

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)*

Petition Pursuant to Rule 206.1

Response to Petition

Motion for Judgment on the Pleadings Pursuant to Rule 1034(a)

Motion Pursuant to Rule 208.1

Response to Motion

Summary Judgment Pursuant to Rule 1035.2

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: _____

FILED

2017 JUL -6 AM 8:43

OFFICE OF JUDICIAL SUPPORT
DELAWARE CO. PA.

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

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

ALEXANDRIA PASSE, on behalf of herself and others similarly situated,	:	COURT OF COMMON PLEAS
	:	DELAWARE COUNTY
Plaintiff,	:	
v.	:	CASE ID: 2016-10362
	:	CLASS ACTION
500 JANSEN, INC. (d/b/a "Lou Turk's") and CHRISTOPHER L. SADDIC,	:	NON-JURY TRIAL
	:	
Defendants.	:	
	:	

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' EMERGENCY PETITION TO STAY**

Plaintiff, Alexandria Passe, on behalf of herself and the certified class, through her undersigned counsel, hereby responds to Defendants' Emergency Petition to Stay as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted in part, denied in part. It is admitted that Defendants have filed a "Motion for Class Decertification." It is denied that there have been any "development[s] related to Plaintiff's fitness to proceed as class representative" that would warrant the decertification of the Class. The fact that Plaintiff did not sign an agreement with Defendants containing a

purported arbitration clause is not a new revelation. 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 such an agreement. Furthermore, the lack of a signed agreement by Plaintiff was only confirmed by Defendants' failure to attach such an agreement to their opposition to Plaintiff's Motion for Class Certification filed on April 10, 2017 or their Motion to Compel Arbitration filed on April 20, 2017. Thus, Defendants have waived the arguments asserted in their Motion for Decertification.

7. Denied. First, Defendants have failed to provide Class Counsel advance notice of their Emergency Petition to Stay pursuant to L.R. 206.1(a)(3)(d) or attach a certification concerning their efforts to provide advance notice to their filing. Second, Defendants have failed to provide any support for their assertion that the sending the Court-approved Notice will cause confusion among Class Members. Third, as discussed in paragraph 6 *supra*, Defendants have waived arguments in their Motion for Decertification by failing to raise them until now. This includes Defendants' failure to file any response to Plaintiff's May 11, 2017 Motion for Approval of the Proposed Class Action Notice and Notification Process. However, since Defendants have failed to adhere to the Court's June 5, 2017 Order directing them to produce the names and last known addresses of all Class Members within 14 days, Class Counsel is unable to send the Notice to the Class, making moot the emergency relief sought by Defendants.

8. Denied. *See* Response to Paragraphs 6-7 *supra*. By way of further answer, the Sixth Circuit Court of Appeals recently upheld the sending of notice to a collective of approximately 80,000 employees asserting wage and hour claims under the federal Fair Labor

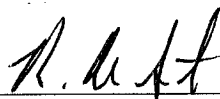
Standards Act¹ even though the employer asserted that approximately 50,000 of the employees signed arbitration agreements. *See Taylor v. Pilot Corp.*, 2017 U.S. App. LEXIS 11036 (6th Cir. June 19, 2017). As here, none of the named plaintiffs in Taylor had signed one of the arbitration agreements at issue. *Id.* at *5.

9. Denied. *See* Response to Paragraphs 6-7 *supra*. By way of further answer, the Court-approved Notice does not provide the Court's contact information, preventing "confused Class Members" from "contacting the Court for information."

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendants' Emergency Petition to Stay.

Date: July 6, 2017

Respectfully submitted,



Peter Winebrake, Esquire
R. Andrew Santillo, Esquire
Mark J. Gottesfeld, Esquire
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Carmen P. Belefonte, Esquire
SALTZ, MONGELUZZI, BARRETT &
BENDESKY, P.C.
20 West Third Street
P.O. Box 1670
Media, PA 19063

Justin M. Swartz, Esquire*
Melissa L. Stewart, Esquire*
**pro hac vice motions forthcoming*
OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor

¹ Fair Labor Standards Act collectives proceed pursuant to 29 U.S.C. § 216(b) and do not use the class action procedures of federal Civil Rule 23. *Id.* at *3.

New York, New York 10016


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.
Musi, Malone & Daubengerger, L.L.P.
21 West Third Street
Media, PA 19063

Date: July 6, 2017



R. Andrew Santillo, Esquire
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025