

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION: Passé

CIVIL CASE NO. 2016-10362

v.

500 Jansen, Inc., et al.

NATURE OF MATTER FILED: *(please check one)*

- | | | |
|--|--|--|
| <input type="checkbox"/> Petition Pursuant to Rule 206.1 | <input type="checkbox"/> Response to Petition | <input type="checkbox"/> Motion for Judgment on the Pleadings Pursuant to Rule 1034(a) |
| <input type="checkbox"/> Motion Pursuant to Rule 208.1 | <input checked="" type="checkbox"/> Response to Motion | <input type="checkbox"/> Summary Judgment Pursuant to Rule 1035.2 |
| <input type="checkbox"/> Family Law Petition/Motion Pursuant to Rule 206.8 | | |

FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE DATE OR HEARING DATE UPON ALL PARTIES

A motion or petition was filed in the above captioned matter on the ___ day of _____, _____, which:

Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date _____, _____.

Requires all parties, to appear at a hearing/conference on the ___ day of _____, _____, at ___ in Courtroom ___, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: _____, _____ at 10:00 AM in Courtroom _____.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

Has been assigned to Judge Charles B. Burr, II.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

Carmen P. Belefonte, Esquire
SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.
20 West Third Street
P.O. Box 1670
Media, PA 19063
(610) 627-9777

FILED

2017 JUL -6 AM 8:43

OFFICE OF JUDICIAL SUPPORT
DELAWARE CO. PA.

Attorney for Plaintiff and the Class (additional counsel listed on signature page)

ALEXANDRIA PASSE, on behalf of
herself and others similarly situated,

Plaintiff,

v.

500 JANSEN, INC. (d/b/a "Lou Turk's")
and CHRISTOPHER L. SADDIC,

Defendants.

:
: COURT OF COMMON PLEAS
: DELAWARE COUNTY
:
: CASE ID: 2016-10362
:
: CLASS ACTION
:
: NON-JURY TRIAL
:
:
:

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR CLASS DECERTIFICATION**

Plaintiff, Alexandria Passe, on behalf of herself and the certified class, through her undersigned counsel, hereby responds to Defendants' Motion for Class Decertification as follows:

1. Admitted.
2. Admitted. By way of further answer, in their opposition to Plaintiff's Motion for Class Certification, Defendants argued that Plaintiff had failed to satisfy Civil Rule 1702(2)'s commonality requirement and Civil Rule 1705(5)'s fair and efficient method of adjudication requirement. In support of their second argument, Defendants cited to the existence of Entertainer License Agreements containing purported arbitration clauses. *See* Def. Class Cert. Opp. at pp. 2, 3.
3. Admitted in part, denied in part. It is admitted that Defendants filed a Petition to

Compel Arbitration on April 20, 2017 based upon the Entertainer License Agreement. The remaining averments in this paragraph are denied.

4. Admitted.

5. Admitted in part, denied in part. It is admitted that Defendants accurately quotes Plaintiff's Response to Defendants' Petition to Compel Arbitration. It is denied that this filing by Plaintiff was the first time Defendants were informed that Plaintiff had not signed such an agreement. On the contrary, Defendants have been aware that Plaintiff was seeking to proceed on a class-wide basis since this lawsuit was originally filed in the Philadelphia Court of Common Pleas on *March 16, 2016*. A quick review by Defendants of their business records during the 12 months this lawsuit was pending before Plaintiff filed her class certification motion would have confirmed that she did not sign an Entertainer License Agreement. This fact was only confirmed by Defendants' failure to attach an Entertainer License Agreement signed by Plaintiff to their opposition to Plaintiff's Motion for Class Certification that Defendants filed on April 10, 2017 or their Motion to Compel Arbitration that they filed on April 20, 2017. By failing to previously raise the lack of a signed Entertainer License Agreement by Plaintiff, Defendants have waived any arguments concerning this issue.

6. Admitted in part, denied in part. It is admitted that Defendant accurately quotes Plaintiff's Opposition to Defendants' Motion to Compel Arbitration. It is denied that this filing by Plaintiff was the first time Defendants became aware that Plaintiff had not signed such an agreement. *See* Response to Paragraph 5 *supra*.

