

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:19 CV 55

ASHLEY GALLEHER, on behalf of)
herself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
ARTISANAL, LLC, and BILL GREENE,)
)
Defendants.)
_____)

ORDER

This matter is before the Court on the Parties’ Joint Motion to Approve Notice, Consent to Join Form, and Conditional Certification Plan (Doc. 20).

On December 11, 2019, the undersigned conducted a conference call with counsel regarding the Motion. At the conclusion of the conference, the parties were directed to file, within seven (7) days, a revised Notice of Collective Action Lawsuit. The parties were also given leave to submit authority pertaining to the need for court-authorization of the proposed Consent to Become Party Plaintiff form.

On December 18, 2019, the parties requested that their deadline to file this information be extended through December 19, 2019. (Doc. 23). This request was granted.

On December 19, 2019, Plaintiff filed a proposed revised Notice of Collective Action Lawsuit form and informed the Court that the parties had not been able to agree upon a joint revised form and that Plaintiff's counsel was unaware of any authority mandating court-authorization of Consent to Become Party Plaintiff forms. (Doc. 24).

On December 31, 2019, Defendants filed a Response (Doc. 25).

The Court finds that Plaintiff's revised Notice of Collective Action Lawsuit (Doc. 24-1) should be accepted, though with certain changes, some of which were discussed during the December 11 conference call. For example, potential plaintiffs should be informed that, should they choose to join the lawsuit, they may be represented by counsel for Plaintiff or may hire an attorney of their own choosing. See e.g., Moseman v. U.S. Bank Nat'l Ass'n, No. 3:17-CV-00481-FDW-DCK, 2018 WL 3616864, at *2 (W.D.N.C. June 12, 2018).

The Court declines, however, to endorse Plaintiff's proposed Consent to Become Party Plaintiff form (Doc. 20-2). As written, the form includes several provisions that would appear to be more appropriate for an engagement agreement and, as noted, no authority has been provided to indicate that such forms are required to be authorized by the Court.

IT IS THEREFORE ORDERED THAT:

1. The Parties' Joint Motion to Approve Notice, Consent to Join Form, and Conditional Certification Plan (Doc. 20) is **GRANTED IN PART** as follows:

- a. The revised Notice of Collective Action Lawsuit filed on December 19, 2019 (Doc. 24-1) ("Revised Notice") is **ACCEPTED** subject to the following revisions which shall be made by Plaintiff's counsel before the Revised Notice is distributed.

- b. Section I (Introduction):

- i. Change "Plaintiff ... filed this lawsuit on behalf of himself and all current and former tipped employees ..." to "Plaintiff... filed this lawsuit on behalf of herself and also seeks to sue on behalf of all current and former tipped employees"

- ii. Change "You are receiving this Notice because you are 'similarly situated' to the Plaintiff and are eligible to join this lawsuit" to "You are receiving this Notice because you may be 'similarly situated' to the Plaintiff and may be eligible to join this case."

- c. Section IV (Your Right to Participate in this Lawsuit):
 - i. Change “You may join this lawsuit by completing and sending a signed copy of the attached ‘Consent to Join’ form to Plaintiff’s attorneys via e-mail, or U.S. mail to the following ... ” to “If you wish to join or ‘opt in’ to this case, you or your lawyer must provide written notice to Plaintiff’s attorneys via e-mail, or U.S. mail at the following:”
- d. Section V (Effect of Joining this Lawsuit)
 - i. Remove “with the help of Plaintiff’s lawyers” from the last sentence.
- e. Section VIII (Your Legal Representative if You Join this Lawsuit)
 - i. Change the Section title to “Your Legal Representation”.
 - ii. Change “If you join this lawsuit, counsel listed below will represent your interests” to “The following attorneys represent Plaintiff. If you choose to join this case, you may also be represented by these attorneys, or you may retain a different attorney to represent you.”

f. Section X (Further Information)

- i. Add statements indicating that while the Court has approved the Notice, the Court takes no position with regard to the merits of the case and that the Court should not be contacted about the Notice or the case.
2. The Revised Notice, reflecting the changes directed herein, shall be distributed by **January 13, 2020**. The Revised Notice shall be mailed by first class mail and/or email, and a copy of the Revised Notice shall be posted at a location in Defendant's local offices where potential plaintiffs are likely to view it. Plaintiff's attorneys are permitted to distribute one subsequent/reminder Revised Notice to potential plaintiffs by first class mail and/or email.
3. The period during which potential plaintiffs may choose to opt-in to this case shall terminate on **March 10, 2020**.
4. The Parties' Joint Motion to Approve Notice, Consent to Join Form, and Conditional Certification Plan (Doc. 20) is **DENIED IN PART** with respect to the proposed Consent to Become Party Plaintiff

form (Doc. 20-2). Plaintiff's counsel may provide a copy of that form to potential plaintiffs, but the Court takes no position with regard to its contents.

Signed: January 3, 2020

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

