

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARIA GORZKOWSKA, MARIA
DRWIEGA, PATRYCJA MARTINEZ, and
BARBARA DRELICHOWSKI, individually
and on behalf of all others similarly situated,
Plaintiffs,

v.

EURO HOMECARE LLC and ELZBIETA
DARMOROS,
Defendant.

No. 3:19-cv-01773 (VAB)

**RULING AND ORDER ON CONDITIONAL CERTIFICATION
AND NOTICE TO POTENTIAL PLAINTIFFS**

Maria Gorzkowska, Maria Drwiega, Patrycja Martinez, and Barbara Drelichowski (together, “Plaintiffs”), individually and on behalf of other similarly situated current and former employees of Euro Homecare LLC (“Euro Homecare”), filed this action against Euro Homecare and Elzbieta Darmoros (together, “Defendants”) under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, alleging FLSA overtime violations, overtime violations under Connecticut law, and failure to pay wages. Class and Collective Action Compl., ECF No. 1 ¶¶ 50–70 (Nov. 11, 2019) (“Compl.”).

Plaintiffs now move for conditional certification and notice to potential plaintiffs. Pls.’ Mot. for Conditional Certification and Notice to Potential Pls., ECF No. 24 (Mar. 20, 2020) (“Pls.’ Mot.”); Mem. in Supp. of Pls.’ Mot. for Conditional Certification and Notice to Potential Pls., ECF No. 24-1 (Mar. 20, 2020) (“Pls.’ Mem.”); Pls.’ Corrected Mot. for Conditional Certification and Notice to Potential Pls., ECF No. 25 (Mar. 23, 2020) (“Pls.’ Am. Mot.”). Defendants object to this motion. Defs.’ Obj. to Pls.’ Mot. for Conditional Certification and

Notice to Potential Pls., ECF No. 29 (May 4, 2020) (“Defs.’ Obj.”); Defs.’ Obj. to Pls.’ Mot., ECF No. 30 (May 4, 2020).¹

For the following reasons, Plaintiffs’ motion is **GRANTED**.

The Court grants conditional certification for all current and former employees of Defendants who provided live-in caregiver and/or companion services to Defendants’ clients at any time between November 7, 2016 and present, finding that Plaintiffs have made the factual showing required to infer that these employees were subject to a common policy or plan that violated the law. *See Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010).

The Court orders that the notice to potential opt-in plaintiffs (1) be provided in both English and Polish; (2) include contact information for both Plaintiffs’ and Defendants’ counsel; (3) provide notice of possible litigation requirements for opt-in plaintiffs; and (4) provide a one hundred and twenty (120)-day opt-in period. This notice shall be mailed and sent by e-mail to potential opt-in plaintiffs. The Court will not require the posting of the notice at the Euro Homecare LLC offices.

The Court orders the parties to confer and revise the notice and consent form described in the preceding paragraph consistent with this Order and submit a final version for the Court's approval by **February 5, 2021**.

The Court further orders Defendants to disclose to Plaintiffs’ counsel the names, dates of employment, last known home addresses, e-mail addresses, and telephone numbers of Euro Homecare employees within the proposed opt-in plaintiff class by **February 22, 2021**, within thirty (30) days of this Order. At this time, the Court declines to order the disclosure of social security numbers and dates of birth of the proposed opt-in plaintiff class.

¹ Euro Homecare and Ms. Darmoros file individual, but identical objections. Defs.’ Obj.; Defs.’ Obj. to Pls.’ Mot., ECF No. 30. The Court will cite to Euro Home Care’s objection, Defs. Mot., ECF No. 29, for both defendants.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Allegations

Plaintiffs allege that Euro Homecare is “a provider of home healthcare services, including ‘live-in’ services, which [Euro Homecare] advertises on its website as ‘providing 24 hours around the clock continued support.’” Pls.’ Mem. at 2–3 ¶ 2 (alterations omitted).

Ms. Darmoros is allegedly the owner of Euro Homecare and a resident of Plainville, Connecticut. Compl. ¶ 10. Ms. Darmoros allegedly “employed Plaintiffs and participated directly in employment decisions.” *Id.* ¶ 11.

Plaintiffs allege that they each “worked as a live-in caregiver during all or some of [their] employment with [Euro Homecare].” Pls.’ Mem at 3 ¶ 3.

“Beginning with the week ending October 30, 2016 and continuing through the present,” Defendants allegedly “have had a policy of requiring live-in homecare workers to report taking an hour each for breakfast, lunch, and dinner, and having eight uninterrupted hours for sleep during each and every 24-hour period of live-in employment.” *Id.* at 3 ¶ 4. Defendants also allegedly “have had a policy of compensating live-in workers for no more than 13 hours per each 24-hour period of live-in employment.” *Id.* at 3 ¶ 5.

