UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Aulistar Mark, *et al.*,

Plaintiffs,

–v–

Gawker Media LLC, *et al.*,

Defendants.

13-cv-4347 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Before the Court is Plaintiffs' renewed and revised application for the Court to approve its plan to disseminate via social media court-authorized notice of this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Dkt. No. 119. Plaintiffs have also requested permission to disseminate notice of this action to a list of individuals who applied for internships with Defendant Gawker Media LLC, but for whom no further record of whether they worked as interns exist, that was recently produced by Defendants in discovery. The Court has also received and considered Defendants' response, *see* Dkt. No. 120, in which Defendants consent to Plaintiffs' social-media plan with two exceptions. Defendants oppose Plaintiffs' application to disseminate notice to all individuals appearing on a list of Gawker internship applicants. The Court denied without prejudice an earlier application to disseminate notice through various forms of social media on March 5, 2015. *See* Dkt. No. 100. For the reasons explained below, the Court hereby adopts Plaintiffs' renewed request to disseminate notice through social media, Dkt. No. 119, subject to the limitations requested by Defendants, Dkt. No. 120. The Court denies Plaintiffs' request for permission to disseminate notice to Gawker internship applicants for whom there exists no further evidence that they ever became Gawker interns.

Plaintiff's new social media plan tailors its proposed methods and forms of notice dissemination to reaching known former Gawker interns with a substantially similar message to that contained in the traditional forms of notice sent in this case. Plaintiffs' proposal, by and large, no longer presents the danger of simply advertising a lawsuit against Defendants, but instead serves the primary purpose of a FLSA notice, which is to notify and inform individuals eligible to opt in to the collective action. *See* Dkt. No. 100 at 1-2. Defendants have represented that they substantially consent to Plaintiffs' plan except for two small details: they request that Plaintiffs be directed to "unfollow" potential opt-in Plaintiffs who do not respond on Twitter by April 14, 2015, and they request that Plaintiffs not be permitted to "friend" potential opt-in Plaintiffs on Facebook. Dkt. No. 120. The Court agrees with these limitations.

First, Plaintiffs shall "unfollow" any interns on Twitter when the opt-in period closes at the end of the day on April 14, 2015, unless the individual has chosen to opt in to this action. Second, Plaintiffs shall not be permitted to "friend" individuals on Facebook, as it could create a misleading impression of the individual's relationship with Plaintiffs' counsel. These two conditions were requested by Defendants in their submission, and the Court agrees that they are prudent limitations that ensure Plaintiffs' use of social-media notice complies with the general principle governing FLSA opt-in notices. *See* Dkt. No. 120.

Plaintiffs' application to send notice to a list of applicants for internships with Gawker Media is denied. As a general principle, notice should be sent only to individuals who can raise a claim. *Cf. Sobczak v. AWL Indus., Inc.*, 540 F. Supp. 2d 354, 364 (E.D.N.Y. 2007) (explaining that "[t]here is no reason to provide an opt-in notice to a plaintiff whose claims could not be asserted in this Court" in context of denying notice to potential plaintiffs with time-barred claims under federal law) (quoting *LeGrand v. Educ. Mgmt. Corp.*, No. 03-cv-9798 (HB) (HBP), 2004 WL 1962076, at *3 n.2 (S.D.N.Y. Sept. 2, 2004). Sending notice to a list of all applicants for an internship position will necessarily be overinclusive of individuals who may have claims, as many will never have accepted positions with Gawker Media. In this case, there is no indication that *any* of the individuals on the list of applicants that Plaintiffs have obtained actually took

internships with Gawker. Moreover, any individual names in the list who accepted an internship position with Gawker would likely be identifiable by Plaintiffs through other means. Even though Defendants did not maintain an official list of interns, such individuals likely would have left a record of their internships by other means, such as by sending emails during the course of the internship.

For the foregoing reasons, the Court approves Plaintiffs' social media plan as set forth in Dkt. No. 119, subject to the limitations Defendants have requested in Dkt. No. 120. Plaintiffs' application to send notice to individuals who appear only on a list of applicants for internships with Defendants is DENIED.

SO ORDERED.

Dated: April 10, 2015
New York, New York

ALISON J. NATHAN
United States District Judge