

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-03364-MEH

THERESA EGAN, BRIAN BARKER, and SABRINA BUDDEN-WRIGHT, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

FASTAFF, LLC and U.S. NURSING CORPORATION,

Defendants.

**JOINT STIPULATION TO AND MOTION FOR
CONDITIONAL COLLECTIVE CERTIFICATION
OF PLAINTIFFS' FAIR LABOR STANDARDS ACT CLAIMS AND CONTINGENT
WITHDRAWAL OF PLAINTIFFS' EARLIER MOTION FOR CONDITIONAL
CERTIFICATION**

Pursuant to 29 U.S.C. § 216(b), Plaintiffs and Defendants (the “Parties”) enter into the following Joint Stipulation and Motion for purposes of the above captioned-case only:

1. On September 20, 2023, Plaintiffs filed their Motion for Conditional Certification of FLSA Collective Action (ECF No. 33). In light of the standard for conditional certification under Section 216(b) of the FLSA, to preserve the Court’s and the Parties’ resources, and in the interest of judicial economy, the Parties stipulate to conditional collective certification within the meaning of 29 U.S.C. § 216(b) as set forth below and solely for the purpose of sending court-authorized notice (the “Notice”) of the lawsuit to putative members of the FLSA collective action.

2. Consistent with Local Rule 7.1(a), the parties met and conferred prior to Plaintiffs filing their Motion. The Parties continued their discussions and have reached an agreement as to conditional certification, which is outlined in this Joint Stipulation and Motion.

3. The Parties stipulate to conditional certification of the following FLSA collective:

All travel healthcare professionals currently or formerly employed by Fastaff or U.S. Nursing Corporation who (1) worked more than 40 hours in a workweek from February 16, 2020 until the date of the Court's conditional certification order and (2) who received a "Housing Stipend" (or its equivalent by any other name) that was not included in their regular rate of pay during a workweek where they worked more than 40 hours.

4. The Parties stipulate to the use of the Notice attached as **Exhibit A**.

5. The Parties stipulate to the use of the Consent to Join Form attached as **Exhibit B**.

6. The Parties stipulate that the appropriate opt-in period should be 75 days from the date the Notices are mailed to putative opt-ins.

7. The Parties stipulate to issuance of the Notice and Consent to Join Form to putative opt-ins by U.S. Mail and e-mail. The Parties also stipulate to a reminder notice by e-mail (if an e-mail address is available) or postcard (if no e-mail address is available) to each putative opt-in who has not returned the Consent to Join form 30 days after the issuance of the original notice.

8. Plaintiffs and their counsel will select an administrator to oversee the notice process.

9. The Parties stipulate that Defendant will produce a list of putative members that includes their names, employee identification numbers, the dates and locations of their employment, last known mailing addresses, and email addresses within 30 days of the filing of this Joint Stipulation.

10. Defendants reserve the right to seek decertification as to the FLSA collective consistent with applicable law and the Scheduling Order that will be established by the Court. Defendants do not admit any wrongdoing or the propriety of this case proceeding as an FLSA collective action, and specifically deny that they engaged in any wrongdoing and maintain that decertification will be warranted at the appropriate time.

11. The Parties agree that nothing in this Joint Stipulation and Motion shall prejudice Defendants' rights to later argue that Named Plaintiffs and any opt-in Plaintiffs are not similarly-situated within the meaning of 29 U.S.C. § 216(b), that the conditionally-certified collective should be decertified, or to contest Plaintiffs' suitability to serve as a representative on behalf of any FLSA collective in this matter. Plaintiffs agree that Defendants, by joining in this Joint Stipulation, have not waived any such arguments and that Plaintiffs will not argue that Defendants have waived or should otherwise be prevented from making such arguments. Defendants reserve the right to make these arguments at the appropriate times in the future.

12. Defendants' agreement to conditional collective certification at this juncture reflects a compromise of disputed claims, and an effort to avoid the burden and expense in the present lawsuit only.

13. The Parties agree that the Plaintiffs' allegations are sufficient to establish that notice is appropriate pursuant to *Theissen v. General Electric Capital Corp.* 267 F.3d 1095, 1102, 1105 (10th Cir. 2001). Defendants' agreement on this issue is not, and shall not be construed as, an admission as to any of the allegations.

14. Defendants' agreement is not, and shall not be construed as, an admission by Defendants in any other proceeding and does not preclude Defendants from later moving to decertify any FLSA collective.

15. The Parties stipulate to the Court entering an Order consistent with this Joint Stipulation and Motion, as outlined in the attached Proposed Order, filed concurrently.

16. Contingent on the Court's entry of the Proposed Order granting this Joint Stipulation and Motion, Plaintiffs agree that their earlier Motion for Conditional Certification of FLSA Collective Action (ECF No. 33) can be denied as moot in light of the superseding Joint Stipulation and Motion.

WHEREFORE, the Parties respectfully request that the Court enter the attached Proposed Order granting the Joint Stipulation and Motion and conditionally certifying the collective outlined herein and denying as moot the earlier Motion for Conditional Certification of FLSA Collective Action (ECF No. 33).

AGREED TO AND STIPULATED.

Dated: October 19, 2023

STUEVE SIEGEL HANSON LLP

By: /s/ Alexander T. Ricke

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Respectfully submitted,

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, a true and correct copy of the foregoing was filed with the Clerk of the Court via the CM/ECF system, which will send notice of this filing to all counsel of record via email.

/s/ Alexander T. Ricke
Alexander T. Ricke
Plaintiffs' Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Egan et al. v. Fastaff LLC and U.S. Nursing Corp.

Case No. 1:22-cv-03364-RSM

NOTICE OF CONDITIONALLY CERTIFIED COLLECTIVE ACTION LAWSUIT

If you worked as a travel healthcare professional for Fastaff or U.S. Nursing Corporation and you (1) worked more than 40 hours in a workweek from February 16, 2020 until [date of order] and (2) received a “Housing Stipend” (or its equivalent by any other name) that was not included in your regular rate of pay during a workweek where you worked more than 40 hours, you are eligible to participate in this lawsuit to recover overtime pay.

PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS LAWSUIT

You are receiving this Court-authorized Notice because you worked as a travel healthcare professional for Defendants Fastaff, LLC and/or U.S. Nursing Corp. (collectively “Fastaff”) and worked more than 40 hours during a workweek when you received a “Housing Stipend” during the relevant time. According to Fastaff’s records, you are eligible to participate in this lawsuit to potentially recover unpaid wages and other damages under the Fair Labor Standards Act (“FLSA”). **To participate, you must complete, sign, and return the enclosed Consent to Join Form by [75 days of mailing].**

What is the Lawsuit about?

Plaintiffs Theresa Egan, Brian Barker, and Sabrina Budden-Wright worked as travel nurses for defendant Fastaff. They filed a lawsuit on behalf of themselves and other similarly situated employees against Fastaff alleging, among other things, that the company violated the FLSA by excluding the value of their housing stipends from their “regular rate” of pay, and thus miscalculating their mandated overtime rate of pay. This alleged miscalculation resulted in underpayment of overtime wages, which the Plaintiffs seek to recover, among other things, in this lawsuit.

The Plaintiffs sought to represent similarly situated employees at Fastaff and to give them an opportunity to participate in the lawsuit by filing a Consent to Join Form. The Court entered an Order dated [x], which is why you are receiving this Notice and being given the opportunity to join this lawsuit. You may receive this Notice and information about this lawsuit via U.S. Mail and email.