Plaintiffs allege, however, that “if they had any daytime breaks at all, [they] were never relieved of their duties for a full three hours.” *Id.* at 3 ¶ 6. Plaintiffs further allege that their “sleeping times were frequently interrupted by the clients’ needs,” which “sometimes le[ft] Plaintiffs with less than five hours for sleep per night.” *Id.* at 3 ¶ 7.

B. Procedural Background

On November 11, 2019, Plaintiffs filed a Complaint against Defendants. Compl.

On December 12, 2019, Defendants moved for an extension of time to file a response to the Complaint. Mot. for Extension of Time, ECF No. 9 (Dec. 12, 2019). The next day, The Court granted this motion. Order, ECF No. 10 (Dec. 13, 2019).

On January 17, 2020, Defendants moved for an additional extension of time to file their response to the Complaint, filing two identical motions. Mot. for Extension of Time, ECF No. 15 (Jan. 17, 2020); Mot. for Extension of Time, ECF No. 16 (Jan. 17, 2020). On January 21, 2020, the Court granted these motions. Order, ECF No. 18 (Jan. 21, 2020).

On February 20, 2020, Defendants filed identical Answers. Answer, ECF No. 22 (Feb. 20, 2020); Answer, ECF No. 23 (Feb. 20, 2020).

On March 20, 2020, Plaintiffs filed a motion for conditional certification and notice to potential plaintiffs with supporting materials. Pls.' Mot.; Pls.' Mem; Decl. of Maria Gorzkowska, Ex 1 to Pls.' Mot., ECF No. 24-2 (Mar. 20, 2020) ("Gorzowska Decl."); Decl. of Maria Drwiega, Ex 2 to Pls.' Mot., ECF No. 24-3 (Mar. 20, 2020) ("Drwiega Decl."); Decl. of Patrycja Martinez, Ex 3 to Pls.' Mot., ECF No. 24-4 (Mar. 20, 2020) ("Martinez Decl."); Decl. of Barbara Drelichowski, Ex 4 to Pls.' Mot., ECF No. 24-5 (Mar. 20, 2020) ("Drelichowski Decl.").

On March 23, 2020, Plaintiffs filed a corrected motion for conditional certification and notice to potential plaintiffs. Pls. Am. Mot.

On March 31, 2020, Defendants separately moved for an extension of time to file a response to Plaintiffs' amended motion, filing identical motions. Mot. for Extension of Time, ECF No. 26 (Mar. 31, 2020); Mot. for Extension of Time, ECF No. 27 (Mar. 31, 2020). The next day, the Court granted these motions. Order, ECF No. 28 (Apr. 1, 2020).

On May 4, 2020, Defendants objected to Plaintiffs' amended motion. Defs.' Obj.; Mem. in Supp. of Defs.' Obj., ECF No. 29-1 (May 4, 2020) ("Defs.' Mem."); Defs.' Obj. to Pls.' Mot., ECF No. 30.

On January 19, 2021, the Court decided to resolve the pending motion based on the written submissions of the parties alone, without oral argument on Plaintiff's motion. Order, ECF No. 32 (Jan. 19, 2021).

II. STANDARD OF REVIEW

In 1938, Congress enacted the Fair Labor Standards Act ("FLSA") to "eliminate" "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. § 202 (a–b). "In furtherance of this goal, the FLSA imposes numerous 'wage and hour' requirements, including an overtime provision mandating employers to pay non-exempt employees time-and-a-half for each hour worked in excess of 40 hours per week." *Lassen v. Hoyt Livery Inc.*, No. 3:13-CV-01529 JAM, 2014 WL 4638860, at *3 (D. Conn. Sept. 17, 2014). Section 216(b) of the Act creates a private cause of action for FLSA violations for individual employees or collectives of "similarly situated" employees. 29 U.S.C. § 216(b); *Lassen*, 2014 WL 4638860, at *3.

The Second Circuit has adopted a two-step approach to FLSA conditional certification. *Myers*, 624 F.3d at 554-55. "Although they are not required to do so by FLSA, district courts have discretion, in appropriate cases, to implement § 216(b) by facilitating notice to potential plaintiffs of the pendency of the action and of their opportunity to opt-in as represented plaintiffs." *Id.* at 554 (alterations and internal quotation marks omitted). "In determining whether to exercise this discretion in an 'appropriate case,' the district courts of this Circuit appear to have coalesced around a two-step method, a method which, while again not required by the

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