

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

TONY BRIDGES, et al.

CIVIL ACTION

VERSUS

NO. 16-448

**ABSOLUTE LAWN CARE
LA, LLC, et al.**

SECTION “G”(2)

ORDER

Presently pending before the Court is the “Motion for Conditional Certification and Class Certification” by Plaintiffs Tony Bridges, Jonas Theophile, Derek Chairs, and Juan Calderon (collectively “Plaintiffs”), wherein Plaintiffs seek to conditionally certify two classes of employees under the Fair Labor Standards Act (“FLSA”), as well as two classes pursuant to Federal Rule of Civil Procedure 23 for various state law claims.¹ Defendants Absolute Lawn Care LA, LLC (“Absolute Lawn Care”) and Robert L. Rogers (collectively “Defendants”) oppose the motion.² In opposition, Defendants argue that the FLSA is inapplicable in this case because Absolute Lawn Care is not a “business enterprise engaged in commerce” under the FLSA.³ Specifically, Defendants argue, Absolute Lawn Care may only be subject to the FLSA if its annual gross volume of sales meets or exceeds \$500,000 and if it engages in interstate commerce, instead of purely local business—standards that Defendants claim the company does not meet.⁴ Furthermore, Defendants contend, because Plaintiffs cannot maintain FLSA claims against Defendants, the Court should decline to exercise supplemental jurisdiction over their state-law claims, and therefore should not

¹ Rec. Doc. 20.

² Rec. Doc. 23.

³ *Id.* at 2–3.

⁴ *Id.* at 2.

certify Plaintiffs' Rule 23 classes either.⁵ In reply, Plaintiffs argue generally that Defendants improperly put forward merit-based arguments that are not relevant to the issue of conditional certification.⁶

Ordinarily, the determination of conditional certification "is made using a fairly lenient standard, and typically results in 'conditional certification' of a representative class."⁷ Generally, courts do not require more than "substantial allegations that the putative class members were together the victims of a single decision, policy, or plan" and only a modest factual basis is required.⁸ If conditional certification is granted, the case then proceeds through discovery as a class action to the "merits stage," at which time the defendants may move for decertification.⁹

Here, however, although Defendants raise a merits-based issue at the conditional certification stage, Defendants have pointed to binding Fifth Circuit precedent seriously calling into question whether Plaintiffs may state a FLSA claim against Defendants.¹⁰ If Defendants are correct, the Court may lack subject-matter jurisdiction to hear this matter, and may be barred from conditionally certifying either the FLSA or Rule 23 putative classes. Moreover, expedited resolution of this issue may be in order in light of the fact that Plaintiffs' filing of the instant claim has not tolled the applicable prescription period on the state law claims of Plaintiffs' two putative classes.¹¹

⁵ *Id.* at 9–10.

⁶ Rec. Doc. 26 at 1–2.

⁷ *Mooney v. Aramco Serv. Co.*, 54 F.3d 1207, 1214 (5th Cir. 1995).

⁸ *Id.* at 1214 n.8 (quoting *Sperling v. Hoffman-LaRoche, Inc.*, 118 F.R.D. 392, 407 (D.N.J. 1988)).

⁹ *Id.* at 1214.


¹⁰ *Williams v. Henagan*, 595 F.3d 610, 621 (5th Cir. 2010).

¹¹ Rec. Doc. 17 at 2.

Accordingly,

IT IS HEREBY ORDERED that the parties must brief the Court regarding whether Defendants' claims that the FLSA does not apply to Plaintiffs' claims because Absolute Lawn Care is not a "business enterprise engaged in commerce" under the FLSA is in fact a threshold jurisdictional question that the Court may or must address before considering the motion for conditional certification. Defendants' briefing is due to the Court by July 20, 2016. Plaintiffs' briefing must be submitted to the Court by July 27, 2016.

NEW ORLEANS, LOUISIANA, this 6th day of July, 2016.


NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE