

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIANNE BUCCERI, JANET CHARAK, *
and LISA SANDERS, on behalf of *
themselves and all other similarly situated, *
*
Plaintiffs, *
*
v. * Civil Action No. 15-cv-13955-IT
*
CUMBERLAND FARMS, INC., *
*
Defendant. *

MEMORANDUM AND ORDER

October 4, 2017

TALWANI, D.J.

Pending before this court are Defendant Cumberland Farms, Inc.'s Motion to Dismiss Opt-In Plaintiff Jennie Senac with Prejudice ("Motion to Dismiss") [#161], and Plaintiffs' Counsel's Assented-to Motion to Withdraw as Counsel to Opt-in Plaintiff Jennie Senac ("Motion to Withdraw") [#166]. Senac has not opposed either motion. For the reasons that follow, both motions are ALLOWED.

I. Background

On November 25, 2015, Plaintiffs Dianne Bucceri, Janet Charak, and Lisa Sanders (the "Named Plaintiffs") brought an action in this court alleging that Defendant Cumberland Farms, Inc. ("Cumberland Farms") had failed to pay owed overtime wages to both the Named Plaintiffs and to others similarly situated, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* and Massachusetts wage laws. Compl. ¶¶ 1-2 [#1]. On June 10, 2016, Plaintiffs filed the operative, Second Amended Collective and Class Action Complaint and Jury Demand [#42]. On August 31, 2016, Senac opted-in as a party plaintiff. Pls.' Notice of Filing Consent to Join Form(s) Under Fair Labor Standards Act, 29 U.S.C. § 216(b) [#71-1].

On February 15, 2017, the court issued an Amended Scheduling Order [#115] bifurcating discovery. On February 21, 2017, Cumberland Farms selected Senac as one of the plaintiffs for Phase I discovery, and served Senac with its First Set of Requests for Production of Documents and First Set of Interrogatories. Decl. of Molly C. Mooney, Esq. (“Mooney Decl.”), Ex. A [#162-2]. On an unopposed motion, the court extended the time for Senac to oppose Cumberland Farms’ discovery requests to March 30, 2017. Elec. Order [#122]. Plaintiffs’ counsel served timely objections to Cumberland Farms’ written discovery requests on Senac’s behalf, see Mooney Decl., Ex. B [#162-3], but Senac did not answer any of the discovery.

On March 24, 2017, Cumberland Farms noticed Senac’s deposition for April 19, 2017, at the Boston office of its counsel, Seyfarth Shaw LLP. Mooney Decl., Ex. C. [#162-4]. On April 13, 2017, Plaintiffs’ counsel notified Cumberland Farms that Senac “has not responded to our attempts to communicate with her,” and that they were “unable to confirm her appearance at the deposition.” Mooney Decl., Ex. D at 8-9 [#162-5]. Plaintiffs’ counsel reiterated between April 14, 2017, and April 18, 2017, that Senac had not responded to their communications, id. at 2-8, and later stated that their last communication with Senac occurred in early March 2017, Mooney Decl., Ex. E at 4 [#162-6]. Senac did not appear for her deposition on April 19, 2017. Id. at 3-4.

At a status conference on May 4, 2017, the court asked Plaintiffs’ counsel to certify that they mailed a communication to Senac regarding the case. Status Conference Hr’g Tr. 7:24-8:7 [#139]. Plaintiffs’ counsel certified on August 4, 2017, that they “sent a letter today to Jennie Senac regarding the Court’s order issued during the May 4, 2017 conference.” Mooney Decl., Ex. F [#162-7]. On August 22, 2017, Plaintiffs’ counsel told Cumberland Farms that they “have been unable to communicate with Ms. Senac and will be filing a request to withdraw as her counsel.” Mooney Decl., Ex. G [#162-8].

Cumberland Farms filed its Motion to Dismiss [#161] on August 28, 2017, and on

September 1, 2017, Plaintiffs' counsel filed its Motion to Withdraw [#166]. On September 13, 2017, the court issued an Order to Show Cause [#172], directing Senac that if she sought to oppose Plaintiffs' counsel's Motion to Withdraw [#166], she was to file her opposition no later than September 27, 2017. Alternatively, if Senac did not oppose Plaintiffs' counsel's Motion to Withdraw [#166] but did seek to oppose Cumberland Farms' Motion to Dismiss [#161], she was to file a statement of non-opposition to the motion to withdraw and her opposition to Cumberland Farms' motion no later than September 27, 2017. Id. The court also warned that if Senac did not respond to this order, or responded but did not oppose either motion, it anticipated allowing both motions. Id. As directed by the court, Plaintiffs' counsel filed a certificate of service on September 13, 2017, stating that they had served on Senac a copy of the court's order. Certificate of Service [#173]. Senac has filed no response to the court's Order to Show Cause [#172], the Motion to Dismiss [#161], or the Motion to Withdraw [#166].

II. Defendant's Motion to Dismiss

Under Federal Rule of Civil Procedure 41(b), “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Despite opting into the conditionally certified collective action on August 31, 2016, Senac has failed to respond to discovery requests with other than generic objections, to appear for her deposition, or to otherwise prosecute her claims. Further, this court notified Senac three weeks ago that it anticipated allowing Cumberland Farms' Motion to Dismiss [#161] if she did not respond, or responded but did not oppose. Senac did not respond. The court finds that Senac has failed to prosecute her case, and the court now GRANTS Cumberland Farms' Motion to Dismiss [#161].

III. Plaintiffs' Counsel's Motion to Withdraw

Plaintiffs' counsel seeks to withdraw as counsel for Senac based on “a breakdown in the

attorney-client relationship." Mot. to Withdraw 1 [#166]. Senac has not opposed the motion. The evidence provided to this court suggests that Senac has failed to communicate with her counsel for over six months. See, e.g., Mooney Decl., Ex. E at 4 [#162-6]. As a result, Plaintiffs' counsel is unable to represent Senac's interests, and their Motion to Withdraw [#166] is ALLOWED.

IV. Conclusion

For the foregoing reasons, Cumberland Farms' Motion to Dismiss Opt-In Plaintiff Jennie Senac with Prejudice [#161], and Plaintiffs' Counsel's Assented-to Motion to Withdraw as Counsel to Opt-in Plaintiff Jennie Senac [#166] are ALLOWED.

IT IS SO ORDERED.

Date: October 4, 2017

/s/ Indira Talwani
United States District Judge