

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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MELANIA FELIX DE ASENCIO, MANUEL	:	CIVIL ACTION
A. GUTIERREZ, ASELA RUIZ, EUSEBIA	:	
RUIZ, LUIS A. VIGO, LUZ CORDOVA	:	
and HECTOR PANTAJOS, on behalf of	:	
themselves and all other similarly	:	
situated individuals,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-CV-4294
	:	
TYSON FOODS, INC.,	:	
	:	
Defendant.	:	

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**MEMORANDUM**

ROBERT F. KELLY, Sr. J.

AUGUST 6, 2002

Presently before this Court is the Defendant Tyson Foods’ (“Tyson”) Motion for Summary Judgment on the Claims of Fifty-Seven Opt-In Plaintiffs, and the Plaintiffs’ Motion for Additional Discovery Pursuant to FED R. CIV. P. 56(f). For the reasons that follow, Tyson’s Motion for Summary Judgment will be granted and the Plaintiffs’ Motion for Additional Discovery will be denied.

**I. BACKGROUND**

On August 22, 2000, the named Plaintiffs filed a representative action for the purpose of obtaining monetary, declaratory, and injunctive relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et. seq., and the Pennsylvania Wage Payment and Collection Law (“WPCL”), 42 P.S. § 260.1, et seq. The Plaintiffs are or were employed by Tyson, as production employees in Tyson’s New Holland, Pennsylvania poultry processing facility (“New

Holland Facility”). The Plaintiffs allege that Tyson has failed to pay its production employees at its New Holland Facility their minimum hourly pay rate for all hours of work performed up to forty hours per week and has failed to pay them overtime for hours worked in excess of forty hours per week as required by the FLSA and WPCL.

On January 30, 2001, this Court authorized the issuance of notice of this litigation to the putative class members. The putative class described in the notice encompasses “hourly employees engaged in chicken processing at Tyson’s New Holland, Pennsylvania chicken processing facility at any time on or after August 22, 1997.” (Jan. 30, 2001 Order). The notice informed the current and former production employees that in order to participate in the FLSA claim, they were required to file a written consent with the Court.

Tyson filed this Motion for Summary Judgment on June 11, 2002, alleging that fifty-seven of the Plaintiffs who opted into this action by filing consents are not proper plaintiffs. Specifically, Tyson alleges that twenty-four of these opt-in Plaintiffs filed their consents outside of the statute of limitations period. Tyson further alleges that four of the twenty-four opt-in Plaintiffs described above and another thirty-three opt-in Plaintiffs did not work in positions within the scope of the FLSA class during the statute of limitations period. The Plaintiffs filed their response to the Motion on July 8, 2001, along with a Motion for Additional Discovery Pursuant to FED R. CIV. P. 56(f).

## **II. STANDARDS**

### **A. Summary Judgment**

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper “if there is no genuine issue as to any material fact and the moving party is

entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

**B. Additional Discovery under Rule 56(f)**

Federal Rule of Civil Procedure 56(f) states:

Should it appear from the affidavits of a party opposing the motion

that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

FED. R. CIV. P. 56(f).

### **III. DISCUSSION**

#### **A. Plaintiffs Who Joined the Suit After the Statute of Limitations Had Run**

Generally, the FLSA provides for a two year statute of limitations for actions to recover unpaid overtime compensation. 29 U.S.C. § 255(a). However, if the plaintiff proves that the violation was willful, a three-year period applies. *Id.* Tyson does not concede that any violation was willful in this action, however for the purposes of this Motion, it has assumed a three year statute of limitations period. Generally, claims for unpaid overtime wages under the FLSA accrue at the end of each pay period when overtime is not paid. *Cook v. U.S.*, 855 F.2d 848, 851 (Fed. Cir. 1998); *Shandelman v. Schuman*, 92 F. Supp. 334, 335 (E.D. Pa. 1950). Furthermore, in an FLSA collective action, an employee's action commences, for purposes of the statute of limitations, when he or she files a written consent to join the action. 29 U.S.C. § 256(b). Therefore, in this case, an opt-in Plaintiff's claim is barred if the Plaintiff's last pay period ended more than three years before he or she filed his or her written consent. Tyson relies on the affidavit of the New Holland Facility Personnel Manager, Shirley Orta ("Orta"), who examined the payroll and personnel records for the opt-in Plaintiffs at issue and compared the date of their last pay period to the date that they filed their written consent to join the lawsuit. According to the affidavit, twenty-four opt-in Plaintiffs fall outside of the three year statute of limitations. Therefore, Tyson requests summary judgment be granted in their favor and against

these twenty-four opt-in Plaintiffs.

The Plaintiffs argue that because Tyson unfairly delayed in sending out the notices of this lawsuit to the putative class members, the twenty-four opt-in Plaintiffs at issue were not able to file their consents within the statute of limitations period. Therefore, the Plaintiffs request that this Court toll the statute of limitations and deny Tyson's Motion for Summary Judgment. The Plaintiffs rely on the following facts to argue that Tyson delayed in sending out the notice: the Plaintiffs first requested all of the applicable employee's names and addresses on October 4, 2000, when they filed their Motion for Judicial Facilitation of Notice to Potential Class Members. Tyson filed a Motion in Opposition to Plaintiffs' Motion for Judicial Facilitation on November 7, 2000. On January 1, 2001, this Court granted the Motion for Judicial Facilitation and ordered Tyson to produce the relevant names and addresses. However, by Order dated February 27, 2001, we extended the production deadline. On March 8, 2001, at Tyson's request, we modified the previous Order to allow Tyson to send out the notices themselves rather than to produce a list of names and address to the Plaintiffs. The Plaintiffs further allege that Tyson did not send out the notices until March 15, 2001.

We find the Plaintiffs' argument on this issue unpersuasive and the case law cited in support thereof inapposite. The facts do not show that Tyson unfairly delayed in sending out the notices. In fact, there are no facts which would warrant a tolling of the statute of limitations. Regardless, the two cases cited by the Plaintiffs also do not support their proposition. See Cahill v. City of New Brunswick, 99 F. Supp.2d 464, 478 (D.N.J. 2000)(determining that the three year statute of limitations should apply instead of the two year statute of limitations because of the defendant's willful misconduct; not that the statute of limitations should be tolled beyond the

three year limit); Reich v. Southern New England Comm. Corp., 892 F. Supp. 389, 404 (D. Conn. 1995)(tolling the two year statute of limitations because the defendant violated the FLSA by failing to maintain proper payroll records and by failing to produce complete lists of its employees names and payroll records; facts significantly different from the case at bar). Therefore, we will not toll the statute of limitations.

**B. Plaintiffs Who Did Not Work In Positions Within the Scope of the FLSA Class**

Orta also examined the employment histories of the opt-in Plaintiffs at issue and determined that four of the opt-in Plaintiffs described above, and thirty-three other opt-in Plaintiffs did not work in any chicken processing departments within the three years prior to the date that each filled his or her written consent. Tyson contends that nearly all of these thirty-seven opt-in Plaintiffs worked in the sanitation department. It is elementary that the Plaintiffs must meet the class requirements before they may legitimately opt-in to the collective FLSA action, and the Plaintiffs do not argue otherwise.<sup>1</sup> Therefore, Tyson requests summary judgment against these thirty-seven opt-in Plaintiffs because they do not fall within the FLSA collective action class.

The Plaintiffs dispute that Orta's affidavit and the records she relied on are accurate. The Plaintiffs further allege that June 11, 2001, when Tyson filed the present Motion for Summary Judgment, was the first time that Tyson raised the argument that some of the opt-in Plaintiffs were barred from joining the collective action. Moreover, the Plaintiffs argue that they

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<sup>1</sup> In their Response to the Motion for Summary Judgment, the Plaintiffs state that they "concede that if the information provided by Ms. Orta is accurate, the affected thirty-seven opt-in would fall outside of the scope of the class." (Resp. Mot. Summ. J., 8).

did not receive the names, phone numbers and addresses of these fifty-seven opt-in Plaintiffs “in a useable, manageable and concise format” until July 1, 2002, after the Motion for Summary Judgment was filed and after discovery had closed. (Rule 56(f) Affidavit ¶ 9). Therefore, the Plaintiffs argue that Tyson’s Motion must be denied and their Motion for Additional Discover must be granted in order to give these opt-in Plaintiffs, and the other twenty-four opt-in Plaintiffs described above, the opportunity to respond to the allegations. Specifically, the Plaintiffs allege that under Rule 56(f), they should be given sixty days of additional discovery to contact each of the fifty-seven opt-in Plaintiffs and ask: (1) if any of them ever worked in a position that falls within the class definition; (2) if any of them ever worked for Tyson after Tyson alleges they stopped working; and (3) if any of them failed to receive the notice and consent forms in a timely manner.

Rule 56 allows parties to file motions for summary judgment before the conclusion of discovery. However, a court should not grant summary judgment until the party opposing the motion has had an adequate opportunity to conduct discovery. Doe v. Mercy Health Corp. of Southeastern Pa., 150 F.R.D. 83, 84 (E.D. Pa. 1993)(citing Radich v. Goode, 886 F.2d 1391, 1393 (3d Cir. 1989)). Rule 56(f), which the Plaintiffs rely on, allows for additional discovery to combat motions for summary judgment which are filed before discovery is concluded. Id. However, in this case, the time for discovery has concluded and the Plaintiffs had ample opportunity to conduct discovery.

Furthermore, Tyson produced the majority of the necessary payroll, time-and-attendance, and personnel information for the fifty-seven opt-in Plaintiffs in 2001 and the remainder of the information in April, 2002. Moreover, this Court gave the Plaintiffs an

additional two weeks to prepare their Response to the present Motion for Summary Judgment. Tyson also points out that it put the Plaintiffs on notice of these claims in its Answer when Tyson pleaded that the class members were not similarly situated and that some of the workers' claims were barred by the statute of limitations. Lastly, Tyson notes that the Plaintiffs initially requested to have the notice sent to a broader group of employees than permitted by the FLSA's statute of limitations on the grounds that Tyson could move for judgement on individuals after discovery had closed.

As stated above, the Plaintiffs also attack the Motion for Summary Judgment by arguing that they believe Orta's affidavit or the data she relies on is inaccurate. Therefore, the Plaintiffs wish to contact the fifty-seven opt-in Plaintiffs and discover if they would dispute any of the relevant information provided by Tyson. However, even if some of the fifty-seven opt-in Plaintiffs would now claim that the records are inaccurate, this still would not create a genuine issue of material fact sufficient to defeat summary judgment. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Furthermore, the Plaintiffs cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams, 891 F.2d at 460. Here, the Plaintiffs simply argue that the records might be wrong and that Orta, the New Holland Facility Personnel Manager, is not credible regarding personnel issues because Tyson stated in another motion that she lacked foundation to testify about food-borne diseases. At best, the Plaintiffs are seeking to raise a metaphysical doubt by injecting unsupported assertions and mere suspicions which is insufficient to defeat this

Motion for Summary Judgment.

**IV. CONCLUSION**

There is no legitimate reason to toll the statute of limitations. Furthermore, discovery is closed, the Plaintiffs had ample opportunity to conduct discovery, they possessed the required information well prior to the Motion for Summary Judgment, and they failed to raise a genuine issue of material fact regarding Tyson's evidence relating to the issues at hand.

Therefore, Tyson's Motion For Partial Summary Judgment will be granted and the Plaintiffs' Motion for Additional Discovery Pursuant to FED. R. CIV. P. 56(f) will be denied.

Two Orders follow.