

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

NIKKI SIMMS; KIM HUFFSTETLER; and
HEATHER POPA, individually and on behalf
of all other similarly situated

PLAINTIFFS

v.

Case No. 2:12-CV-02252

NORTHPORT HEALTH SERVICES OF ARKANSAS, L.L.C.
d/b/a LEGACY HEALTH AND REHABILITATION
CENTER; NHS MANAGEMENT, L.L.C.; J. NORMAN ESTES;
and CLAUDE LEE, in their capacities as owners, managers,
and/or officers of the above named entities

DEFENDANTS

ORDER

Currently before the Court are Plaintiffs' Motion for Voluntary Dismissal of Heather Popa (Doc. 23), Plaintiffs' Motion for Leave to File First Amended and Substituted Complaint (Doc. 25), and Defendants' Motion to Dismiss Case (Doc. 21). This lawsuit concerns Plaintiffs' individual and class claims for federal and state wage and hour law violations.

The Court held a telephonic conference yesterday, April 1, 2013, to discuss with counsel the potential implications of a case filed in the United States District Court for the Western District of Missouri involving claims similar to those asserted by Plaintiffs in the instant matter. In the Missouri case, the district court recently certified both a conditional collective action pursuant to the Fair Labor Standards Act and a Rule 23 class action involving the same Defendants named in the case at bar, and for wage and hour violations similar to those asserted by Plaintiffs in the case at bar.

Defendants filed a Motion to Dismiss the instant matter, asking that the Court direct Plaintiffs to pursue their class claims in the earlier-filed Missouri case. In response, Plaintiffs' counsel advised that one of the Plaintiffs in the instant matter, Heather Popa, had decided to join the Missouri litigation, but that the other two Plaintiffs, Nikki Simms and Kim Huffstetler, wished to proceed

with only their individual claims, rather than their class claims. Accordingly, Plaintiffs filed a Motion to Dismiss Ms. Popa from the case and a Motion for Leave to File an Amended Complaint to assert only individual claims by Ms. Simms and Ms. Huffstetler. Defendants' counsel, having been consulted by the Court, has no objection to Plaintiffs' dismissal of Ms. Popa and to the filing of an Amended Complaint. Defendants further agree, as does the Court, that the dismissal of Ms. Popa and the filing of an Amended Complaint renders the pending Motion to Dismiss (Doc. 21) moot.

Therefore, it is ORDERED that Plaintiffs' Motion for Voluntary Dismissal of Heather Popa (Doc. 23) is GRANTED, and the Clerk of Court is directed to terminate Ms. Popa as a party to this action.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Leave to File First Amended and Substituted Complaint (Doc. 25) is GRANTED, and Plaintiffs are directed to immediately file the proposed amended complaint attached to their Motion for Leave (Doc. 25-1).

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss Case (Doc. 21) is DENIED AS MOOT.

IT IS SO ORDERED this 2nd day of April, 2013 .

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE