

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 10-21691-CV-KING

CHRISTOPHER JOHNSON, on his
own behalf and on behalf of others
similarly situated,

Plaintiffs,

v.

NOBU ASSOCIATES SOUTH BEACH,
LP, a Foreign Limited Partnership,

Defendant.

**ORDER ADOPTING MAGISTRATE REPORT & RECOMMENDATION, GRANTING
RENEWED MOTION TO DISMISS COUNT III**

THIS CAUSE comes before the Court upon Magistrate Judge Ted E. Bandstra's February 4, 2011 Report and Recommendation (DE #63) on Defendant's Renewed Motion to Dismiss Count III of Plaintiff's Complaint and Motion for Costs (DE #55). Therein, Magistrate Judge Bandstra recommended that Defendant's Renewed Motion be granted, but that Defendant's Motion for Cost be denied. Furthermore, Magistrate Judge Bandstra recommended that Plaintiff's Motion for Class Certification (DE #25) be denied as premature. Plaintiff filed his objections (DE # 64) on February 15, 2011, to which Defendant responded (DE #67) on February 25, 2011.

Upon consideration of the excellent Report and Recommendation, the Court finds that Magistrate Judge Bandstra properly determined that Florida's Minimum Wage Act bars action by opt-in Plaintiffs Christiansen and Parra. The Florida statute, as noted by Magistrate Judge Bandstra, requires that each aggrieved individual must provide their employer with pre-suit

notification of any alleged violations of the FWMA. Because Christiansen and Parra failed to do so, their claims must be dismissed at this time.

Magistrate Judge Bandstra also correctly determined that Plaintiff's own pre-suit notice violated the FMWA. Namely, the FMWA provides that a notice of deficiency must state "the total amount of the alleged unpaid wages through the date of the notice." Inherently, therefore, there is no allowance for inflating the amount allegedly owed by the inclusion of attorneys' fees, liquidated damages, or any other factor. The FMWA is primarily concerned with properly compensating an employee, and as such it provides an opportunity for an employer to "cure" upon receipt of proper notice. Permitting counsel to inflate the notice of deficiency would therefore undercut the statutory intent of the Florida Minimum Wage Act.

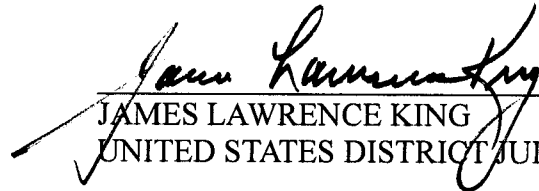
Furthermore, Magistrate Judge Bandstra's determination that conditional class certification is premature is correct. Because Plaintiff's pre-suit notice sought more compensation than is warranted by the FMWA, there is as of yet no way to determine whether class certification is necessary, since such class certification rests upon Defendant failing to make a proper tender as permitted by the FMWA.

Accordingly, after a careful review of the arguments and legal authorities cited by Magistrate Judge Bandstra, the Court concludes that the Report & Recommendation is a thorough and accurate reflection of both the record and the law at issue. Therefore, it is **ORDERED, ADJUDGED, and DECREED** that:

1. Magistrate Judge Bandstra's Report and Recommendation (DE #63) is hereby **AFFIRMED** and **ADOPTED** as an Order of this Court.
2. Defendant's Renewed Motion to Dismiss Count III of the Amended Complaint (DE #55) be, and the same is hereby, **GRANTED**.

3. Defendant's Motion for Costs (DE #55) is **DENIED**.
4. Plaintiff's Motion to Certify Class (DE #25) is **DENIED as premature**.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse in Miami, Miami-Dade County, Florida, this 25th day of February, 2011.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

Cc:

Magistrate Judge Ted E. Bandstra

Counsel for Plaintiff

Lowell J. Kuvin

Law Office of Lowell J. Kuvin
17 East Flagler Street
Suite 223
Miami, FL 33132
305-358-6800
Fax: 305-358-6808
Email: lowell@kuvinlaw.com

Kelly Allysha Amritt

Morgan & Morgan
6824 Griffin Road
Davie, FL 33314
954-318-0268
Fax: 954-333-3515
Email: kamritt@forthepeople.com

Lowell J. Kuvin

Law Office of Lowell J. Kuvin
17 East Flagler Street
Suite 223
Miami, FL 33132
305-358-6800
Fax: 305-358-6808
Email: lowell@kuvinlaw.com

Counsel for Defendants

Edward Diaz

Holland & Knight
701 Brickell Avenue
Suite 3000
Miami, FL 33131
305-374-8500
Fax: 789-7799
Email: edward.diaz@hkllaw.com

Erika R. Royal

Holland & Knight, LLP
515 East Las Olas Boulevard
Suite 1200
Fort Lauderdale, FL 33301
954-525-1000
Fax: 463-2030
Email: erika.royal@hkllaw.com