

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ETHAN A. HOLMES, for himself and on
behalf of those similarly situated

Plaintiff,

v.

Case No: 2:16-cv-669-FtM-38MRM

SWISSPORT FUELING, INC. and
SWISSPORT SA FUEL SERVICES, LLC,

Defendants.

OPINION AND ORDER¹

This matter comes before the Court on United States Magistrate Judge Mac R. McCoy's Report and Recommendation. ([Doc. 72](#)). Judge McCoy recommends granting in part and denying in part Plaintiff Ethan Holmes' Motion for Conditional Certification and Permission to Send Court-Supervised Notification ([Doc. 50](#)). Neither party objects to the Report and Recommendation, and the time to do so has expired. Thus, the Report and Recommendation is ripe for review.

A district judge "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#). The district judge "shall make a de novo determination of those portions of the report or specified

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proposed findings or recommendations to which objection is made.” *Id.* And “[t]he judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

After examining the file carefully and independently, and upon considering Judge McCoy’s findings and recommendations, the Court accepts and adopts the Report and Recommendation.

Accordingly, it is now

ORDERED:

(1) The Report and Recommendation ([Doc. 72](#)) is **ACCEPTED and ADOPTED** and the findings incorporated herein.

(2) Plaintiff Ethan Holmes’ Motion for Conditional Certification and Permission to Send Court-Supervised Notification ([Doc. 50](#)) is **GRANTED in part and DENIED in part** as follows:

a. The Court grants conditional certification under [29 U.S.C. § 216\(b\)](#)

based on the following modified class definition:

All current and former aircraft fuelers employed by Swissport Fueling, Inc. or Swissport SA Fuel Services, LLC at the Southwest Florida International Airport in the past three (3) years, who were not paid for all hours actually worked as a result of either of the following two auto-deduction policies: (1) an auto-deduction that deducted thirty (30) minutes from every workday for meal breaks, but required the employee to work during this time period; and/or (2) an auto-deduction for rounding start and end times.

b. Plaintiff is **DIRECTED** to file an amended proposed Notice and Consent consistent with this Order and the Report and Recommendation on or


before **October 2, 2017**, for the Court's further consideration and approval.

- c. Defendants may file objections to Plaintiff's amended proposed Notice and Consent on or before **October 9, 2017**, for the Court's further consideration and approval.
- d. The Court denies Plaintiff's Motion to the extent he seeks any greater or other relief than is recommended in the Report and Recommendation and adopted by this Order.

(3) Upon the Court's approval of the final form of the Notice and Consent, the Court will set a schedule for:

- a. Defendants to produce to Plaintiff the names and last known addresses of all aircraft fuelers employed by Defendants at Southwest Florida International Airport within the past three (3) years from the date the Notice is mailed;
- b. Plaintiff to mail the Notice;
- c. Plaintiff to file all Consents to Join with this Court; and
- d. The parties to file an Amended Case Management Report addressing the remaining case management deadlines in this case.

DONE and **ORDERED** in Fort Myers, Florida this 19th day of September, 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record

