

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:12-CV-69-H

ROSE LORENZO, on behalf of)
herself and all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
PRIME COMMUNICATIONS, L.P., a)
Texas General Partnership,)
)
Defendant.)

ORDER

This is an action under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, ("FLSA") and the North Carolina Wage and Hour Act, N.C. Gen. Stat. §§ 95-25.1 *et seq.*, brought by Plaintiff Rose Lorenzo against her former employer, Prime Communications, L.P. The court previously entered orders conditionally certifying Plaintiff's FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) [DE #74] and certifying a Rule 23 class as to Plaintiff's state-law claims [DE #94].

Presently before the court is defendant's motion for partial summary judgment [DE #205] and plaintiffs' motion to accept late opt-in consents [DE #209]. In its motion for partial summary judgment, defendant contends that seventeen individuals have released their claims against defendant as part of the settlement of a prior California class-action lawsuit involving wage and hour

claims, ten individuals missed the deadline for joining this suit, and two opt-in plaintiffs executed individual settlement agreements that preclude them from participating in this action. Plaintiff filed a response to this motion as well as a motion seeking the court's leave to accept as timely the tardily filed consent notices.

United States Magistrate Judge Kimberly A. Swank filed a memorandum and recommendation ("M&R") on February 14, 2017, recommending to this court defendant's motion be denied and plaintiffs' motion be granted and thoroughly details the reasons for her recommendation. Defendant has filed objections to the M&R, and plaintiff has filed a response.

Under Rule 72(b) of the Federal Rules of Civil Procedure, a district judge "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3).

First, defendant objects to the magistrate judge's recommendation that the Martinez settlement¹ does not bar the claims of the California plaintiffs. Defendant's objection though centers on the argument that it believes the magistrate judge is allowing a collateral attack of the Martinez settlement. This argument is without merit. Rather, the magistrate judge found

¹ Martinez v. Prime Commc'ns of Cal., LLC, No. BC44767 (Super. Ct. L.A. Cnty., Cal).

some internal inconsistencies in the settlement, and finding an absence of any mention of the FLSA or the waiver of federal rights or claims in both the Settlement Notice and the judgment approving the class-action settlement, ultimately found defendant had not met its burden of demonstrating that the Martinez judgment would be construed under California law to preclude the FLSA claims of all California plaintiffs involved in this action. The court has considered this matter de novo, and agrees with the recommendation of the magistrate judge.

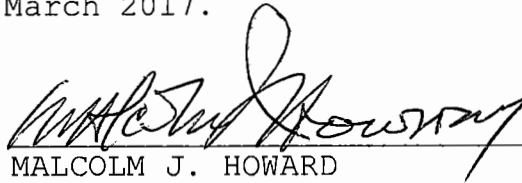
Next, defendant objects to the magistrate judge's recommendation that the late consents to opt-in be accepted as timely, and defendant's motion for judgment as to these claims be denied. Defendant acknowledges the court's discretion to allow these late consents. However, defendant disagrees with the magistrate judge's exercise of discretion. This court has independently reviewed this matter, and finds, in its discretion, these late opt-ins should be allowed.

Finally, defendants object to the magistrate judge's recommendation that summary judgment be denied as to plaintiffs Rebecca Willoughby and Patricia White because the Fourth Circuit has not permitted private settlements of FLSA disputes and even assuming they would permit enforcement of such, there are genuine issues of material fact that preclude summary judgment on those issues. Defendant cites case law from multiple circuits to support

its objection; notably, however, defendant does not cite a Fourth Circuit case. This court has carefully studied this issue, and finds defendant's objection to be without merit.

Therefore, the court having reviewed the M&R and other pertinent documents of record finds the recommendation of the magistrate judge is in accordance with law and should be approved. Therefore, the court adopts the findings of the M&R as its own. Plaintiffs' motion to accept late opt-in consent forms is GRANTED [DE #209], and defendant's motion for partial summary judgment is DENIED. [DE #205]. Other pending motions in this matter shall be ruled on in due course.

This 21st day of March 2017.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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