

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 11-cv-02990-WYD-KLM

SCOTT BURKE, on behalf of himself and others similarly situated,

Plaintiff,

v.

ALTA COLLEGES, INC., d/b/a Westwood College, a Delaware corporation,

Defendant.

MINUTE ORDER

ORDERED ENTERED BY CHIEF JUDGE WILEY Y. DANIEL

On November 16, 2011, Plaintiff filed the instant action for wages pursuant to the Federal Fair Labor Standards Act ("FLSA") (29 U.S.C. § 201 *et. seq.*). On July 13, 2012, Plaintiff filed a Motion to Certify Conditionally a Collective Action Under the Fair Labor Standards Act 29 U.S.C. § 216(b) and for Court Assisted Notice Under Authority of *Sperling v. Hoffman La Roche*, 493 U.S. 165, 169 (1989) ("Motion to Certify Conditionally a Collective Action"). I set a hearing on this motion for October 9, 2012. On August 13, 2012, Defendant filed a Motion to Stay the Deadline for its Response to Plaintiff's Motion to Certify Conditionally a Collective Action, to Bifurcate the Case, and Request for Court Conference ("Motion to Stay").

A claim brought pursuant to the FLSA must be "commenced within two years after the cause of action accrued . . ." 29 U.S.C. § 255(a). An action is "commenced" on the date the complaint is filed, subject to certain exceptions. 29 U.S.C. § 256. In the case of a collective action, if an individual claimant does not immediately file written consent to become a party plaintiff, or if the individual claimant's name does not appear on the initial complaint, plaintiff's action is considered to be "commenced" when a plaintiff files written consent. 29 U.S.C. § 256(b). In short, the FLSA has an "opt-in" mechanism which presumes a lapse of time between the date a collective action is commenced and the date that each opt-in plaintiff files his or her consent form. With respect to an individual's claim, the statute of limitations is not tolled until he or she files a written consent to join or opt-in to the collective action. *Id.*

Should this action be certified as a collective action under 29 U.S.C. § 216(b), I am

concerned about possible statute of limitations issues impacting claims by potential opt-in plaintiffs. Accordingly, Defendant's Motion to Stay is **DENIED** to the extent that it seeks a stay in responding to Plaintiff's Motion to Certify Conditionally a Collective Action. Defendant's response to this motion shall be filed not later than **Monday, August 27, 2012**. The remaining issues raised in Defendant's Motion to Stay will be addressed at the hearing set for October 9, 2012. Should I deny Defendant's Motion to Stay at the hearing, I will then hear argument on the Plaintiff's Motion to Certify Conditionally a Collective Action.

Dated: August 21, 2012