7. Admitted in part, denied in part. It is admitted that Plaintiff agreed that the language of the Entertainer License Agreement referenced by Defendants was accurately quoted. It is denied that the purported arbitration clause is enforceable. The mere existence of an

arbitration clause does not automatically mean that those class members who purportedly signed an Entertainer License Agreement are precluded from pursuing the Pennsylvania Minimum Wage Act and Pennsylvania Wage Payment and Collection Law claims as members of the certified class in this case. It is not uncommon for courts to find that similar wage claims are either outside the scope of an arbitration clause or that the arbitration clause is otherwise unenforceable. *See, e.g., Hertzfeld v. 1416 Chancellor, Inc.*, 666 Fed. Appx. 124 (3d Cir. 2016); *Kelkis v. TruGreen Limited Partnership*, 2013 Phila. Ct. Com. Pl. LEXIS 206 (Pa. C.C.P, Phila. Cty. June 19, 2013); *Sylanski v. Trugreen Ltd. Partnership*, 2012 U.S. Dist. LEXIS 186303 (E.D. Pa. June 13, 2012); *see also Novosad v. Broomall Operating Co. LP*, 2017 U.S. App. LEXIS 6120 (3d Cir. Apr. 10, 2017); *Noble v. Samsung Elecs. Am., Inc.*, 2017 U.S. App. LEXIS 3841 (3d Cir. Mar. 2, 2017). As our Superior Court has warned, “the existence of an arbitration provision and a liberal policy favoring arbitration does not require the rubber stamping of all disputes as subject to arbitration.” *McNulty v. H&R Block, Inc.*, 843 A.2d 1267, 1271 (Pa. Super. Ct. 2004).

8. Admitted in part, denied in part. It is admitted that Defendant accurately quotes Plaintiff’s Opposition to Defendants’ Petition to Compel Arbitration. It is denied that this filing by Plaintiff was the first time Defendants became aware that Plaintiff had not signed such an agreement. *See Response to Paragraph 5 supra.*

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted

13. Denied. Plaintiff lacks knowledge sufficient to form a belief as to the truth of the

factual assertions in this paragraph.

14. Admitted in part, denied in part. It is admitted that Plaintiff did not sign an Entertainer License Agreement. It is denied that this is the first time the Defendants became aware that Plaintiff did not sign such an agreement. *See* Response to Paragraph 5 *supra*.

15. Denied. Plaintiff lacks knowledge sufficient to form a belief as to the truth of the factual assertions in this paragraph. By way of further answer, Defendants fail to provide numerical support for what supposedly constitutes “[t]he overwhelming majority of class members” which is vague and ambiguous. Moreover, the mere existence of an arbitration clause does not automatically mean that those class members who purportedly signed an Entertainer License Agreement are precluded from pursuing the Pennsylvania Minimum Wage Act and Pennsylvania Wage Payment and Collection Law claims as members of the certified class. It is not uncommon for courts to find that similar wage claims are either outside the scope of an arbitration clause or that the arbitration clause is otherwise unenforceable. *See, e.g., Hertzfeld v. 1416 Chancellor, Inc.*, 666 Fed. Appx. 124 (3d Cir. 2016); *Kelkis v. TruGreen Limited Partnership*, 2013 Phila. Ct. Com. Pl. LEXIS 206 (Pa. C.C.P, Phila. Cty. June 19, 2013); *Sylanski v. Trugreen Ltd. Partnership*, 2012 U.S. Dist. LEXIS 186303 (E.D. Pa. June 13, 2012); *see also Novosad v. Broomall Operating Co. LP*, 2017 U.S. App. LEXIS 6120 (3d Cir. Apr. 10, 2017); *Noble v. Samsung Elecs. Am., Inc.*, 2017 U.S. App. LEXIS 3841 (3d Cir. Mar. 2, 2017). As our Superior Court has warned, “the existence of an arbitration provision and a liberal policy favoring arbitration does not require the rubber stamping of all disputes as subject to arbitration.” *McNulty v. H&R Block, Inc.*, 843 A.2d 1267, 1271 (Pa. Super. Ct. 2004).

16. Admitted in part, denied in part. It is admitted that Defendants correctly paraphrase Civil Rule 1710(d). It is denied that the Court’s class certification order should be

revoked here. *See* Response to Paragraph 5 *supra* and Response to Paragraphs 21, 23 *infra*.

17. Admitted in part, denied in part. It is admitted that Defendants accurately quote the Superior Court's *Janick* opinion. It is denied that there have been any "developments" since the filing of Plaintiff's Motion for Class Certification on March 20, 2017 which would warrant the alteration, modification or revocation of the Court's April 27, 2017 class certification order. *See* Response to Paragraph 5 *supra* and Response to Paragraphs 21, 23 *infra*.

18. Denied. As discussed in Response to Paragraph 5 *supra*, the fact that Plaintiff did not sign an Entertainer License Agreement is not a new revelation and any arguments that Defendants could have made regarding this fact were waived by their failure to raise this issue during the class certification briefing. Moreover, Plaintiff still satisfies each of the prerequisites for class certification. *See* Response to Paragraphs 21, 23 *infra*.

