

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KOFI CAMPBELL, *et al.*

Plaintiffs,

v.

C.R. ENGLAND, INC., *et al.*

Defendants.

STIPULATION TO CONDITIONALLY
CERTIFY AS COLLECTIVE ACTION
AND SEND COURT SUPERVISED
NOTICE

ORDER

No. 13-262

The Parties, by and through undersigned counsel, hereby stipulate and agree as follows:

a. WHEREAS, Plaintiffs filed the instant matter on April 11, 2013 asserting that they and all other over-the-road truck drivers employed by Defendants were denied minimum wage as required by the FLSA, (Doc. No. 2);

b. WHEREAS, Defendants answered the lawsuit on May 17, 2013, and denied and continue to deny that they violated the FLSA with respect to Plaintiffs or other over-the-road truck drivers, (Doc. No. 18);

c. WHEREAS, on July 22, 2013, Plaintiffs filed a Motion to Conditionally Certify this Matter as a Collective Action Pursuant to §216(b) of the FLSA and to Facilitate Notice to Class Members, (Doc. No. 32) (the “Motion”);

d. WHEREAS, on August 8, 2013, Defendants filed a Response to the Motion, wherein Defendants, while maintaining that they did not violate the FLSA with respect to Plaintiffs or other over-the-road truck drivers of Defendants, did not oppose this Court conditionally certifying this matter as collective action pursuant to §216(b) of the FLSA, but where Defendants objected to portions of the notice procedure and language sought by Plaintiffs in the Motion.

e. WHEREAS, without conceding their respective legal positions, the Parties engaged in discussions to resolve the outstanding disputed issues in the Motion, and have come to an agreement regarding the language in the notice and the procedure for facilitating same;

NOW WHEREFORE, the Parties agree and stipulate as follows:

1. The instant matter shall be conditionally certified as a collective action, pursuant to §216(b) of the FLSA, on behalf of all over-the-road truck drivers who were employed by C.R. England at any point from July 22, 2010 through the present.

2. The decision by Defendants not to oppose the conditional certification of the FLSA collective action does not constitute an admission that the named Plaintiffs are similarly situated to the described class or that this action meets the conditions necessary for certification of a FLSA collective action. Defendants retain the right to move to decertify the collective action and/or oppose any request by Plaintiff for final certification.

3. Defendants shall provide to Plaintiffs' counsel, by no later than September 9, 2013, an importable list of all class members in an electronic spreadsheet containing, in separate columns, the first name, last name, street address, city, state, zip code, and country of each class member (the "Spreadsheet").

4. Plaintiffs' counsel shall, by no later than September 30, 2013, send via First Class mail the 3-page "Important Notification to Class Members" and the 1-page "Consent to Join Lawsuit" Form to each individual identified as a class member. A copy of this Notice and Consent Form is attached hereto as "Exhibit A."

5. Plaintiffs' counsel may, without leave of Court or further agreement from Defendants, provide the contact information for Plaintiffs' Firm in the Notice and Consent Form attached as "Exhibit A" (the space for such information is currently highlighted and marked "to be

provided”), provided that Plaintiffs’ counsel must provide a copy of such changes to Defendants’ counsel prior to mailing same.


6. All potential class members may join this lawsuit by: (1) mailing a copy of the “Consent to Join Lawsuit” Form to Plaintiffs’ counsel, provided that it is placed in the mail on or before December 31, 2013; (2) e-mailing or faxing a copy of the “Consent to Join Lawsuit” Form to Plaintiffs’ counsel, provided it is sent via e-mail or fax on or before December 31, 2013; or (3) submitting an online “Consent for Join Lawsuit Form,” provided it is submitted on or before December 31, 2013.

7. Defendants retain all defenses, including without limitation, the defense that the statute of limitations bars, in whole or in part, the claims of any individual who opts into this lawsuit as a Plaintiff.

8. This Court shall hold an in-person status conference to determine the appropriate scheduling for the remainder of the case on January 16, 2014, ~~in the am/pm.~~ at 3:00 p.m.

<p><u>/s/ Justin L. Swidler</u> Justin L. Swidler, Esq. Richards S. Swartz, Esq. SWARTZ SWIDLER, LLC 1878 Marlton Pike East, Ste. 10 Cherry Hill, NJ 08003</p> <p>Counsel for Plaintiffs</p>	<p><u>/s/ Michael Blue</u> Michael Blue, Esq. Scott Hagen, Esq. RAY QUINNEY & NEBEKER, P.C. 36 South State Street, Suite 1400 Salt Lake City, UT 84111</p> <p>Counsel for Defendants</p>
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SO ORDERED


~~The Honorable Paul M. Warner, USMJ~~
Clark Waddoups
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KOFI CAMPBELL, et al. v. C.R. ENGLAND, INC. et al.

Case No. 2:13-cv-00262-CW

IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH.

THE COURT HAS NOT YET ISSUED AN OPINION REGARDING THE MERITS OF THIS LITIGATION.

Please read carefully. Your legal rights may be affected.

TO: Any and all over-the-road truck drivers who were employed by C.R. England at any point from July 22, 2010 to the present.

FROM: Counsel for Plaintiffs

RE: LAWSUIT ASSERTING VIOLATIONS OF FEDERAL WAGE LAWS AGAINST C.R. ENGLAND

RESPONSE DUE: **DECEMBER 31, 2013.**

INTRODUCTION

This Notice is being sent to you by Order and under supervision of the United States District Court for the District of Utah. The purpose of this notice is: (1) to inform you of the existence of a collective class action lawsuit filed against C.R. England; (2) to advise you of how your rights may be affected by this lawsuit; and (3) to instruct you on the procedure for participating in this lawsuit. You have been sent this notice because employment records indicate that you are an eligible class member.

