

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
DOCKET NO. 5:16-cv-00161-FDW-DCK

MICHAEL FOSTER, RONALD)
BOUCHARD and DENNIS FINK,)
individually and for all others similarly)
situated,)
)
Plaintiffs,)
)
vs.)
)
LOWE’S COMPANIES, INC. and NILOY)
INC. d/b/a DCT SYSTEMS,)
)
Defendants.)
)
_____)

ORDER

THIS MATTER is before the Court *sua sponte*. Dennis Fink was joined as a plaintiff to this action by Plaintiffs Michael Foster and Ronald Bouchard’s second amended complaint. (Doc. Nos. 40, 42). Although it would appear from the second amended complaint and the Joint Motion for Settlement Approval and Dismissal that counsel for Plaintiffs also represent Dennis Fink, it does not appear that Dennis Fink has filed his written consent to be a party to this action, unlike Plaintiffs Michael Foster and Ronald Bouchard (Doc. No. 4).

Section 216(b) of Title 29 provides that “[n]o employee shall be a party plaintiff to [any action against an employer to recover the liability prescribed under 29 U.S.C. § 216(b)] unless he gives his consent in writing to become such a party and such consent is filed in the court in which the action is brought.” Because there is no written consent on the record from Dennis Fink, the Court orders Dennis Fink to file his written consent no later than October 11, 2017. See generally Kulik v. Superior Pipe Specialties Co., 203 F. Supp. 938, 941 (N.D. Ill. 1962) (“The ‘consent in writing to become such a party’, referred to in 29 U.S.C.A. § 216(b) . . . is a document signed by

the person whose consent it purports to be. No document with the name of a person typewritten thereon satisfies the requirement of 29 U.S.C.A. § 256, unless the typewritten name is proved to be the signature of and by that person.”). If Dennis Fink does not file a written consent by October 11, 2017 or does not wish to be a plaintiff in this action, the Court will strike Dennis Fink from the action.

IT IS SO ORDERED.

Signed: October 4, 2017

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

