IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

ANGELINA HARRISON,
On behalf of Herself and All others
Similarly Situated,

Plaintiff,

vs. CASE NO: 26-cv-00192-CHB-MAS

SEASONAL FOOD CONCEPTS INCORPORATED d/b/a KONA ICE OF THE BLUEGRASS, KONA ICE OF THE VILLE, LLC CO., THOMAS SCOTT LAMB, AND LISA DAWN LAMB,

Defendants.

PLAINTIFF'S RULE 26(f) CONFERENCE REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), the Court's July 27, 2026 Order [ECF#10], and in response to Defendants' separately filed report [ECF#11], Plaintiff Angelina Harrison respectfully submits her proposed discovery plan. The parties conferred but did not agree on whether discovery before court-facilitated notice and Rule 23 certification should reach the proposed collective and class.

Plaintiff agrees that focused, prompt discovery should develop the record for notice and certification. **She does not agree** that discovery should be limited to her own employment or deferred until after notice or certification. The Complaint alleges common pay, timekeeping, scheduling, break, notice, equal-pay, recordkeeping, and retaliation practices affecting Defendants'

hourly, non-exempt employees from May 2023 forward. The relevant workforce, payroll, timekeeping, scheduling, event, truck, and policy records are maintained by Defendants.

Defendants' proposal would be extremely inefficient, and very expensive to Plaintiff, by artificially bifurcating Plaintiff's claims, before investigating the class/collective-based claims, by requiring Plaintiff to establish that other employees are similarly situated while withholding the classwide evidence needed to make that showing. It would also postpone merits scheduling until after an uncertain notice process. Plaintiff therefore proposes a single, orderly discovery period, with a short initial phase for collective- and class-certification issues and continued merits discovery thereafter.

1. Initial Disclosures and Core Collective Documentation

The parties have not exchanged the disclosures required by Rule 26(a)(1). They shall exchange complete Rule 26(a)(1) disclosures within seven (7) calendar days after entry of the Rule 16 Scheduling Order.

Within fourteen (14) calendar days after entry of the Scheduling Order, Defendants shall produce, in reasonably usable electronic form, the following core records for the proposed collective and Rule 23 class from May 1, 2023 to the present:

a) A roster stating each current or former hourly, non-exempt employee's name, last-known mailing address, personal email address, telephone number, dates of employment, job title(s), work location or territory, supervisor(s), and rate and method of pay;

b) Records sufficient to show job duties, reporting structure, applicable policies, and any material variation in timekeeping, compensation, scheduling, meal or rest periods, wage notices, equal-pay practices, and complaints or retaliation;

c) Time, payroll, wage, schedule, event-assignment, truck-assignment, and point-of-sale data sufficient to compare hours recorded, hours or events worked, compensation paid, and the operation of the challenged practices across the proposed collective and class;

d) Policies, handbooks, training materials, wage notices, and communications concerning compensable work, overtime, recordkeeping, payroll, breaks, equal pay, complaints, and retaliation; and

e) Any arbitration agreement, collective or class waiver, release, or other agreement that Defendants contend applies to any putative member.

Employee contact information and personnel data may be designated Confidential and used only for this litigation. Before court-facilitated notice, any contact information will be used only to investigate the facts relevant to similarity and certification, not to represent that the Court has approved notice or endorsed the action. Within seven (7) calendar days after entry of the Scheduling Order, the parties shall submit an agreed protective order or their respective proposals. The absence of an entered protective order shall not postpone production; the material may be treated as Confidential pending the Court's ruling.

2. ***Why Collective- and Classwide Discovery Is Needed Now***

The recent Sixth Circuit opinion, in *Clark v. A&L Homecare & Training Ctr., LLC*, 68 F.4th 1003, 1010 (6th Cir. 2023), makes prompt discovery more necessary, not less. Whether employees are similarly situated is factbound and ordinarily turns on their tasks and the employer's timekeeping and compensation policies; other employees may possess unique knowledge of those facts. Because Plaintiff must show a strong likelihood of similarity before notice, the Sixth Circuit directed courts to expedite the notice decision and authorized prompt, court-ordered discovery

relevant to it. *Id.* at 1011 (*citing* Fed. R. Civ. P. 26(d)(1)). Limiting discovery to Plaintiff alone would prevent the comparison Clark requires.

The Complaint provides a concrete basis for this discovery. It alleges that Plaintiff and putative members performed the same core event-based work—preparing and loading trucks, driving, staffing events, serving customers, cashiering, cleaning, and restocking—through the same scheduling, point-of-sale, telephone, and electronic systems. [ECF#1; *Compl.* ¶¶ 27–30, 41, 68]. Defendants allegedly controlled event schedules, truck assignments, travel, arrival and closing times, staffing, sales, payroll, and employee communications, and centrally implemented the challenged practices. *Id.* ¶¶ 37, 55, 59. The roster, schedules, event and truck assignments, POS data, time and pay records, policies, and communications directly test the common tasks, timekeeping, compensation, and defenses *Clark* identifies. *Id.* at 1010–12.

The claims themselves require employer-wide proof: unpaid pre- and post-event work, inaccurate hours, unpaid overtime, denied breaks, unequal pay, deficient wage records and notices, and concealment. *Compl.* ¶¶ 36–62. The Complaint identifies schedules, event and payroll records, communications, POS data, and employee testimony as common proof, *id.* ¶¶ 56, 72, 75, 80, 90, and alleges recurring seasonal staffing and uniform or similar practices, *id.* ¶¶ 55, 67–71, 81–90. The roster shows size, job groups, locations, supervisors, and witnesses; the operational and pay data permit classwide comparison; and agreements bear on individualized defenses. This is discovery testing pleaded claims, not searching for new ones.

