UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60073-CIV-DIMITROULEAS

RONALD REED, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

STARBUCKS COFFEE COMPANY, a foreign corporation, qualified to do business in Florida, as STARBUCKS CORPORATION,

Defendant.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION AND TO PERMIT COURT-SUPERVISED NOTIFICATION

THIS CAUSE is before the Court upon Plaintiff's Motion for Conditional Class Certification of Representative Class and to Permit Court-Supervised Notification [DE-5]. The Court has carefully considered the Motion, Defendant's Response [DE-18], Plaintiff's Reply [DE-22], and is otherwise fully advised in the premises.

I. BACKGROUND

The Plaintiff, Ronald Reed, an employee of Starbucks Coffee Company, has filed this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216, alleging that Starbucks failed to pay him overtime compensation in violation of the FLSA. Specifically, Mr. Reed alleges that he and other similarly situated current and former employees were employed as 'store managers' and were improperly classified as exempt and thus were not properly compensated for overtime. Plaintiff points out that a previous action over this issue was brought,

in which 900 plaintiffs were ultimately joined, in a case styled Pendlebury et al. v. Starbucks, Case No. 04-80521-civ-Marra. The class was conditionally certified in that case and the Court denied a motion to decertify in 2007. That case was settled in August 2008. The Plaintiff in this case seeks to recoup unpaid overtime compensation and other damages for the three year period prior to the filing of the Complaint. Five other individuals have filed notices of consent to join since the filing of this Complaint. [DE-4 (Joseph Abston; Melissa Beacham; Bari Schwartz); DE-19 (Ronna Lee Corriveau); DE-26 (Paula Calamia)].

II. DISCUSSION

Plaintiff seeks preliminary class certification pursuant to 29 U.S.C. § 216(b) and leave to notify all potential class members of their right to opt in to the present action. He seeks to certify a class defined as all current and former employees who worked as a store manager during any time period on or after January 15, 2006.

Section 216(b) of the FLSA provides that an action for unpaid overtime compensation may be maintained by "any one or more employees for and in behalf of ... themselves and other employees similarly situated." 29 U.S.C. § 216(b). A District Court has the authority under the FLSA to issue an order requiring notice of an action to such similarly situated persons. See Dybach v. State of Fla. Dep't of Corrections, 942 F. 2d 1562, 1567 (11th Cir. 1991) ("concluding that the 'broad remedial purpose of the Act' is best served if the district court is deemed to have the power to give such notice to other potential members of the plaintiff class to 'opt in' if they so desire") (internal citations omitted). Before determining whether to exercise such discretion, the Court "should satisfy itself that there are other employees of the department-employer who desire to 'opt-in' and who are 'similarly situated' with respect to their job requirements and with

regard to their pay provisions." Id at 1567-68. The Eleventh Circuit has also held that while plaintiffs bear the burden of demonstrating a "reasonable basis" for a class-wide action, the burden "is not heavy." Grayson v. K Mart Corp., 79 F. 3d 1086, 1097 (11th Cir. 1996); Haynes v. Singer Co., 696 F. 2d 884, 887 (11th Cir. 1983). If the District Court concludes that there are other employees similarly situated who desire to opt in, then the Court has discretion to establish the specific procedures to be followed with respect to opting-in. Dybach, 942 F. 2d at 1568.

In addition, the Eleventh Circuit has endorsed a two-tiered approach to certification of collective actions under Section 216(b). Hipp v. Liberty Nat'l Life Ins. Co., 252 F. 3d 1208, 1219 (11th Cir. 2001). In the notice stage of the case, the District Court should make an initial determination in certifying the proposed class using a fairly lenient standard, resulting in a conditional certification. See id.; Stone v. First Union Corp., 203 F.R.D. 532, 536 (S.D. Fla. 2001). Thus, since this case is in the notice stage, the Court will use the lenient standard to determine the suitability of a collective action.

