

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Bruce C. Cohen, individually, as private attorney general, and on behalf of similarly situated individuals,

Plaintiff,

v.

Consilio LLC, and Consilio Services, LLC,  
Defendants.

Court File No. 0:20-cv-01689-DSD-BRT

**STIPULATION TO STAY  
LITIGATION, CONDITIONALLY  
CERTIFY PROPOSED FLSA  
COLLECTIVE, SEND NOTICE, AND  
PURSUE SETTLEMENT  
DISCUSSIONS**

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The parties to the above-entitled civil action, through their undersigned counsel, hereby stipulate to stay this Litigation in order to allow: 1) notice of this Litigation to issue to a conditionally certified collective pursuant to Section 216(b) of the Fair Labor Standards Act (“FLSA”) informing the collective members of an opportunity to participate in this litigation as party plaintiffs; 2) a sixty day opt-in period; 3) and a subsequent sixty day period during which the parties will exchange compensation and time records related to the opt-in plaintiffs, analyze that data, and participate in a mediation focused on attempting to resolve the opt-in plaintiffs’ FLSA claims. The parties respectfully request that the Court enter an Order facilitating this process.

**Procedural Background**

On August 4, 2020, Bruce C. Cohen, individually, as private attorney general and on behalf of similarly situated individuals (“Cohen”) filed a Complaint against Consilio LLC, and Consilio Services, LLC (collectively “Consilio”) in United States District Court of Minnesota. (ECF No.1.) The Complaint alleged seven counts including a failure to pay overtime premiums required by the FLSA and the Minnesota Fair Labor Standards Act

(“MFLSA”) (Counts I and VI), failure to comply with the Minnesota Wage Theft Act (Count V) and failure to pay wages pursuant to the Minnesota Payment of Wages Act (Count VII). The Complaint also contained three claims that were dismissed by the Court on May 27, 2021 based on Consilio’s Motion to Dismiss filed on September 11, 2020: 1) a claim that Consilio had engaged in the unauthorized practice of law in Minnesota (Count II); 2) a petition for declaratory relief under Delaware law against Defendant Consilio Services, LLC asserting that Consilio Services, LLC had engaged in the unauthorized practice of law in Delaware (Count III); and 3) a petition for declaratory relief under Virginia law against Defendant Consilio, LLC asserting that Consilio, LLC had engaged in the unauthorized practice of law in Virginia (Count IV). (See ECF Nos. 10-15, 39). The Court denied Consilio’s motion to partially dismiss Plaintiff Cohen’s FLSA claim on personal jurisdiction grounds. (*See* ECF No. 39.)

On September 11, 2020, Consilio filed its Answer and Affirmative Defense and Additional Defenses (ECF No. 8) denying any liability and asserting numerous defenses, including the affirmative defense that Plaintiff Cohen and other licensed attorney document reviewers are appropriately classified as exempt from the overtime requirements of the FLSA and the MFLSA because they allegedly meet the requirements of the learned professional exemption recognized in Section 213(b) of the statute and by the MFLSA. Consilio also filed the aforementioned Motion to Dismiss on September 11, 2020. (ECF Nos. 10-15).

On February 26 2021, Plaintiff Cohen filed a motion to amend the Complaint and sought to add claims (ECF Nos. 28-32). The Court denied Plaintiff's motion to amend on May 27, 2021. (ECF No. 39).

Following this motion practice, Plaintiff Cohen's Count I (FLSA), Count V (Minnesota Wage Theft Act), Count VI (MFLSA) and Count VII (Minnesota Payment of Wages Act) remain to be resolve by this litigation. (*See* ECF No. 1).

On November 29, 2021, Consilio asserts that it made payments to licensed attorney document reviewers who it currently employed or had employed in Minnesota who had not been paid overtime premium for hours over 40 in a workweek since August 5, 2019. Those payments consisted of all overtime premium owed for hours worked over 40 in a workweek since August 5, 2019 and liquidated damages for hours worked in excess of 48 in a workweek since August 5, 2019. The parties have not resolved Plaintiff's claims for additional FLSA liquidated damages, Minnesota penalties, interest and attorney fees on behalf of himself and a putative Rule 23 state law class and are attempting to do so in good faith.

### **The Parties' Stipulated Agreement**

1. The parties desire to attempt to resolve Plaintiff's FLSA claim with Plaintiff and any other putative Collective member who desires to opt-in to this case as a party plaintiff pursuant to Section 216(b) of the FLSA.

2. In order to facilitate these anticipated settlement discussions, which the parties envision will primarily occur at a private mediation, the parties have reached an

agreement that the proposed putative FLSA Collective should be, with the Court's approval, conditionally certified pursuant to Section 216(b) of the FLSA.

The parties agree on the following definition of the national Collective:

All U.S. licensed attorney document reviewers employed by Consilio Services, LLC in the United States from August 5, 2019 to present who were classified as exempt from overtime and were not paid for overtime for hours over 40 in a workweek.