19. Admitted. By way of further answer, *see* Response to Paragraph 21 *infra* demonstrating how Plaintiff satisfies the typicality requirement.

20. Admitted. By way of further answer, *see* Response to Paragraph 21 *infra* demonstrating how Plaintiff satisfies the typicality requirement.

21. Denied. As discussed in Response to Paragraph 5 *supra*, the fact that Plaintiff did not sign an Entertainer License Agreement is not a new revelation and any arguments that Defendants could have made regarding this fact were waived by their failure to previously raise this issue. By way of further answer, the purpose of the typicality requirement "is to determine whether the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." *Janicik v. Prudential Ins. Co. of America*, 451 A.2d 451, 457 (Pa. Super. 1982). Put differently, the court *merely* must be satisfied that "the interests of

the class representative sufficiently comport with those of the proposed class to ensure fair representation of absentee class members.” *Baldassari v. Suburban Cable TV Co.*, 808 A.2d 184, 193 (Pa. Super. 2002). Factual differences between the individual claims of the named plaintiff and absent class members do not prohibit a typicality finding if the legal claims arise from the same alleged course of conduct. *See id.* As discussed in Plaintiff’s Motion for Class Certification, the typicality requirement is easily satisfied here because the common issues challenged by Plaintiff in her individual capacity and on behalf of the class concern Defendants’ admitted uniform practices of: (i) not paying Dancers any compensation for performing at the Club; and (ii) making various deductions to Dancers’ compensation from Club patrons. In this regard, Plaintiff’s interests are exactly aligned with the interests of the Class, and there is no reason to doubt that Plaintiff’s pursuit of her Pennsylvania Minimum Wage Act and Pennsylvania Wage Payment and Collection Law rights will advance the interests of the Class. Defendants have failed to show that Plaintiff’s position on these common issues is not sufficiently aligned with those of the Class. Whether or not Plaintiff signed an Entertainer License Agreement is irrelevant to this analysis because the enforceability of the arbitration clause is a merits issue which is not before the Court at the certification stage. *See* Explanatory Comment to Civil Rule 1707 (“The [class certification hearing] is confined to a consideration of the class action allegations and is not concerned with the merits of the controversy or with attacks on the other averments of the complaint. Its only purpose is to decide whether the action shall continue as a class action or as an action with individual parties only.”). Even if consideration of the arbitration clause in Entertainer License Agreement was a relevant consideration at this stage, it is not automatic that the arbitration clause will be enforceable against those Class Members who signed the agreement. *See* Response to Paragraph 15 *supra*.

22. Denied. *See* Response to Paragraph 21 *supra*.

23. Admitted in part, denied in part. It is admitted that Defendants accurately quote Civil Rule 1708(5). It is denied that the existence of the Entertainer License Agreement justifies the decertification of the Class or demonstrates that a certification of this case as a class is not a fair and efficient method of adjudicating this controversy. Defendants are merely regurgitating the argument from their opposition to Plaintiff's Motion for Class Certification that the fair and efficient method for adjudication requirement was not satisfied. *See* Response to Paragraph 2.¹ This argument was already rejected by the Court when it granted Plaintiff's Motion for Class Certification.

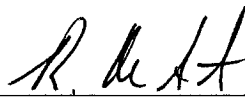
24. Denied. As discussed in Response to Paragraph 15 *supra*, the "overwhelming majority of the class members" is vague and ambiguous and Defendants fail to provide numerical support for this assertion. By way of further answer, Defendants are merely regurgitating the argument from their opposition to Plaintiff's Motion for Class Certification that the fair and efficient method for adjudication requirement was not satisfied. *See* Response to Paragraph 2. This argument was already rejected by the Court when it granted Plaintiff's Motion for Class Certification. Finally, as discussed in Response to Paragraph 21 *supra*, the enforceability of the arbitration clause in the Entertainer License Agreement is a merits issue that is not properly before the Court at the certification stage.

WHEREFORE, Plaintiff respectfully requests this Honorable Court deny Defendants' Motion for Class Decertification.

¹ Defendants cited to Civil Rule 1702(5) in its opposition class certification, *see* Def. Opp. to Class Cert. at pp. 2, 3, which relies on the factors listed in Civil Rule 1708, *see* Civil Rule 1708(5) ("a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.").

Date: July 6, 2017

Respectfully submitted,



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Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies subject to the penalty of perjury that, on this date, the attached documents were served on the Defendants by delivering same to Defendants' counsel via electronic mail:

Thomas A. Musi, Esq.
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Date: July 6, 2017



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