

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

JOSE ROSILES-PEREZ,)
JESUS SANTIAGO-SALMORAN)
and ANDRES ALDANA-MORENO)
on behalf of themselves and all others)
similarly situated,)
)
Plaintiffs,)
v.)
)
SUPERIOR FORESTRY SERVICE, INC.,)
SCOTT BARSTOW and)
WILLIAM IOUP,)
)
Defendants.)

NO. 1:06-0006
JUDGE HAYNES

ORDER

Based upon the Court’s review of the record, the parties’ submissions and the argument of counsel at the July 16, 2007 conference, the Court concludes that the members of the alleged class are sufficiently numerous, approximately, 2,300 persons and that this action presents common questions of fact and law on the Defendant’s policies and practices concerning the payment of compensation and also the practices concerning pre-employment expenses for employees. Under the Sixth Circuit precedent, these claims presents substantial and common issues under the Fair Labor Standards Act (“FLSA”). The presence of common questions of law and fact is also reflected in the Defendant’s motion for partial summary judgment. (Docket Entry No. 175). The Court concludes that certification of this action as a collective action is superior and would serve the interests of justice.

Accordingly, it is **ORDERED** that this action is **PROVISIONALLY CERTIFIED** as a collective action under FLSA. The Court follows the Order certifying a collective action under the FLSA in James Cowan, et al v. Treetop Enterprises, Inc., No.3:98-cv-0623, M.D. Tenn. Docket

Entry No. 64. The parties are given ten (10) days from the date of entry of this Order to submit an Agreed Notice to potential claimants. If the parties are unable to agree on a notice, each counsel shall file a proposed notice with a statement of supporting reasons. See Hoffman Laroche v. Sperling, 493 U.S. 165 (1989) (discussing the FSLA requirements). Upon completion of discovery, the Defendant may move to revise this certification. Yates v. Wal-Mart Stores, Inc., 58 F.Supp.2d 1217, 1218-19 (D. Colo. 1999).


The Defendants motion for a partial summary judgment (Docket Entry No. 175) is **DENIED without prejudice** to renew upon completion of discovery. The Defendants motion for a protective order (Docket Entry No. 191) is **DENIED without prejudice** to renew after the Defendants' production of electronic information in the Court's Order.

The Court entered its Order on electronic discovery (Docket Entry No. 203) because from its review of the record and the material submitted, the Court was persuaded that serious deficiencies exist in the Defendant's current production. The Court notes the lack of an effective litigation hold to preserve evidence and discoverable information. See Zubulake v. UBS Warbang, 229 F.Supp.2d 422, 432-34 (S.D.N.Y. 2004). The Court's requirement that the Defendant compensate Plaintiff's computer expert for his work arises from the Court's finding of inadequacies and incompleteness of the Defendant's ESI production, as required by its Order of May 2, 2006. The May 2nd Order required the production of all of the Defendants electronic files and databases as requested by the Plaintiff in interrogatory one and/or production requests numbers one through three have been honored. As the Defendant requested, there will be a claw-back provision for the Defendant's electronic discovery for any confidential materials in the production of their database. The Defendant is granted the right to assert any privilege, subject to filing a privilege log.

A Status conference is set in this action for **Monday, October 22, 2007 at 10:00 a.m. in Columbia, Tennessee.** The purpose of that conference will be to ascertain the status of the Plaintiffs expert's review of the Defendant's electronic information and to set appropriate deadlines for additional discovery, dispositive motions, the final pretrial conference and trial.

It is so **ORDERED.**

ENTERED this the 17th day of July, 2007.


WILLIAM J. HAYNES, JR.
United States District Judge