2015 WL 6736118
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United States District Court,
S.D. New York.

Jamel FLOOD, Ira Heaston, Issac Heaston, Tashauna Reid, Patrick Pink, Amy Courtemanche, Eury Espinal, and Jose Fernandez, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
CARLSON RESTAURANTS INC., Carlson Restaurants Worldwide Inc., and T.G.I. Friday's Inc., Defendants.

No. 14 Civ. 2740(AT). | Signed Nov. 3, 2015.

ORDER

ANALISA TORRES, District Judge.

***1** By letter dated October 8, 2015, Plaintiffs request a 45–day extension of the deadline for potential collective members to opt-in to this action and leave to mail and e-mail a reminder notice to members who were initially sent notice but have not yet returned consent-to-join forms. ECF No. 258 at 1. For the reasons stated below, Plaintiffs' requests are GRANTED.

Defendants' most compelling argument in opposition is that an extension would disturb the parties' stipulation as to the notice process in this action, *see* ECF No. 267 at 2–3. In the stipulation—"so ordered" by the Court on February 9, 2015, *see* ECF No. 136–Plaintiffs agreed that collective members could opt-in no later than 60 days from the date notice to opt-in was mailed, Stipulation and Order Regarding Dissemination of Notice, ECF No. 136, at ¶¶ 5–8, that the claims administrator would follow a process to address undeliverable packages, *id.* ¶ 6, and that no other form of notice, including e-mail, would be "appropriate," *id.* ¶ 8. The Second Circuit does not appear to have articulated a standard for determining whether an opt-in period in an **FLSA** collective action that was agreed to as part of a stipulation may be extended or otherwise altered. That being said, the caselaw provides two insights that lead the Court to believe it can, and should, grant Plaintiffs' requests.

First, the Second Circuit has looked to New York state law treating stipulations more as "runof-the-mill contract[s]" rather than a "court order." *See New York v. Mountain Tobacco Co.*, 953 F.Supp.2d 385, 390 (E.D.N.Y.2013) (citation omitted). This means that courts should typically not "disturb a valid stipulation" unless there is good cause, fraud, duress, mistake, unconscionability, or ambiguity in the terms of the agreement. *Katel Ltd. Liab. Co. v. AT & T Corp.*, 607 F.3d 60, 65 (2d Cir.2010) (citing *McCoy v. Feinman*, 99 N.Y.2d 295, 755 N.Y.S.2d 693, 785 N.E.2d 714, 719 (N.Y.2002)). What it also means, however, is that a court is not bound by a stipulation to the extent it provides answers for questions that belong in the ambit of the court. *See Mountain Tobacco Co.*, 953 F.Supp.2d at 390 (citing *Swift & Co. v. Hocking Valley Ry.*, 243 U.S. 281, 289–90, 37 S.Ct. 287, 61 L.Ed. 722 (1917) and *Fisher v. First Stamford Bank & Tr. Co.*, 751 F.2d 519, 523 (2d Cir.1984)).

Second, the law is settled that the Court possesses "broad discretion" to oversee the notice process in an **FLSA** collective suit. *See Gjurovich v. Emmanuels Marketplace, Inc.*, 282 F.Supp.2d 101, 106 (S.D.N.Y.2003) (citing *Hoffmann La Roche Inc. v. Sperling*, 493 U.S. 165, 170, 110 S.Ct. 482, 107 L.Ed.2d 480 (1989)). Such discretion must be exercised with the understanding that the **FLSA** should be interpreted "liberally" and its protections afforded "exceptionally broad coverage." *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir.2015) (citing *Chao v. Gotham Registry, Inc.*, 514 F.3d 280, 285 (2d Cir.2008)). Plaintiffs bring their claims under "a uniquely protective statute," *id.* at 207, and their "rights cannot be abridged by contract or otherwise waived because this would ... thwart the legislative policies [the **FLSA**] was designed to effectuate," *id.* at 203 (citing *Lynn's Food Stores, Inc. v. United States Dep't of Labor*, 679 F.2d 1350, 1352 (11th Cir.1982)). The discussion in *Cheeks* pertained to whether parties can settle **FLSA** collective actions without Court or government approval, but the Court believes the decision's affirmance of the "exceptionally broad coverage" of the **FLSA's** provisions is pertinent to the issue here. *See Braunstein v. E. Photographic Labs., Inc.*, 600 F.2d 335, 336 (2d Cir.1978); *see also Gjurovich*, 282 F.Supp.2d at 106.

