

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

YASSINE BAOUCH, et al.,)	
)	
Plaintiffs,)	8:12CV408
)	
v.)	
)	
WERNER ENTERPRISES, INC.,)	ORDER
d/b/a WERNER TRUCKING, and)	
DRIVERS MANAGEMENT, LLC,)	
)	
Defendants.)	
_____)	

This matter is before the Court on defendants' motions. Defendants move the Court to extend the discovery deadline (Filing No. [246](#)). In addition, defendants move this Court to deny the plaintiffs' summary judgment motion (Filing No. [236](#)) without prejudice (Filing No. [249](#)). The issue before the Court is whether plaintiffs' motion for summary judgment and permanent injunction is proper at this time.

The defendants are Werner Enterprises, Inc. and Drivers Management, L.L.C. (collectively "Werner"). Werner is a trucking company. Plaintiffs are current and former Werner employees who allege Werner has violated the Fair Labor Standard Act ("FLSA") and various state laws including the Nebraska Wage and Hour Act ("NWAHA"). Essentially, the plaintiffs claim Werner allowed its employees to opt into a per diem program which circumvented minimum wage requirements. The per diem program offers Werner's

employees tax-free reimbursement for each day its drivers spend away from home. Importantly, Werner deducts this tax-free pay from the drivers' wages.

The Court has not established a scheduling order for *Daubert* motions, summary judgment motions, or a trial date. The defendants have not had adequate time to depose the plaintiffs' experts and additional opt-in plaintiffs. The Court finds that plaintiffs' summary judgment motion is premature. There is a clear preference in the law for adequate discovery. *Stanback v. Best Diversified Prods., Inc.*, 180 F.3d 903, 911 (8th Cir. 1999) (citing *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 113 F.3d 1484, 1489-90 (8th Cir. 1997)); Fed. R. Civ. P. 56(d). Therefore, the Court will grant the defendants' motion to extend the discovery deadline. The Court will also deny the plaintiffs' motion for summary judgment without prejudice. The parties will be able to submit cross motions for summary judgment at the close of discovery. Accordingly,

IT IS ORDERED:

1) The defendants' motion (Filing No. [246](#)) to extend the discovery deadline is granted. A progression schedule will be established at the planning conference.

2) The defendants' motion (Filing No. [249](#)) to deny plaintiffs' motion for summary judgment and permanent injunction without prejudice is granted. Plaintiffs' motion (Filing No.

236) for summary judgment and permanent injunction is denied without prejudice.

3) A planning conference to establish a progression schedule shall be held in the chambers of the undersigned on:

Friday, November 20, 2015, at 9 a.m.

in Suite 3190, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska. The parties may participate by telephone by notifying the Chambers of the undersigned: (402) 661-7320.

DATED this 12th day of November, 2015.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court