

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEFFRY BUTLER, ET AL. :

:

v. : Civil Action No. DKC 10-2747

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DIRECTSAT USA, LLC, ET AL. :

:

MEMORANDUM AND ORDER

Presently pending in this Fair Labor Standards Act collective action case are two motions brought by the Defendants. First is a motion to strike the untimely filed consent form of Darrell Damond Brooks. (ECF No. 124). Plaintiffs have not filed a response. Second is an unopposed motion to dismiss Plaintiffs Curtis Hill, Johnathan Jennings, and Justin Robinson as time barred. (ECF No. 155). These motions will be granted.

I. Plaintiff Brooks

On April 3, 2013, Plaintiffs filed a Fifteenth Notice of Filing of Consent form, representing Claimant Darrell Damond Brooks. (ECF No. 123). The consent form was signed by Mr. Brooks and dated June 25, 2012.

The notice of collective action lawsuit provided to potential claimants stated that the "Consent to Join" form must be returned to Plaintiffs' counsel on or before August 2, 2012,

and that the form must be filed with the court by that date, (ECF No. 106-1), although the court permitted completed consent forms to be filed within ten days of receipt with counsel, (ECF No. 66 ¶ 8), meaning that all forms had to be filed, at the latest, by August 12, 2012.¹ In the absence of any showing of exceptional circumstances justifying late submission and/or filing, consent forms that were not signed by August 2, 2012, or filed with the court by August 13, 2012, will be stricken.

Plaintiffs' Fifteenth Notice of consent form was signed by Mr. Brooks on June 25, 2012, but not filed with the court until April 3, 2013. Plaintiffs have not responded to Defendants' motion and there is nothing on the record to demonstrate that this notice could not have been filed timely. Therefore, Plaintiff Darrell Damond Brooks' consent form will be stricken.

II. Plaintiffs Hill, Jennings, and Robinson

The Fair Labor Standards Act ("FLSA") provides for a two-tiered statute of limitations, depending on the standard of culpability Plaintiff can prove. By default, a Plaintiff must commence an FLSA action within two years of when the cause of action accrued. 29 U.S.C. § 255(a). If the Plaintiff can prove a "willful violation" of the FLSA, however, the period to commence an FLSA cause of action is extended to three years.

¹ August 12 was a Sunday, making Monday, August 13 the actual final day for filing.

Id. In an FLSA collective action case, an opt-in Plaintiff's action commences on the date on which his written consent is filed in the court. *Id.* § 256(b).

Plaintiffs Hill, Jennings, and Robinson were not original Plaintiffs, but instead opted-in after the collective action was certified. Mr. Hill and Mr. Jennings were last employed by Defendants on July 13, 2009. Mr. Robinson was last employed by Defendants on April 16, 2009. Mr. Hill and Mr. Jennings' consent forms were filed with the court on July 27, 2012. (ECF No. 89-1). Mr. Robinson's consent form was filed with the court on May 18, 2012. (ECF No. 73-1).

Even assuming, for the sake of this motion, that Plaintiffs could demonstrate that Defendants willfully violated the FLSA and therefore extended the statute of limitations to three years, Plaintiffs' claims would be barred. Therefore, they will be dismissed from this FLSA collective action.

Accordingly it is this 6th day of September, 2013, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendants' motion to strike the untimely filed consent form of Darrell Damond Brooks (ECF No. 124) BE, and hereby IS, GRANTED;

2. Plaintiffs' Fifteenth Notice of Consent Form to be a Claimant Under the Fair Labor Standards Act (ECF No. 123),

representing Claimant Darrell Damond Brooks BE, and the same hereby IS, STRICKEN;

3. Defendants' motion to dismiss Plaintiffs Curtis Hill, Johnathan Jennings, and Justin Robinson (ECF No. 155) BE, and hereby IS, GRANTED;

4. Plaintiffs Curtis Hill, Johnathan Jennings, and Justin Robinson BE, and the same hereby ARE, DISMISSED; and

5. The clerk will transmit copies of this Order to counsel for the parties.

/s/

DEBORAH K. CHASANOW
United States District Judge