between 10 August 2013 and 10 August 2016, are similarly situated to

Johnson. They worked the same jobs during the same period of time, performed the same duties, and were paid in the same manner. *Smith v. Frac Tech Services, Ltd.*, 2009 WL 4251017 at *4 (E.D. Ark. 24 Nov. 2009). The Court therefore conditionally certifies this group*:

All HVAC installers employed by Defendants A and R Mobile Home Supply and Service, Inc.; Jan McGough, Individually and as Officer and Director of A and R Mobile Home Supply and Service, Inc.; and Russell McGough, Individually and as Officer and Director of A and R Mobile Home Supply and Service, Inc., (collectively "Defendants"), between 10 August 2013 and 10 August 2016 (the "FLSA Group").

2. The Court approves the proposed consent form, and reminder postcard. The Court approves the proposed notice with the tweaks noted on the attached drafts. The Court directs the Defendants to give Johnson's attorneys (in electronic spreadsheet format) the list of names of all people who fit the group definition. The list should include their home addresses and telephone numbers, if known. Defendants are right, though, that any more information would go too far at this point; birthdays, non-public phone

*It is not a class; it is a group pursuing a collective action. Calling it a class invites confusion because of Fed. R. Civ. P. 23 issues.

numbers, and social security numbers aren't necessary. The notice schedule will be as follows:

- Defendants produce spreadsheet 23 June 2017
- Notice period opens 23 June 2017
- Deadline to mail notice 7 August 2017
- Thirty-day reminder postcard mailing deadline 8 September 2017
- Opt-in period closes 22 September 2017

And the Court grants Johnson's request to include the complaint with the notice. If Defendants ask Johnson to include the answer, then Johnson must include it, too.

* * *

Mostly unopposed motion, № 16, granted as modified.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

6 June 2017

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CORTNEY JOHNSON, Individually and
on Behalf of All Others Similarly Situated

PLAINTIFF

vs.

No. 4:16-cv-577-DPM

A AND R MOBILE HOME SUPPLY AND SERVICE,
INC.; JAN McGOUGH, Individually and as Officer and
Director of A AND R MOBILE HOME SUPPLY AND
SERVICE, INC.; and RUSSELL McGOUGH,
Individually and as Officer and Director of A AND R
MOBILE HOME SUPPLY AND SERVICE, INC.

DEFENDANTS

NOTICE OF RIGHT TO JOIN LAWSUIT

FROM: Mr. Josh Sanford
SANFORD LAW FIRM, PLLC
One Financial Center
650 South Shackleford Road, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040
E-mail: josh@sanfordlawfirm.com
Attorneys for Plaintiff

Group

TO: All HVAC installers employed by Defendants A and R Mobile Home Supply and Service, Inc.; Jan McGough, Individually and as Officer and Director of A and R Mobile Home Supply and Service, Inc.; and Russell McGough, Individually and as Officer and Director of A and R Mobile Home Supply and Service, Inc., (collectively "Defendants"),
~~at any time after August 10, 2013~~ *between 10* *and 10 August 2016* (the "FLSA Class").

RE: Fair Labor Standards Act lawsuit against Defendants.

(1) INTRODUCTION: The purpose of this notice is to inform you of a pending collective action lawsuit in which you may be a member as a Plaintiff; to advise you of how your rights may be affected by this suit; and to instruct you on the procedure for participating in this suit.

(2) DESCRIPTION OF THE LAWSUIT: Plaintiff in this case is a former HVAC employee for Defendants. Plaintiff filed a lawsuit against Defendants asserting that Defendants violated federal law in failing to pay its HVAC employees correctly.

Defendants deny Plaintiff's claims and allegations. Defendants assert that they complied with the law, and properly compensated, all of their HVAC employees.

This case has been set for trial on April 2, 2018. If the case is not settled between the parties, a trial will be held at the United States District Court for the Eastern District of Arkansas in Little Rock, Arkansas. The Court has not ruled on or decided any of the issues, including the merits of the claims or defenses.

(3) COMPOSITION OF THE PROPOSED CLASS: Plaintiff seeks to sue on behalf of himself and on behalf of all HVAC employees who were employed by Defendants at any time ~~on or~~ between ~~August 10, 2013 to August 10, 2016.~~ GROUP

(4) YOUR RIGHT TO PARTICIPATE IN THIS SUIT: If you fit the definition above, you may join this suit (that is, you may opt-in) provided that you file or cause to be filed the attached Consent to Join Collective Action ~~on or before~~ and 10, 2017.

Information regarding this case is available from Plaintiff's attorney, Josh Sanford, Sanford Law Firm, PLLC, One Financial Center, 650 South Shackleford Road, Suite 411, Little Rock, Arkansas 72211, (501) 221-0088, josh@sanfordlawfirm.com.

(5) EFFECT OF JOINING THIS SUIT: If you choose to join this suit, you will be bound by the judgment whether it is favorable or unfavorable. While the suit is proceeding you may be required to provide information, sit for depositions, and testify in court. You will not be required to pay attorney's fees directly. If successful, Plaintiff's attorney will receive a part of any money judgment or settlement entered in favor of the ~~class~~ group.

It is important to understand that you are not entitled to recovery just because you were employed by Defendants as a HVAC employee at some time since August 10, 2013. The Court will make a final decision about whether you are entitled to recover, and for what time period, if any, that you are entitled to recover. The Court has not made those decisions as of yet.

(6) EFFECT OF NOT JOINING THIS SUIT: If you choose not to join this suit, you will not be affected by the settlement of this case or any judgment, favorable or unfavorable. If you choose not to join this suit, you are free to file your own lawsuit. If you do not join this suit, however, its filing will not stop the running of the statute of limitations (deadlines) applicable to any claims you may have against Defendants within the scope of the suit. If those deadlines expire

before you file your own lawsuit, you may lose your rights. Accordingly, if you desire to file your own lawsuit, you should contact an attorney to preserve whatever rights you may have.

(7) Group **GLASS COUNSEL:** If you choose to join this suit, the named Plaintiff through his attorney will represent your interests. Plaintiff's attorney and the attorney for the ~~potential class~~ is:

Group
Mr. Josh Sanford
Sanford Law Firm, PLLC
One Financial Center
650 South Shackleford Road, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040
E-mail: josh@sanfordlawfirm.com

You also have a right to hire your own attorney and pursue your potential claims individually. If you sign a Consent to Join you agree that the attorney for the potential class will represent you in this case.

(8) **FURTHER INFORMATION:** Further information about this suit, your rights to join in this action, information about filing a Consent to Join, and additional Consent to Join forms can be obtained by contacting Josh Sanford at (501) 221-0088 or josh@sanfordlawfirm.com.

(9) **RETALIATION PROHIBITED:** The law prohibits anyone from discriminating or retaliating against you for taking part in this case. If you believe you have been discriminated or retaliated against in any way as a result of your receipt of this notice or election to participate in this lawsuit, you should contact the Clerk of the Court, or your attorney immediately.