

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
IN THE COLUMBIA DIVISION

Dianna Simons individually and on
behalf of other similarly situated
Consenters,

Plaintiff,

v.

Sylvan Food Systems, Inc.,

Defendant.

Case No.: 3:11-cv-00792-CMC

**CONSENT ORDER REGARDING
COUNTERCLAIMS**

Pursuant to Rules 15(a) and 13(e), Fed. R. Civ. P., the parties have jointly moved the court to permit the filing of an Amended Answer to Plaintiff's Verified Amended Complaint and leave for Defendant to file potential counterclaims within 30 days after the close of the opt-in period in this action. For good cause shown and for the reasons set forth below, the court grants the motion.

This matter has been conditionally certified by the court as a collective action under the Fair Labor Standards Act. On December 15, 2011, the court issued an Order Approving Notice and Consent Form. [Dkt. No. 88]. The approved Notice provided that "Defendant may . . . bring a countersuit" against those who opt into the action. [Dkt. No. 88-1, p. 3]. The court has ordered that the Notice and Consent Form be mailed to the conditionally certified group by January 9, 2012. [Dkt. No. 88]. The potential consenters will have until February 23, 2012 to opt into this matter. [Dkt. No. 88-1].

On December 13, 2011, Plaintiff filed a Verified Amended Complaint. [Dkt. No. 83]. On January 3, 2012, Defendant filed an Answer to Verified Amended Complaint and

Counterclaim. [Dkt. No. 91]. Given that the identity of the potential consenters will not be fully known until February 23, 2012, Plaintiff will have difficulty responding to Defendant's counterclaim. The parties have proposed that Defendant be permitted to file an Amended Answer by January 9, 2012 that eliminates the current counterclaim, but that Defendant be permitted 30 days from the February 23, 2012 opt-in deadline to file an amended pleading, which may assert any appropriate counterclaims once the identity of all consenters has been ascertained. Plaintiff and consenters would be permitted to assert any and all defenses and/or objections they may have to any counterclaims. The court approves the parties' proposal and grants the motion.

The parties are directed to make this order available to potential members of the collective action by including it with other materials available on Plaintiff's counsel's website.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
January 6, 2012