IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISAAC HARRIS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:17-cv-01371
	)	
MEDICAL TRANSPORTATION MANAGEMENT, INC.,	)	
	)	
Defendant.	)	

REPLY IN SUPPORT OF PLAINTIFFS' CONDITIONAL MOTION TO TOLL LIMITATIONS PERIOD FOR PUTATIVE COLLECTIVE MEMBERS

Plaintiffs Isaac Harris, Darnell Frye, and Leo Franklin requested that the Court conditionally certify the collective action in this case on October 2, 2017. Plaintiffs explained that resolution of defendant Medical Transportation Management, Inc.'s (MTM) pending Motion to Dismiss was unnecessary to conditionally certify the collective action. To prevent harm to putative collective members, Plaintiffs alternatively requested that the Court toll the statute of limitations under the Fair Labor Standards Act (FLSA) if it decided to adjudicate MTM's motion to dismiss before the motion for conditional certification. Plaintiffs requested this equitable relief on the basis that, while awaiting the adjudication of what Plaintiffs, correctly, believed to be a futile attempt to dismiss the wage claims against MTM, putative collective members would lose their claims in the absence of notice from the Court. The Court stayed briefing of both the motion for conditional certification and the conditional motion to toll pending resolution of the motion to dismiss, which has now been denied.

As Plaintiffs explained in their conditional motion to toll, equitable tolling should be granted "to avoid prejudice to actual or potential opt-in plaintiffs that can arise from the unique

procedural posture of collective actions." *Antonio-Morales v. Bimbo's Best Produce, Inc.*, No. CIV.A.8:5105, 2009 WL 1591172, at *1 (E.D. La. Apr. 20, 2009) (collecting cases). Equitable tolling is available where plaintiffs have "diligently" pursued their rights and "extraordinary circumstances" exist to support the request for tolling. *Dyson v. District of Columbia*, 710 F.3d 415, 421–22 (D.C. Cir. 2013); *see also Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755 (2016).

Here, Plaintiffs have diligently pursued their rights and those of the putative collective, and extraordinary circumstances support tolling. Importantly, MTM does not assert that tolling will cause it any prejudice. Because the "[a]pplication of equitable tolling is solely within the Court's discretion," *Smith v. Holder*, 806 F. Supp. 2d 59, 62 (D.D.C. 2011), and at least some putative collective members will suffer great harm in the form of lost claims if tolling is denied while MTM will suffer no prejudice if tolling is granted, the Court should grant Plaintiffs' motion.

ARGUMENT

I. Plaintiffs Diligently Pursued Their Rights Under the FLSA.

Plaintiffs filed this action on behalf of themselves and others similarly situated on July 13, 2017, bringing individual claims, a putative collective action under the FLSA, and a putative class action under D.C. law. On September 6, 2017, MTM moved to dismiss the entire action. At that point, Plaintiffs attempted to negotiate tolling with MTM to prevent harm to putative opt-in plaintiffs while allowing space for the parties and the Court to separately brief and resolve MTM's motion to dismiss. When this attempt failed, Plaintiffs filed their motion for conditional certification and their conditional motion to toll on October 2, 2017, explaining that the Court need not decide MTM's motion to dismiss prior to granting conditional certification. *See* Pl. Mem. in Supp. of Mot. for Conditional Certification 1–2, 10–13 (Doc. 14-1); Pl. Mem. in Supp. of

Condition Mot. to Toll 1 (Doc. 15-1). On October 3, 2017, the Court stayed briefing on both the motion for conditional certification and the conditional motion to toll. *See* Minute Order of October 3, 2017. Plaintiffs nonetheless diligently pursued their rights by both putting MTM on notice of the putative collective action when they filed their complaint and moving for conditional certification within a month of MTM's first substantive filing in the case. *See Holland v. Florida*, 560 U.S. 631, 653 (2010) ("The diligence required for equitable tolling purposes is reasonable diligence, … not maximum feasible diligence.").

In response, MTM argues that tolling is unwarranted because the unknown putative collective members should have protected themselves by opting in—without having received any notice of this suit. Requiring putative collective members to intuit that a collective action is pending and to avail themselves of its potential benefits by opting in prior to receiving any notice that they could do so would place an unreasonable burden on potential collective members. *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989) (efficacy of collective action "depend[s] on employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate"). That a handful of putative collective members were able to connect with Plaintiffs and/or their counsel to do so shows that there is interest in the lawsuit but does not establish that the Court should impute knowledge of a pending collective action to all putative collective members, who received no notice.

MTM also argues that tolling is unwarranted because putative collective members should have filed their own lawsuits, but putative collective members generally are not—and should not be—required to file a separate lawsuit to obtain tolling when a putative collective action potentially covering them has already been filed. This is even more true here, where Plaintiffs' Complaint

demonstrates their intent to seek collective action status. *Cf. Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 880–81 (7th Cir. 2000) (articulating a similar rule in the context of a class member's intervention to appeal the denial of class certification where the named plaintiff was no longer an adequate representative to do so). Not only does this argument "ignore[] the realities of FLSA claims"—namely, that low wage workers will often be unaware of their legal rights or unable to attract counsel to pursue their low value individual claims—but "such an argument would go against ever applying equitable tolling to a potential opt-in." *Bergman v. Kindred Healthcare, Inc.*, 949 F. Supp. 2d 852, 861 (N.D. Ill. 2013). Putative collective members should be permitted to rely on Plaintiffs' diligent actions; requiring putative collective members to file their own subsequent lawsuits to protect their rights would undermine the very purposes of collective actions under the FLSA: "lower individual costs to vindicate rights by pooling of resources" for litigants and "efficient resolution in one proceeding of common issues of law and fact arising from the same alleged [unlawful] activity" for the judicial system. *Hoffmann-La Roche*, 493 U.S. at 170.