The Court has not decided which side is right. By conditionally certifying this lawsuit as a collective action and issuing this notice, the Court is not suggesting that the Plaintiffs will win or lose the case.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO*Egan et al. v. Fastaff LLC and U.S. Nursing Corp.*

Case No. 1:22-cv-03364-RSM

Your options are explained on the next page.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE BY RETURNING YOUR CONSENT TO JOIN FORM	<p>If you choose to be included in this lawsuit, you will be bound by its outcome, which includes sharing in any monetary judgment or settlement that may be secured. You give up any rights to separately sue Fastaff about the same legal claims in this lawsuit.</p> <p>To be included in this lawsuit, you must complete, sign, and return the enclosed Consent to Join Form by 75 days of mailing. Please see options for returning your Consent to Join Form below.</p>
DO NOTHING	<p>If you do not want to participate in this lawsuit, you do not need to do anything. If you do nothing, you will not be bound by any outcome in this litigation and may retain your right to sue Fastaff separately. However, the statute of limitations on the FLSA overtime claims in this case will continue to run, and you will not be able to later elect to participate in this action. Further, if this action results in a money judgment or settlement, you will not be able to receive any portion of those benefits.</p>

How do I participate in the lawsuit?

To participate in the lawsuit, you must complete, sign, and return the enclosed Consent to Join Form by **75 days of mailing**. There are two ways for you to return your Consent to Join Form:

Option 1 – Mail Your Consent to Join Form: You can mail your completed and signed Consent to Join Form to the notice administrator using the postage pre-paid return envelope enclosed with this Notice.

Option 2 – Electronically Submit Your Consent to Join Form: You can complete, sign, and submit your Consent to Join Form online by going to **website**.

What are my options?

You have two options.

Option 1 – Participate in the Lawsuit: Your first option is to participate in this lawsuit by returning your Consent to Join Form as described above. If you do that, you will (a) join the litigation as an opt-in plaintiff, (b) be bound by any judgment in the case, and (c) have the opportunity to share in any monetary judgment or settlement that might be secured in this case. You will be giving up your right to separately sue Fastaff regarding the claims in this case. If you choose to join the lawsuit, you may be asked to give testimony or information about your work for Fastaff.

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Option 2 – Do Nothing, Do Not Participate in the Lawsuit: Your second option is to do nothing. If you do nothing, you will not participate in the lawsuit. You will not be bound by any judgment in the lawsuit and will not share in any potential monetary judgment or settlement. You will preserve your right to separately sue Fastaff regarding the claims in this case at your own expense. Your statute of limitations for the FLSA overtime claims in this case will continue to run.

Why did I get this Notice?

You received this Notice because Fastaff's records show you are a member of the following group of people that the Court authorized to receive this Notice and be given an opportunity to participate in this lawsuit:

All travel healthcare professionals currently or formerly employed by Fastaff or U.S. Nursing Corporation who (1) worked more than 40 hours in a workweek from February 16, 2020 until the date of the Court's conditional certification order and (2) who received a "Housing Stipend" (or its equivalent by any other name) that was not included in their regular rate of pay during a workweek where they worked more than 40 hours.

If you meet this definition, you are eligible to participate in this lawsuit to recover overtime pay. If you still have questions about whether you are eligible to participate in the lawsuit, please contact the Notice Administrator at [phone number] or [email] or visit [website].

What are the Plaintiffs asking for?

The Plaintiffs are asking the Court to award them and similarly situated employees any unpaid overtime wages during the relevant time period, along with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and the costs of this action.

Do I have a lawyer?

If you opt to join the collective, you will be represented by Plaintiffs' counsel, who will commonly represent the interests of Plaintiffs, and all similarly situated employees that join this lawsuit. You do not have to separately pay Plaintiffs' counsel. If the lawsuit results in a money judgment or settlement, Plaintiffs' Counsel, at their option and depending on the circumstances, will seek their attorneys' fees and costs as a percentage of the overall recovery, or to be separately paid by Fastaff, all subject to Court approval. You may alternatively choose to retain your own counsel or represent yourself.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Egan et al. v. Fastaff LLC and U.S. Nursing Corp.

Case No. 1:22-cv-03364-RSM

Plaintiffs' Counsel are:

George A. Hanson
Alexander T. Ricke
Crystal Cook Leftridge
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112

What if I have questions about this Notice or need more information?

This Notice is only a summary of your rights. If you have any questions about this Notice, how to participate in the lawsuit, or anything else, then you may contact Plaintiffs' Counsel through the Notice Administrator at [phone number] or [email]. You can also find more information about the lawsuit at [website]. A copy of the Plaintiff's Complaint outlining the claims in this lawsuit, the Court's Order authorizing this Notice, and other pertinent documents are posted on the website.

The Court is not able to answer questions about the lawsuit or this Notice. Please contact Plaintiffs' Counsel through the Notice Administrator if you have questions or need additional information.

This is a Court approved Notice. This is not a solicitation or advertisement.

EXHIBIT B

Consent to Join
(U.S. Mail Version)

If the pre-printed information to the left is not correct or if there is no pre-printed information, please complete the information below:

<<First>> <<Last>>

Name: _____

<<Address1>>

Address: _____

<<City>>

City: _____

<<State>> <<Zip>>

State: _____ Zip Code: _____

<<Email>>

Email: _____

<<Telephone Number>>

Telephone: _____

<<Work Location>>

Work Location: _____

<<Job Title>>

<<Company Employee ID>>

Company Employee ID: _____

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Egan et al. v. Fastaff, LLC and U.S. Nursing Corp.

Case No. 2:22-cv-03364-MEH

CONSENT TO JOIN

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

I CONSENT TO JOIN THIS LAWSUIT seeking unpaid overtime wages and other damages against Defendants and any related entities. By joining this lawsuit, I designate the Named Plaintiffs and such other class representatives as the Court may subsequently appoint, as my representatives, and allow the class representatives, in consultation with Plaintiffs' counsel, to the fullest extent possible, to make decisions on my behalf concerning the case, the method and manner of conducting the case, including settlement, the entering of an agreement with counsel regarding payment of attorneys' fees and court costs, and all other matters pertaining to this lawsuit to the fullest extent permitted by law. I choose to be represented by Stueve Siegel Hanson LLP and any other counsel with whom they may associate. I understand that I will be bound by any ruling, settlement, or judgment whether favorable or unfavorable. I agree to keep counsel updated as to any change in my contact information, including any change to my mailing address, email, and telephone. I consent to counsel contacting me via U.S. Mail, email, and text message.

Printed Name: _____

Signature: _____

THE DEADLINE FOR SUBMITTING THIS FORM IS [75 DAYS OF MAILING]

YOU CAN SUBMIT THIS FORM ONLINE AT [WEBSITE]

Consent to Join
(Online Version)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Egan et al. v. Fastaff, LLC and U.S. Nursing Corp.

Case No. Case No. 1:22-cv-03364-MEH

CONSENT TO JOIN

Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)

I CONSENT TO JOIN THIS LAWSUIT seeking unpaid overtime wages and other damages against Defendant and any related entities. By joining this lawsuit, I designate the Named Plaintiffs and such other class representatives as the Court may subsequently appoint, as my representatives, and allow the class representatives, in consultation with Plaintiffs' counsel, to the fullest extent possible, to make decisions on my behalf concerning the case, the method and manner of conducting the case, including settlement, the entering of an agreement with counsel regarding payment of attorneys' fees and court costs, and all other matters pertaining to this lawsuit to the fullest extent permitted by law. I choose to be represented by Stueve Siegel Hanson LLP and any other counsel with whom they may associate. I understand that I will be bound by any ruling, settlement, or judgment whether favorable or unfavorable. I agree to keep counsel updated as to any change in my contact information, including any change to my mailing address, email, and telephone. I consent to counsel contacting me via U.S. Mail, email, and text message.

Printed Name: _____

Signature: _____

Address: _____

City: _____

State: _____ Zip Code: _____

Email: _____

Telephone: _____

Company Employee ID: _____

THE DEADLINE FOR SUBMITTING THIS FORM IS [75 DAYS OF MAILING]