DESCRIPTION OF LAWSUIT

Eight over-the-road truck drivers, Kofi Campbell, Billy Brooks, Howard Brooks, Charlie Smiley III, Eric Diggins, Michael Atkins, Caleb Jackson, and Christopher Kelly (“Representative

Plaintiffs”), brought this lawsuit against C.R. England on behalf of themselves and all C.R. England employees who have worked for C.R. England as an over-the-road truck driver at any point from July 22, 2010 to the present. The Representative Plaintiffs contend that C.R. England failed to pay them for compensable time spent in training, in orientation, in testing, in a sleeper berth and for compensable breaks and waiting time, and as a result, paid them under minimum wage.

C. R. England denies Plaintiffs’ allegations and is defending against Plaintiffs’ claims.

Plaintiffs' claims in this action are limited to a two or potentially three-year "statute of limitations." If you choose to join this action, you may be able to recover damages only for hours worked within this time period.

The Representative Plaintiffs have sued C.R. England to recover all wages due on behalf of the entire class. The Representative Plaintiffs are also seeking liquidated damages, attorney’s fees, and costs. If you elect to join and Plaintiffs are successful, you may receive compensation.

HOW TO JOIN THIS LAWSUIT

You may join this lawsuit by completing the attached “Consent to Join Lawsuit” Form (“Consent Form”) and returning it in the mail in the enclosed, pre-stamped and self-addressed envelope. You may also join the lawsuit by completing the attached Consent Form and faxing it to [fax number to be provided] or emailing it to [email address to be provided]. In the alternative, you may complete the Consent Form online at <http://www.swartz-legal.com>.

If you wish to join this lawsuit, you must return the Consent Form or complete the online Consent form by no later than December 31, 2013.

NO RETALIATION PERMITTED

If you are a current employee or contractor of C.R. England, you will not be retaliated against for joining this lawsuit. Under federal law, it is illegal for C.R. England to terminate you or retaliate against you for joining this lawsuit. C.R. England has confirmed that it will not take any retaliatory measures against anyone who joins this lawsuit.

EFFECT OF NOT JOINING THIS LAWSUIT

If you do not file a Consent Form to join in this lawsuit, you will not participate in this lawsuit and will not be bound by, nor will you receive any compensation from, any judgment or settlement. If you so choose, you may pursue your claims on your own. The pendency of this

lawsuit, however, will not stop the running of that statute of limitations as to such claims unless you opt-in by returning the Consent Form. In other words, you may lose some or all of your rights if you do not act now.

NO OPINIONS EXPRESSED AS TO THE MERITS OF THE CASE

This Notice is for the sole purpose of determining the identity of those persons who may be entitled to and wish to participate in this lawsuit and any potential judgment or settlement. The Court has expressed no opinion regarding the merits of Plaintiffs' claims or C.R. England's defenses, and individual claims may be subject to later dismissal if the Court ultimately finds that the claims lack merit or that they cannot be litigated on a class-wide basis.

QUESTIONS REGARDING THIS NOTICE

If you have any questions regarding this Notice, you can contact Justin L. Swidler, Esq. or Richard Swartz, Esq. of Swartz Swidler, LLC, the attorneys representing the class of employees. Their phone number is [to be provided] or toll free at [to be provided]. You can also receive more information regarding this notice and the lawsuit at <http://www.swartz-legal.com>.

LEGAL COUNSEL

If you choose to join this case by filing a Consent Form, you will be agreeing to representation by Plaintiffs' attorneys, identified below:

Justin L. Swidler, Esq.
Richard S. Swartz, Esq.
Swartz Swidler, LLC
1878 Marlton Pike East, Ste. 10
Cherry Hill, NJ 08003

Website: <http://www.swartz-legal.com>
Phone: [to be provided]
Fax: [to be provided]
Toll Free: [to be provided]
Email: [to be provided]

Plaintiffs' attorneys have taken this case on a contingency fee. They may be entitled to receive attorneys' fees and costs from C.R. England should there be a recovery or judgment in favor of the Plaintiffs. If there is a recovery, Plaintiffs' attorneys will apply to receive 1/3 of any settlement obtained or money judgment entered in favor of all members of the class or their fees will be paid separately by C.R. England. If there is no recovery or judgment in Plaintiffs' favor, Plaintiffs' attorneys will not seek any attorney's fees or costs from anyone.

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

KOFI CAMPBELL, *et al.*, on behalf of
themselves and all those similarly situated,

Plaintiffs,

v.

C.R. ENGLAND, INC., *et al.*

Defendants.

No. 13-262

CONSENT TO JOIN LAWSUIT

I, the undersigned, hereby consent to be an Opt-In Party Plaintiff in the above-captioned matter which seeks to recover compensation for minimum wage not paid as required by the Fair Labor Standards Act. I was employed by C.R. England as an over-the-road truck driver within the last three years. I wish to be included as a party and to be bound by any judgment in the claims being asserted against C.R. England by former and current employees of C.R. England and I hereby give consent to Swartz Swidler, LLC, to bring suit against C.R. England on my behalf under the Fair Labor Standards Act. I further designate Swartz Swidler, LLC and the Representative Plaintiffs as my agents in making decisions on my behalf in this litigation, including entering into settlement agreements pertaining to this matter.

Full Name

Signature/Date

Street Address

City, State, and Zip

Telephone Number

Email Address (Optional)

You may return this form by mail in the self-addressed, pre-stamped envelope provided. You may also return this form by e-mail to [to be provided] or by fax at [to be provided]. You may also complete a digital copy of this form online at <http://www.swartz-legal.com>.