UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TAMELA ZIEMSKI,	)	**CASE NO.1:10CV2920**
	)	
Plaintiff,	)	**JUDGE CHRISTOPHER A. BOYKO**
	)	
Vs.	)	
	)	
P AND G HOSPITALITY GROUP, LLC	)	**OPINION AND ORDER**
	)	
Defendant.	)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Plaintiff Tamela Ziemski's Motion for Conditional Certification, Expedited Opt-In Discovery, and Court Supervised Notice to Potential Opt-In Plaintiffs (ECF # 9). This action is brought under the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 216(b), the Ohio Minimum Fair Wage Standards Act ("OMFWSA") O.R.C. § 4111.1(K), Fed. R. Civ. P. 26(d) and 83(b). On March 11, 2011, Defendant filed its Opposition to Plaintiff's Motion. For the following reasons, the Court grants Plaintiff's Motion.

Plaintiff was employed by Defendant as a housekeeper at a hotel (Hampton Inn). Defendant paid Plaintiff and similarly situated housekeepers a piece rate based on the number of hotel rooms they cleaned. Plaintiff contends she and those similarly situated were not paid at

least the applicable minimum wage under both federal and Ohio state law.

This is a collective action brought on behalf of Plaintiff and those similarly situated defined as:

> "All former and current housekeepers employed at a hotel owned and operated by P and G at any time between December 27, 2007 and the present."

Defendant contends the class, by its nature, is not appropriate for collective action because it will involve separate inquiry of each member to determine pay rates per hours worked since each was paid by number of rooms cleaned which varied widely from person to person. Also, Defendant contends the FLSA has a two year limitation period so the class definition is too broad as it looks back three years. The FLSA permits a three year limitation but only when violations are willful. Because there is no allegation of willfulness in the Complaint the two year limitation period is appropriate. Defendant further claims it changed its compensation policy in October 2010 wherein it stopped paying piece rate and changed to an hourly rate.

Plaintiff contends its burden of showing similarly situated members for conditional certification is slight at this stage in the proceedings and is supported by affidavits of Plaintiff and two opt-in members thus, satisfying its burden.

LAW

An employee may bring an action on behalf of himself and other "similarly situated" employees pursuant to 29 U.S.C. § 216(b). Unlike typical class actions, each employee wishing to join the collective action must affirmatively "opt-in" by filing written consent. 29 U.S.C. § 216(b). District courts have discretion to facilitate notice to potential plaintiffs. *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 169 (1989). Before facilitating notice, courts must determine whether the potential class members are similarly situated under Section 216(b) of the

FLSA.

The Sixth Circuit expressed approval for the two-phase test developed by the district courts in the Sixth Circuit. *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 547 (6th Cir. 2006). The first phase takes place at the beginning of discovery when the court has minimal evidence. *Id.* at 546. In the first phase, courts may grant conditional class certification upon a modest factual showing sufficient to demonstrate that the putative class members were the victims of a single decision, policy or plan. *Comer*, 454 F.3d at 547; *Goldman v. RadioShack Corp.*, No. 03-0032, 2003 U.S. Dist. LEXIS 7611, at *20 (E.D. Pa. Apr. 16, 2003). Plaintiffs must show that their "position is similar, not identical, to the positions held by the putative class members." *Id.* at 546-47. Plaintiffs must only establish some "factual nexus" between the Plaintiffs and the potential class members. *Harrison v. McDonald's Corp.*, 411 F. Supp. 2d 862, 868 (S.D. Ohio 2005) (citing *Jackson v. New York Tel. Co.*, 163 F.R.D. 429, 432 (S.D.N.Y. 1995)).

The second phase occurs once "all of the opt-in forms have been received and discovery has concluded." *Comer*, 454 F.3d at 546. During the second phase, courts have discretion to make a more thorough finding regarding the "similarly situated" requirement. *Id.* at 547. "If the claimants are similarly situated, the district court allows the representative action to proceed to trial. If the claimants are not similarly situated, the district court decertifies the class, and the opt-in plaintiffs are dismissed without prejudice." *Douglas v. GE Energy Reuter Stokes*, No. 07-077, 2007 U.S. Dist. LEXIS 32449, at *14 (N.D. Ohio Apr. 30, 2007) (quoting *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1218 (11th Cir. 2001)).

The Court finds Plaintiff has made the "modest factual showing" necessary for conditional certification under Section 216(b) of the FLSA. The affidavits of named Plaintiff

and two opt-in Plaintiffs fulfills the 'modest factual showing' that the opt-in plaintiffs were similarly employed and subject to a common payment policy. Furthermore, Plaintiff's Complaint does plead at paragraph 27 that Defendant's FLSA violation was willful, thus making the three year time period applicable at this stage of the proceedings. Finally, Plaintiff agrees that since Defendant changed its compensation policy on October 17, 2010, the applicable class period runs from December 27, 2007 to October 17, 2010.

Therefore, the Court grants Plaintiff's Motion to Conditionally Certify the Class, amending the class period as stated above to run from December 27, 2007 to October 17, 2010. IT IS SO ORDERED.

S/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge

April 12, 2011