II. Extraordinary Circumstances Support Equitable Tolling.

In their motion, Plaintiffs explained that delays caused by "the time required for a court to rule on a motion … may be deemed an extraordinary circumstance justifying application of the equitable tolling doctrine." *Yahraes v. Rest. Assocs. Events Corp.*, NO. 10-CV-935 (SLT), 2011 WL 844963, at *2 (E.D.N.Y. Mar. 8, 2011) (collecting cases). MTM argues instead that the delay caused by its motion to dismiss is insufficient to rise to this level, but MTM's support for its position does not speak to the circumstances of this case.

First, MTM argues that "routine delays associated with the pace of litigation" do not justify tolling. That description does not apply here, where the Court stayed briefing on—and resolution

of—both the Motion for Conditional Certification and the Conditional Motion to Toll, pending the resolution of MTM's Motion to Dismiss. This case is thus not analogous to the cases cited by MTM, which concern delay only from the time between the filing of the motion for conditional certification and the court's rulings on that motion. *See Nicks v. Koch Meat Co.*, 265 F. Supp. 3d 841, 858 (N.D. Ill. 2017); *Sylvester v. Wintrust Fin. Corp.*, No. 12 C 01899, 2014 WL 10416989, at *2 (N.D. Ill. Sept. 26, 2014); *Garrison v. ConAgra Foods Packaged Food, LLC*, No. 4:12-cv-00737-SWW, 2013 WL 1247649, at *5 (E.D. Ark. Mar. 27, 2013); *Bitner v. Wyndham Vacation Resorts, Inc.*, 301 F.R.D. 354, 363 (W.D. Wis. 2014); *Greenstein v. Meredith Corp.*, No. 11-2399-RDR, 2013 WL 4028732, at *1 (D. Kan. Aug. 7, 2013); *Young v. Dollar Tree Stores, Inc.*, No. 11-cv-1840-REB-MJW, 2013 WL 1223613, at *1 (D. Colo. Mar. 25, 2013).

Second, the sole case MTM cites that considered delay resulting from a motion to dismiss, *MacGregor v. Farmers Ins. Exch.*, No. 2:10-CV-03088, 2011 WL 2731227 (D.S.C. July 13, 2011), is distinguishable. There, the plaintiff agreed to stay briefing of the motion for conditional certification until the resolution of the defendant's motion to dismiss. *Id.* at *1. Here, Plaintiffs requested that the Court decide the motion for conditional certification with dispatch and specifically argued that resolution of MTM's motion to dismiss was not necessary to conditionally certify the collective action. *See* Pl. Mem. in Supp. of Mot. for Conditional Certification 1–2, 10–13 (Doc. 14-1); Pl. Mem. in Supp. of Conditional Mot. to Toll 1 (Doc. 15-1). Thus, unlike in *MacGregor*, the delay resulting from the Court's decision to stay the motion for conditional certification over Plaintiffs' objection cannot be attributable to any action taken by Plaintiffs or

within Plaintiffs' control. *See Menominee Indian Tribe*, 136 S. Ct. at 756 (equitable tolling available where delay results from circumstances "beyond [litigant's] control").[1]

III. MTM Will Not Be Prejudiced by Tolling.

The Court's evaluation of the need for equitable tolling in this case, as with all equitable relief, should be guided by "the tradition in which courts of equity have sought to 'relieve the hardships which, from time to time, arise from a hard and fast adherence' to more absolute legal rules, which, if strictly applied, threaten the 'evils of archaic rigidity.'" *Holland*, 560 U.S. at 650 (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)). As such, evaluating a request for equitable tolling under the FLSA "should focus on fairness to both parties." *Kellgren v. Petco Animal Supplies, Inc.*, No. 13cv644-L (KSC), 2014 WL 2558688, at *4 (S.D. Cal. June 6, 2014). MTM does not assert that it will suffer any prejudice if the Court grants Plaintiffs' request for equitable tolling. In contrast, there is no dispute that putative collective members will be harmed if their claims are not tolled to account for the delay caused by MTM's unsuccessful motion to dismiss. Balancing the hardship that will be suffered by putative collective members and the lack of prejudice to MTM weighs heavily in favor of equitable tolling. *See id.* at *5 ("The potential opt-in plaintiffs could be unfairly prejudiced by the court's delay in resolving Petco's motion to dismiss. Petco is not unfairly prejudiced because the potential scope of its

[1] MTM suggests, as an alternative to Plaintiffs' requested relief, that the Court toll the statute of limitations only for the period between the filing of this motion and the Court's entry of its order adjudicating MTM's Motion to Dismiss on March 5, 2018, thereby accounting only for the period of time that resolution of the motion for conditional certification was delayed by the motion to dismiss. *See* MTM Opp'n to Conditional Mot. to Toll 2 n.1 (Doc. 32). Although Plaintiffs maintain that the period of tolling should be from the date of this motion until 90 days after the provision of notice to putative collective members, the proper end date under MTM's alternative formulation is April 27, 2018, because briefing did not resume on the motion for conditional certification until the Court entered a scheduling order that providing a briefing schedule—essentially lifting the Court's previous stay—on April 27, 2018. *See* Order of April 27, 2018 (Doc. 29); Minute Order of October 3, 2017.

liability was known when the Complaint was filed. … Petco alone possesses the identity of those persons and their work records (hours, pay, etc.) and it [is] unfair to assume that they could somehow become aware of this litigation without notification.").

CONCLUSION

For the above stated reasons and those in Plaintiffs' motion, the Court should exercise its discretion to equitably toll the statute of limitations for putative collective members from October 2, 2017, until 90 days after the notice has issued.

Dated: May 25, 2018

Respectfully submitted,

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