

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

THEODUS DAVIS, on behalf of himself)	
and those similarly situated,)	Case No. 3:16-cv-674
)	
<i>Plaintiff,</i>)	Judge Travis R. McDonough
)	
v.)	Magistrate Judge H. Bruce Guyton
)	
COLONIAL FREIGHT SYSTEMS, INC.,)	
PHOENIX LEASING OF TENNESSEE,)	
INC., RUBY MCBRIDE, and JOHN DOES)	
1-10,)	
)	
<i>Defendants.</i>)	

ORDER

Before the Court are Defendants’ motions for partial summary judgment (Doc. 119) and for decertification of the collective action under the Fair Labor Standards Act (“FLSA”) (Doc. 124). Both motions rely exclusively on a statute-of-limitations defense against Named Plaintiff Theodus Davis. (*See generally* Docs. 119, 124.) Specifically, Defendants argue that Davis’s FLSA claims are time-barred because he failed to file a written consent to join the FLSA collective action before the FLSA’s statute of limitations lapsed. (Doc. 123, at 7.) However, because Defendants have clearly and unambiguously waived this defense, both motions (Docs. 119, 124) will be **DENIED**.¹

Plaintiff filed his original complaint in the United States District Court for the District of New Jersey on September 20, 2016, on behalf of himself and those similarly situated. (Doc. 1.)

¹ Under the circumstances, the Court finds that oral argument on Defendants’ motion for partial summary judgment would not aid in the disposition of that motion and, accordingly, **DENIES** Defendants’ request for oral argument. (Doc. 123, at 1.)

On November 30, 2016, the case was transferred to this Court. (Docs. 12, 13.) Plaintiff amended his complaint on November 29, 2017. (Doc. 61.) Defendants' answer to the original complaint did not contain a statute-of-limitations defense, but their answer to the amended complaint did. (*See* Docs. 25, 62.) On February 5, 2018, in its response to Plaintiff's objection to Defendants' addition of the statute-of-limitations defense to their amended answer, Defendants stated, "Defendants did not have a statute of limitations defense against Plaintiff; he brought his claim within two years. So there was no basis to assert the defense. Plaintiff will not be prejudiced by Defendants adding the statute of limitations defense. Neither will the opt-in plaintiffs." (Doc. 82, at 15.) This statement by Defendants represented that the statute-of-limitations defense would not be used to bar Davis's claims, only as a defense against the opt-in plaintiffs.

There is a strong argument that Defendants waived their statute-of-limitations defense by neglecting to assert it for the first time until 329 days had passed. *Cf. Haskell v. Wash. Twp.*, 864 F.2d 1266, 1273 (6th Cir. 1988) ("[T]he interests of justice require . . . that the [defendants'] failure to raise the limitations defense in a timely fashion constitutes a waiver."). Even if the delay did not amount to a waiver of the statute-of-limitations defense, Defendants explicitly and deliberately waived the defense when they represented to the Court that they did not have a statute-of-limitations defense as to Davis and that he would not be prejudiced by their adding the statute-of-limitations defense in their amended complaint. *Day v. McDonough*, 547 U.S. 198, 202 (2006) ("[W]e would count it an abuse of discretion to override a [party's] deliberate waiver of a limitations defense.").

Defendants attempt to characterize their statement that they did not have a statute-of-limitations defense against Davis and that he would, therefore, not be prejudiced by their

addition of the defense in their amended answer as “an incorrect statement of law[.]” (Doc. 123, at 15 (citing *Paul v. I.N.S.*, 92 F. App’x 277, 279 n.1 (6th Cir. 2004) (concluding, in a context which did not involve a waivable defense, that incorrect statements that conflicted with a statute were not judicial admissions).) But Defendants’ statement did not simply “deal[] with opinions and legal conclusions[.]” *Paul*, 92 F. App’x at 279 n.1 (quoting *MacDonald v. Gen. Motors Corp.*, 110 F.3d 337, 341 (6th Cir. 1997)). Instead, the statement involved a matter within their discretion, specifically whether they intended to assert, or waive, a specific defense. Even if the statement that they “did not have a statute of limitations defense against [Davis]” was merely an incorrect statement, Defendants’ statement that “Plaintiff [would] not be prejudiced by Defendants adding the statute of limitations defense” was a waiver.

Because Defendants’ motions for partial summary judgment (Doc. 119) and decertification of the FLSA collective action (Doc. 124) rely entirely on the waived statute-of-limitations defense, both motions are hereby **DENIED**.

SO ORDERED.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE