

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

BRENDA M. LOWERY, et al.,

Plaintiffs,

v.

Case No. 3:08cv186/MCR/EMT

CASH'S CABANAS, INC., et al.,

Defendants.

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**ORDER ON DEFENDANT'S MOTION TO DISMISS AND
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pending are Defendants' Motion to Dismiss (doc. 88) and Plaintiff Brenda Lowery's Motion For Partial Summary Judgment (doc. 89). On thorough review of the arguments of both parties and the law cited in support, the court DENIES both motions.

On the motion to dismiss the court finds that, despite defendant's offer of settlement, the claims of Plaintiffs Lowery and May are not moot. The court cannot determine at this stage whether the offer fully compensates these plaintiffs for their damages. Further, the issue of whether plaintiffs are similarly situated is premature and should be deferred until after completion of discovery. Defendant's motion to decertify is premature. Additionally, based on plaintiffs' allegation of willfulness, the statute of limitations question for certain of the plaintiff's claims is a fact question which cannot be resolved on a motion to dismiss. The court finds the same true for defendant's argument on waiver.

On the motion for partial summary judgment, the court finds genuine issues of material fact exist as to the amount of overtime due; the applicable rate of pay; and defendant's offer of payment. Accordingly, it is

ORDERED:

Defendants' Motion to Dismiss (doc. 88) and Plaintiff Brenda Lowery's Motion For Partial Summary Judgment (doc. 89) are DENIED.

DONE and ORDERED this 11th day of June, 2009.

s/ M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE