

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

ESPERANZA MOYA; FE ALTAGRACIA : CIVIL ACTION
MOYA; ANITA PEREZ; VICTOR RIVERA; :
JORGE HERNANDEZ; and ALEJANDRO :
ROSADO, on behalf of themselves and :
similarly situated employees :
v. :
PILGRIM'S PRIDE CORPORATION and :
MAXI STAFF, LLC. : NO. 06-1249

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE November 30 , 2006

This is one of three proposed class action suits filed against Pilgrim's Pride Corporation, alleging violations of the Fair Labor Standards Act. The present case is an "opt-in" lawsuit. The court previously approved a notice to potential class members. The court-approved notice was sent to the prospective class members on June 1, 2006, and clearly stated that the form had to be returned on or before August 1, 2006.

If you wish to join this lawsuit, the Federal law requires you to complete the enclosed Notice of Consent form and mail it to the address at the bottom of the form. If you mail a Notice of Consent form, you should do so as soon as possible. **The form must be postmarked on or before August 1, 2006.**

(Court-Ordered Notice of Lawsuit, at ¶5).

According to the Defendants' Motion, 362 people have chosen to opt-in to the suit. Of these 362 opt-ins, eight responses were post-marked after the August 1, 2006 deadline. In their Motion, the Defendants seek to dismiss these untimely consents.

In response, the Plaintiffs' counsel argue that four of the eight untimely opt-ins should be permitted to remain in this lawsuit because they possess a justifiable basis for their

untimely return of the notice. The Defendants rely on the decision of the Honorable John Fullam of this court in Vivone v. Acme Markets, Inc., 687 F.Supp. 168 (E.D. Pa. 1988), in arguing that the untimely consents should be dismissed. Judge Fullam stated:

[U]nnamed plaintiffs [do not] have an interminable right to opt into ADEA class-action lawsuits. For example, in the interests of justice, to facilitate trial preparation and settlement discussions, after allowing a fair time for the filing of consents, a court may declare the class closed.

Id. at 169. According to the Defendants, “a fair time” has passed. Thus, they ask that the court to dismiss all of the untimely notices.

At this point, our case is currently in discovery and has not been listed for trial.

The Plaintiffs’ counsel argues and our research confirms that the court has equitable powers in administering the scope of class action suits and settlements.

Courts which have considered requests to extend deadlines for filing proofs of claim and other settlement documents have generally subjected each request to a general “good cause” analysis.

In re Cendant Corp. Prides Litigation, 189 F.R.D. 321, 323 (D.N.J. 1999)(citing Kyriazi v. Western Elec. Co., 647 F.2d 388, 396 (3d Cir. 1981)(affirming trial court’s application of a good cause standard to claims of plaintiffs who failed to opt-in to settlement by deadline)).

This standard has been utilized in determining whether to allow untimely returned opt-in notices in class action suits. See Monroe v. United Air Lines, Inc., 94 F.R.D. 304, 305 (N.D. Ill. 1982)(untimely opt-ins had “reasonable excuses” for failing to meet the deadline); Robinson-Smith v. Gov’t Employees Ins. Co., 424 F.Supp. 2d 117, 123-124 (D.D.C. 2006)(“The addition of four opt ins will not substantially prejudice the defendant and is consistent with a broad and flexible reading of the [FLSA] and with the Court’s discretion in these matters.”);

Kelley v. Alamo, 964 F.2d 747, 749-50 (8th Cir. 1992)(“a generous reading [of the FLSA] . . . is also appropriate when considering issues of time limits and deadlines.”).

With respect to the eight untimely opt-ins, we find that good cause exists to excuse three of the opt-ins’ untimely consents, and that inclusion of these three people in the suit does not prejudice the defense. Ahmad Moses explained in a letter he returned with the notice that he did not receive the opt-in notice until the end of the opt-in period because he was incarcerated in Atlanta, Georgia. Despite his late receipt of the mail, Mr. Moses signed the form on July 30, 2006, and the return envelope was postmarked August 7, 2006. Because he did not have access to the mail prior to that time, we will excuse his late filing.

Both Richard Huber’s and Giovanni Almanzar’s notices seem to have fallen prey to the United States Postal Service’s snail mail. Both told counsel they returned the notices shortly after signing them in early - mid July. Yet, both are postmarked August 9, 2006. We will not fault the Plaintiffs for the delay in the mails.

Plaintiffs’ counsel also ask the court to permit Sonia de Cardenas to participate in this suit despite her untimely response to the opt-in notice. Ms. de Cardenas’s notice was not returned until September 13, 2006. According to counsel, Ms. de Cardenas stated that the notice got mixed up with junk mail in the bottom of her hang-up mailbox. We do not find that good cause exists to excuse this untimely filing. The notice was within Ms. de Cardenas’s control. Had she “clean[ed] out” the junk mail earlier, she could have avoided the delay in the return of the notice.

Plaintiffs’ counsel does not seek inclusion of the remainder of the untimely opt-ins. However, we will proceed to explain our decision to dismiss their untimely responses. First,

there has been no explanation for the untimely return of the notice by Victor Henderson.

Therefore, his notice will be dismissed. Similarly, without any explanation, Gennie High told counsel that she received the notice late. This is insufficient for the court to determine if good cause exists to excuse her late filing. We have no way of knowing whether the delay in her receipt was of her own doing.

Silvia Lua de Madrigal explained to counsel that she did not return the form in a timely fashion because she feared that the notice was fake and that she would be retaliated against if she were to return it. Despite this fear, however, she did return it – seven days late. We do not believe that she has established “good cause” for this delay. See Evans v. Lowe’s Home Centers, Inc., No. 3:CV-03–438 (M.D. Pa. Mar. 3, 2005)(Caputo, J.), at 4 (rejecting claimed fear of retaliation to excuse untimely return of opt-in notice).

Finally, Lindha M. Calder Rodz did not return the notice until August 23, 2006. She explained that she had moved prior to the mailing of the notice. However, we have no way of knowing whether the fault for the delay lies with Ms. Rodz, for failing to obtain the mail sent to her old address, or with the Postal Service, for failing to timely forward her mail. Without further explanation, we cannot determine whether good cause exists for the untimely return of the notice.

An appropriate Order follows.

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ORDER

AND NOW, this 30th day of November, 2006, upon consideration of the Defendant's Motion to Dismiss Untimely Consents, the response, thereto, and for the reasons stated in the accompanying Memorandum, it is hereby ordered that the Defendants' Motion is GRANTED IN PART and DENIED IN PART. To the extent the Motion seeks to dismiss the consents of Sonia de Cardenas, Victor Henderson, Gennie High, Silvia Lua de Madrigal, and Lindha Calder Rodz, the Motion is GRANTED. In all other respects, the Motion is DENIED.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE