

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

BRIAN FOX, on behalf of himself)
and other similarly-situated,)
)
Plaintiffs,)
)
v.)
)
MARTIN TRANSPORTATION,)
SYSTEMS, INC.,)
)
Defendant.)

CAUSE NO.: 1:08-CV-305-TLS

OPINION AND ORDER

This matter is before the Court on Plaintiffs' Unopposed Motion to Exclude James Shaw from Collective Action under the Fair Labor Standards Act [DE 40], filed on July 20, 2010.

This is an action to recover past due overtime compensation under 29 U.S.C. § 216(b). When an opt-in plaintiff is not a named party plaintiff the opt-in plaintiff's case commences when filing an opt-in notice. 29 U.S.C. § 256. The Notice by Brian Fox *of Individual Opting into Collective Action* (James Shaw) [DE 36] states that Mr. Shaw's last day of employment with the Defendant was November 7, 2006 (DE 36-2 at 7 (answer to question 1)). Mr. Shaw filed his opt-in notice on January 19, 2010, which was more than three years after the end of Mr. Shaw's employment with the Defendant. Therefore, Mr. Shaw's claim is time barred by the FLSA.¹ 29 U.S.C. § 255.

Plaintiffs' Unopposed Motion to Exclude James Shaw from Collective Action under the Fair Labor Standards Act [DE 40] is GRANTED and the Court ORDERS James Shaw to be excluded

¹ The Court is not ruling which limitations period in 29 U.S.C. § 255(a) applies. Mr. Shaw's claim is time barred by the longest possible statutory limitations period in § 255(a).

from the Collective Action.

SO ORDERED on August 23, 2010.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT