

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 06-22738-CIV-MORENO

JASON A. PELLON, *et al.*,

Plaintiffs,

vs.

BUSINESS REPRESENTATION
INTERNATIONAL, INC. and JOSEPH C.
LORENZO,

Defendants.

ORDER ON MOTION TO TAX COSTS

THIS CAUSE came before the Court upon Defendant's Verified Motion to Tax Costs (**D.E. No. 140**), filed on **January 14, 2008**.

THE COURT has considered the motion, response, reply to the response and the pertinent portions of the record, and is otherwise fully advised in the premises.

The Federal Rules of Civil Procedure authorize an award of costs to Defendants as the prevailing parties in this case. See Fed R. Civ. P. 54(d). The issue before the Court is how those costs should be taxed. Defendants cite a case in which the Eight Circuit reversed a district court that had apportioned costs among non-prevailing co-plaintiffs. Concord Boat Corp. v. Brunswick Corp., 309 F.3d 494, 497 (8th Cir. 2002). Defendants argue that the Concord Boat court concluded that all of the plaintiffs were represented by the same counsel, had common theories of liability, and sought the same discovery, therefore apportionment of costs was an abuse of discretion requiring reversal. See id. Defendants suggest applying that rationale to this case.

First of all, the Court observes that Concord Boat is not binding on this Court. Secondly, the court in that case also opined that “joint and several liability for costs is the general rule *unless equity otherwise dictates.*” *Id.* (citing In re Paoli, 221 F.3d 449, 469 (3rd Cir. 2000)) (emphasis added). Here there are “strong opposing considerations” that make it more equitable to place the risk of noncollection on the prevailing party. See id. Unlike the plaintiffs in Concord Boat, Plaintiffs in this case are not sophisticated boat manufacturing companies, they are wage and tip employees suing their employer under the Fair Labor Standards Act. In view of Plaintiffs’ financial circumstances, the Court will exercise its discretion and apportion fees. Therefore, it is

ADJUDGED that the following is **ORDERED**:

1) Costs in the amount of \$35,567.77 shall be awarded to Defendants under Rule 54(d)(1) of the Federal Rules of Civil Procedure; and

2) Such costs shall be equally apportioned among the 53 plaintiffs in this case, such that each Plaintiff is responsible for \$671.09 out of the total amount.

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of February, 2008.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record