

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 00155	DATE	10/12/2004
CASE TITLE	Jaime Alanis vs. American Contract Cleaning, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Defendants' Motion to Dismiss

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Enter Order. For the reasons stated on the reverse side of this minute order, defendants' motion to dismiss [5-1] is denied.

- (11) [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS 2004 OCT 14 PM 4:07	number of notices	Document Number 12
<input type="checkbox"/>	No notices required.		OCT 15 2004 date docketed	
<input type="checkbox"/>	Notices mailed by judge's staff.		<i>UM</i> docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		OCT 15 2004 date mailed notice	
<input checked="" type="checkbox"/>	Docketing to mail notices.			
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate judge.			
RJ	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

ORDER

Defendants American Contract Cleaning, Inc., NCCS Enterprise, Inc. and Bogdan Tokarzewski ("the moving defendants") have moved to dismiss plaintiff's complaint on four grounds: that plaintiff has not alleged sufficient facts to provide notice of his claims, that plaintiff lacks standing to seek injunctive relief, that plaintiff should not be allowed to bring or maintain an opt-in class action because he lacks the required consents of any putative class members and that "the nature of this case and the many other cases filed by plaintiff's counsel as class actions under the Portal to Portal Act violate the intent and objectives of the Act." The court denied the motion insofar as it is based on the first two grounds in open court. It took the remainder of the motion under advisement and now denies it in its entirety.

As far as the court can determine, the third and fourth arguments are really one: that §216(b) actions may not be brought as conventional class actions, but require written consents to join by each member of the putative class. Defendants have cited legislative history of the Portal to Portal Act to persuade the court that permitting conventional class actions in FLSA cases leads to abuses and was therefore prohibited by Congress. Defendants are assured that the court has no intention of violating the Portal to Portal Act, and no intention of permitting plaintiff's FLSA claim to proceed as a conventional class action as opposed to an opt-in class action.

Why, then, do the defendants seek to dismiss the complaint? While the theory of their motion is not entirely clear, defendants state that plaintiff should be required to set forth "facts to support the representative nature of the claim." Motion and Memorandum at 10. It is not clear what defendants think the complaint should say that it fails to say. If defendant are arguing that plaintiff must include consents of other plaintiffs at this point, they cite no supporting authority and the law seems to be to the contrary. *See, e.g., United States v. Cook*, 795 F.2d 987 (Fed.Cir. 1986). *See also Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 172-73 (1989), which rejects an argument similar to that made by defendants here, that the Portal to Portal Act should be restrictively construed on public policy grounds. "The broad remedial goal of the statute," the Supreme Court ruled, "should be enforced to the full extent of its terms."

The motion to dismiss is denied.