***2** Both parties cite caselaw supporting their respective positions regarding: whether the district courts routinely grant extensions, *see* ECF No. 258 at 1–3; ECF No. 267 at 2–3; the appropriate amount of time to allow collective members to opt-in, *see* ECF No. 258 at 2; ECF No. 267 at

4–5; and the propriety of reminder and e-mail notice, *see* ECF No. 258 at 2–3; ECF No. 267 at 5. This only confirms that making such a decision is firmly within the Court's "broad discretion." Additionally, Defendants do not adequately explain why extending the opt-in period would prejudice them specifically, asserting only that an extension would delay discovery generally and would be "contrary to the interests of efficiency and judicial economy." ECF No. 267 at 5. Plaintiffs, on the other hand, contend that an extension is fair because, as of October 8, 2015, only 6.7 percent of the potential collective had joined the case, and because mailings to 7,186 potential collective members were returned as undeliverable. *See* ECF No. 258 at 1–2. Although Defendants correctly note that these numbers are not abnormally low and that the claims administrator has already attempted to re-deliver notice packages to those with failed addresses, this does not dissuade the Court from allowing Plaintiffs an additionaly opportunity to provide "accurate and timely notice."[1] *Hoffman–La Roche Inc.*, 493 U.S. at 170. As such, Plaintiffs' request to extend the opt-in period by 45 days is GRANTED.

Similar reasoning leads the Court to grant Plaintiffs' request to mail and e-mail a reminder notice to those putative members who have not yet opted-in. Although there is "no general consensus among district courts as to the propriety of sending reminder notices," *Guzelgurgenli v. Prime Time Specials Inc.*, 883 F.Supp.2d 340, 357 (E.D.N.Y.2012) (collecting cases), the Court is persuaded by those that find reminders to be "appropriate in an **FLSA** action since the individual is not part of the class unless he or she opts-in," *id.* at 357–58 (citing *Sanchez v. Sephora USA, Inc.*, No. 11 Civ. 3396, 2012 WL 2945753, at *6 (N.D.Cal. July 18, 2012)). A reminder is especially appropriate here given the extension of the opt-in period. Moreover, "given the reality of communications today, ... email notice ... is entirely appropriate." *Pippins v. KPMG LLP*, No. 11 Civ. 0377, 2012 WL 19379, at *14 (S.D.N.Y. Jan. 3, 2012).

Therefore, for the reasons stated above, Plaintiffs' requests are GRANTED. It is ORDERED that:

1. The opt-in period shall be extended to **December 19, 2015.** Further extensions will not be granted absent a showing of good cause.

2. Plaintiffs are directed to send their proposed reminder, attached as Exhibit A to the letter dated October 8, 2015, ECF No. 258, by first-class mail and e-mail, as soon as is practicable, to potential collective members who have not yet returned consent-to-join forms.

The Clerk of Court is directed to terminate the motion at ECF No. 258.

***3** SO ORDERED.

All Citations

Slip Copy, 2015 WL 6736118

Footnotes

1 *See generally Ruggles v. Wellpoint, Inc.*, 687 F.Supp.2d 30, 37 (N.D.N.Y.2009) (deciding to include in the collective plaintiffs whose consent forms were returned after the court-approved deadline by considering "(1) whether 'good cause' exists for the late submissions; (2) prejudice to the defendant; (3) how long after the deadline passed the consent forms were filed; (4) judicial economy; and (5) the remedial purposes of the **FLSA**").