

**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

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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