First, plaintiffs must provide some evidence that there are other employees of the defendant-employer who wish to opt-in the action. Dybach, 942 F. 2d at 1567. Here, Reed has alleged that others are so interested and five other individuals have already filed notices of consent to join. Additionally, the Court finds persuasive the fact that a previous suit resulted in 900 opt-in plaintiffs. Consequently, there is sufficient evidence of other employees who wish to opt-in.

Second, the proposed class members must be "similarly situated" in order to create an opt in class under Section 216(b). Id. The plaintiffs need to show only "'that their positions are similar, not identical' to the positions held by the putative class members." Grayson, 79 F. 3d at

1096 (quoting Sperling v. Hoffman-LaRoche, 118 F.R.D. 392, 407 (D.N.J. 1988), *aff'd in part and appeal dismissed in part*, 862 F. 2d 439 (3d Cir. 1988), *aff'd* Hoffman-LaRoche v. Sperling, 493 U.S. 165 (1989)). As noted above, the plaintiffs' burden is not heavy and may be met by making detailed allegations. Grayson, 79 F. 3d at 1097. Here, Plaintiff has alleged that there is a company-wide pay policy that results in all store managers being improperly classified as exempt and thus denied overtime compensation. Plaintiff has also submitted Starbuck's Job Description for a Retail Store Manager to demonstrate the common job requirements for the potential class. Gonzalez v. Select Onion Co., LLC, 2007 WL 1989698, *2 (D. Or. July 6, 2007) (similarly situated found at conditional stage based on allegation of all employees subjected to general policy of failure to pay overtime); Lima v. Int'l Catastrophe Solutions, Inc., 493 F. Supp. 2d 793, 799 (E.D. La. 2007) (conditional certification granted based on allegations of company wide policy of mis-classification); Guerra v. Big Johnson Concrete Pumping, Inc., 2006 WL 2290512, *3 (S. D. Fla. May 17, 2006) (proposed notice allowed to class based on allegation of company-wide pay policy). The Court finds that Plaintiff has provided sufficient evidence at this time to conditionally certify the proposed class of all store managers classified as exempt and authorize opt in notification to those potential class members.

Mr. Reed and the class that he has defined in the Complaint are similarly situated within the meaning of Section 216(b). Plaintiff's designated class includes all employees of Starbucks who work over forty (40) hours per week and do not receive overtime compensation as store managers. Plaintiffs are limited to those working as store managers. Here, the Plaintiff need not show that the positions are identical; he need only show that the positions are similar. Therefore, the Court finds that Plaintiff has provided sufficient evidence at this stage to meet his burden of

showing that proposed class members are similarly situated.

III. CONCLUSION

Plaintiff has established that there are other Starbucks employees who desire to opt in and who are similarly situated within the meaning of Section 216(b). This determination should not be interpreted as a ruling on the merits of Plaintiff's case, but merely on Plaintiff's burden necessary to allow notification of potential class members.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Conditional Class Certification of Representative Class and to Permit Court-Supervised Notification [DE-5] is **GRANTED.**
2. By May 11, 2009, Defendant shall provide to Plaintiff's counsel the name and last know address for all current and former employees who have worked at Starbucks from January 15, 2006 to the present as store managers.
3. As soon as that information is provided, a Notification shall be mailed via first class mail to each individual to whom a notice must be mailed pursuant to this Order at the sole cost and expense of the plaintiff. However, as Defendant only indicated in a footnote that it objected to the Plaintiff's Proposed Form of Notice [DE-5-2] and the parties have not briefed the issue, Plaintiff shall file a Response on or before April 30, 2009. Defendant may file a Reply on or before May 4, 2009. The parties shall also address whether the Plaintiff's Proposed Notice of Consent [DE-5-3] shall be used.
4. Counsel for Plaintiff may not attempt unsolicited contact with potential class members who have not yet filed their consents without prior court approval.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of April, 2009.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record