Post-*Clark* decisions support that focused approach. *Wedding v. Madisonville Health & Rehabilitation LLC*, No. 4:24-CV-00044-BJB-HBB, slip op. at 4–12 (W.D. Ky. Feb. 25, 2025), rejected a threshold similarity showing before discovery, recognized collective-wide discovery, allowed a three-year scope, and required a specific—not conclusory—burden showing. *Berner v.*

PharMerica Logistics Services, LLC, 703 F. Supp. 3d 802, 809–10 (W.D. Ky. 2023), likewise distinguished the pleading inquiry from *Clark's* later notice showing. *Santiago v. Trilogy Health Services, LLC*, No. 2:23-CV-976, 2023 U.S. Dist. LEXIS 198630, at *2–4 (S.D. Ohio Nov. 2, 2023), held collective-wide discovery relevant to *Clark's* heightened burden.

The same records independently bear on numerosity, commonality, typicality, predominance, ascertainability, and manageability under Rule 23. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13, 354 n.20 (1978). Defendants' general reference to size and resources does not justify withholding data they control. The proposal uses "records sufficient to show," electronic exports, and confidentiality protections; a concrete burden can be addressed as to a specific request without staying the entire case.

Finally, delay destroys FLSA claims because an unnamed employee's action does not commence until written consent is filed. 29 U.S.C. § 256(b). *Clark* therefore instructs courts to "waste no time" on notice, 68 F.4th at 1011, and *Cordell* found expedited discovery sensible so potential plaintiffs would not be left behind, 691 F. Supp. 3d at 849–50. Prompt discovery also avoids duplicative phases and serves the FLSA's efficient collective procedure. *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170–72 (1989).

3. ***Plaintiff's Proposed Discovery Plan***

a) Discovery may address Plaintiff's individual claims; the composition and scope of the proposed FLSA collective and Rule 23 class; whether Plaintiff and putative collective members are similarly situated; Rule 23(a) and (b)(3); common policies and actual practices; damages; and Defendants' answer, affirmative defenses, and asserted individualized defenses.

b) Within seven (7) calendar days after entry of the Scheduling Order, the parties shall identify likely custodians and the payroll, timekeeping, scheduling, point-of-sale, event-assignment, truck-assignment, email, text-message, and other ESI systems or sources likely to contain discoverable information. Those sources shall be preserved. Structured payroll, timekeeping, and scheduling data shall be produced in native or exportable form with field definitions preserved; other records shall be searchable where reasonably practicable.

c) Fact, collective, and class-certification discovery may proceed immediately under Rule 26(d)(1) because the Rule 26(f) conference has occurred, and shall be completed by May 29, 2027. Discovery shall not be stayed pending a motion for court-facilitated notice or Rule 23 certification absent further order of the Court.

d) The parties may use the discovery methods permitted by the Federal Rules. Discovery may extend to the proposed collective and class and shall not be limited to the Named Plaintiff. Initial discovery directed principally to notice and certification shall be completed by December 15, 2026; merits discovery shall remain open through May 29, 2027.

e) Plaintiff shall make her Rule 26(a)(2) case-in-chief expert disclosures and serve any required reports on or before February 27, 2027.

f) Defendants shall make their Rule 26(a)(2) case-in-chief expert disclosures and serve any required reports on or before February 15, 2027.

g) Plaintiff shall make any Rule 26(a)(2) rebuttal expert disclosures and serve any required reports on or before March 15, 2027.

h) The parties shall supplement disclosures and discovery responses in accordance with Rule 26(e) and any order of the Court.

4. ***Other Proposed Deadlines and Case-Management Items***

a) Motions to join additional parties shall be filed by January 15, 2027. This deadline shall not restrict FLSA opt-ins or a motion, supported by discovery, to add or substitute a class representative.

b) Motions to amend the pleadings shall be filed by February 15, 2027.

c) Plaintiff shall file any motion for court-facilitated notice under 29 U.S.C. § 216(b) and any motion for certification of the Kentucky-law class under Rule 23 on or before January 15, 2027.

d) Dispositive motions and motions concerning expert admissibility under Federal Rule of Evidence 702 shall be filed by July 31, 2027.

e) Plaintiff believes a scheduling conference is necessary in this matter.

f) Plaintiff believes that a pretrial conference is necessary for this matter.

g) Subject to the Court's notice and certification rulings and any necessary post-notice discovery, this matter could be ready for trial in November 2027. Plaintiff presently estimates five to six trial days.

h) Plaintiff does not consent to disposition of all proceedings, including trial, by the Magistrate Judge.

i) Mediation should occur after the initial collective- and class-certification discovery and filing of the notice and certification motions, but before the dispositive-motion deadline, with a mediator experienced in wage-and-hour collective and class actions.

If the Court instead stays classwide discovery or otherwise adopts Defendants' requested deferral, Plaintiff respectfully requests that the FLSA limitations period be equitably tolled for putative opt-in plaintiffs from the date of filing of the within Complaint through the close of the notice period. *See* 29 U.S.C. § 256(b); *Bernardez v. Firstsource Solutions USA, LLC*, No. 3:17-CV-613-RGJ-RSE, 2021 WL 434104, at *4–6 (W.D. Ky. Feb. 8, 2021).

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