3. Consilio asserts that it expressly reserves the right to challenge the final certification of the requested collective treatment of all plaintiffs who may join this action or any subpart thereof, at any time in advance of, or at trial, subject to any deadlines set by the Court. The parties agree that Consilio's agreement to this stipulation or any other actions thereto are not an admission related to the appropriateness of such collective treatment.

4. The parties stipulate that the Notice and Consent Form will not be sent to individuals that were hired by Consilio on or after August 1, 2022.

5. The parties stipulate that the Notice and Consent Form will not be sent to individuals that have agreed to arbitrate claims regarding their compensation against Consilio.

6. The parties stipulate that the Notice and Consent Form (attached hereto as **Exhibit 1**) are timely, informative and accurate. The parties agree to use such forms to inform the class members of their right to opt-in to this Litigation as party plaintiffs pursuant to Section 216(b) of the FLSA.

7. The parties stipulate that within twenty days (20) days of the Court approving this stipulation, Consilio shall provide to a third-party settlement administrator the: (1) names, (2) last known home address, and (3) last known personal email addresses (to the extent available) for all collective members defined above and provide the same to Plaintiff's counsel.

8. The parties stipulate that the third-party settlement administrator, within fourteen (14) days of receiving the list from Consilio, shall send the notice in the following manner, and in no other form: 1) mail, via the U.S Postal Service, first class, a copy of the agreed Notice and Consent Form to all persons contained on the list; and also an email copy of the agreed Notice and Consent Form to persons on the list for whom Consilio's records contain a last known personal email address. The Notice and Consent Form shall be sent on only one occasion to the collective members.

9. It is further stipulated that the Collective Members shall have sixty (60) days from the date of the initial mailing of the Notice and Consent Form to send to the Administrator a consent form indicating that they wish to participate in this Litigation as a party plaintiff. To the extent the Notice and Consent Form is sent to particular Collective Members via U.S. Postal Service and returned undeliverable, the Settlement Administrator will immediately notify Plaintiff's counsel and will make reasonable efforts to locate a current mailing address for those Collective Members. Such individuals shall have sixty (60) days from the date of the remailing to send to the Administrator a consent form indicating that they wish to participate in this Litigation as a party plaintiff. To the extent the Settlement Administrator receives a partially completed Consent Form from a

Collective Member, the Settlement Administrator will immediately notify Plaintiff's counsel and will attempt to communicate with that Collective Member in order to facilitate the completion of the consent form.

10. It is further stipulated that the third-party settlement administrator shall provide all completed consent forms returned to the administrator to Plaintiff's Counsel within five days of receipt. Plaintiff's Counsel shall file any such consent forms with the Court no later than within five days of the close of the sixty day opt-in period, but is not prevented from earlier filings.

11. Any Collective Member who attempts to join the case after the deadline may be allowed to participate in the case by agreement of Consilio and Plaintiff or by leave of the Court if good cause is shown.

12. Following the sixty-day opt-in period, Consilio will produce the opt-in plaintiffs' timekeeping and compensation records relevant to their FLSA claims. Consilio will produce these records at least 14 days in advance of the parties' mediation.

13. Within sixty days of the close of the opt-in period, the parties will participate in a private mediation with an experienced wage and hour mediator. The focus of this mediation will be resolution of the opt-in plaintiffs' FLSA claims.

14. The parties have not completed discovery. Consilio represents that while it issued payments to its Minnesota employees as described above, it has not made any similar payments to employees in any other states.

15. If mediation is successful and the parties reach an agreement, the parties will submit the settlement terms reached with respect to the opt-in plaintiffs' FLSA claims to the Court for approval within 30 days of the mediation.

16. If mediation is unsuccessful, the parties have been unable to stipulate to a proposed amended scheduling order. As a result, the parties are submitting competing proposals which are attached as **Exhibit 2**.

17. The parties have also agreed that there are no disputed facts that would prohibit Consilio from seeking summary judgment with respect to Plaintiff Cohen's claims for penalties under the Minnesota Payment of Wages Act, Minn. Stat. 181.101 (Count VII of Plaintiff's Complaint, See ECF No. 1, pp. 51-52). The parties have specifically stipulated to the facts contained in **Exhibit 3**.

18. By agreeing to this stipulation and class definition, Consilio does not waive its right to assert that it is not liable for all or part of any alleged damages that Plaintiff or any putative opt-in Plaintiffs claim to have incurred or its right oppose final certification of the FLSA collective for trial.

19. Upon approval of this stipulation, all discovery and other deadlines in this Litigation will be stayed unless and until the parties' attempts to resolve the opt-in plaintiffs' claims fail at the aforementioned private mediation, at which point this stay will be lifted. During the stay the parties will not engage in any motion practice or discovery other than the activities described herein, unless otherwise agreed to by the parties and approved by the Court.

20. The Parties propose that the Court schedule a status conference during the week of November 7, 2022, at which point the parties can report their progress toward preparation for the aforementioned mediation.

Dated: August 12, 2022

*/s/ John H. Lassetter*

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Dated: August 12, 2022

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