

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Joshua Dodge v. Qualtek Wireless LLC

Dodge · No. 2:25-cv-00043-DAD-AC · Decided September 15, 2025

OPINION

Dodge

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JOSHUA DODGE, No. 2:25-cv-00043-DAD-AC

12 Plaintiff,

13 v. ORDER DENYING WITHOUT PREJUDICE

PLAINTIFF'S MOTION FOR

14 QUALTEK WIRELESS LLC, CONDITIONAL CERTIFICATION

15 Defendant. (Doc. No. 9) 16 17 18 This matter is before the court on plaintiff's motion for
conditional certification of 19 plaintiff's Fair Labor Standards Act ("FLSA") collective action
lawsuit brought against defendant 20 Qualtek Wireless LLC. (Doc. No. 9.) On February 24, 2025,
plaintiff's motion was taken under 21 submission on the papers pursuant to Local Rule 230(g).
(Doc. No. 16.) For the reasons 22 explained below, the court will deny plaintiff's motion without
prejudice to its refiling.

23 BACKGROUND

24 Plaintiff Joshua Dodge was an hourly employee of defendant from approximately April 25
2021 through September 2024. (Doc. Nos. 5 at ¶ 53; 9-2 at 1.) Plaintiff worked for defendant as
26 a foreman and was hired to build, repair, maintain, and/or upgrade hardware on 27
telecommunications towers. (Doc. Nos. 5 at ¶ 54; 9-2 at 1.) In bringing this action, plaintiff 28
proposes an FLSA class composed of the following employees: 1 All current and former non-
exempt QualTek employees in the United States who were subject to QualTek's meal period
policy, bonus pay 2 scheme, and/or per diem pay scheme at any time from October 17, 2021
through the present (the "Hourly Employees"). 3 4 (Doc. No. 9-1 at 8.) 5 Plaintiff originally filed
this collective action complaint in the Sacramento County 6 Superior Court on October 17, 2024.
(Doc. No. 1-1 at 8.) On December 5, 2024, plaintiff filed a 7 first amended complaint in that court.
(Id. at 79.) Defendant filed a notice of removal to this 8 federal court on January 3, 2025 on the
basis of federal question jurisdiction pursuant to 28 9 U.S.C. § 1331 as to plaintiff's FLSA claim

and supplemental jurisdiction under 28 U.S.C. 10 § 1367(a) as to plaintiff's state law claims. (Doc. No. 1 at 3.) On January 8, 2025, plaintiff filed 11 a second amended complaint in which plaintiff asserted the following claims: (1) failure to pay 12 for all hours worked in violation of California Labor Code § 204; (2) failure to pay overtime in 13 violation of California Labor Code § 510; (3) failure to authorize and permit and/or make 14 available meal and rest periods in violation of California Labor Code §§ 226.7, 512; (4) failure to 15 provide timely and accurate itemized wage statements in violation of California Labor Code 16 § 226; (5) for waiting time penalties pursuant to California Labor Code §§ 201–03; and (6) failure 17 to pay overtime in violation of 29 U.S.C. § 201, et seq. (Doc. No. 5.) 18 On January 29, 2025, plaintiff moved for conditional certification of this FLSA collective 19 action. (Doc. No. 9.) On February 12, 2025, defendant filed its opposition to the motion. (Doc. 20 No. 12.) On February 21, 2025, plaintiff filed its reply thereto. (Doc. No. 15.)

21 LEGAL STANDARD

22 The FLSA permits employees to file civil actions against employers who abridge the 23 FLSA's guarantees. 29 U.S.C. § 216(b); see also *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 24 66, 69 (2013) (“The FLSA establishes federal minimum-wage, maximum-hour, and overtime 25 guarantees that cannot be modified by contract.”). Employees may bring collective actions under 26 the FLSA, representing all “similarly situated” employees, but “each employee [must] opt-in to 27 the suit by filing a consent to sue with the district court.” *Does I thru XXIII v. Advanced Textile 28 Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000). 1 “[A]t or around the pleading stage, plaintiffs will typically move for preliminary 2 certification.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1109 (9th Cir. 2018). 3 “Preliminary certification . . . refers to the dissemination of notice to putative collective members, 4 conditioned on a preliminary determination that the collective as defined in the complaint satisfies 5 the ‘similarly situated’ requirement of section 216(b).” *Id.*; see also 29 U.S.C. § 216(b) (“An 6 action to recover the liability prescribed in the preceding sentences may be maintained against 7 any employer (including a public agency) in any Federal or State court of competent jurisdiction 8 by any one or more employees for and in behalf of himself or themselves and other employees 9 similarly situated.”). Plaintiffs seeking conditional certification of a collective action under the 10 FLSA have the burden to show that they are “similarly situated” to other employee class 11 members. *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1340 (N.D. Cal. 2014). Plaintiffs can 12 show they are “similarly situated by making substantial allegations, supported by declarations or 13 discovery, that the putative class members were together the victims of a single decision, policy, 14 or plan.” *Rodriguez v. Danell Custom Harvesting, LLC*, 293 F. Supp. 3d 1117, 1130 (E.D. Cal. 15 2018) (quoting *Nen Thio*, 14 F. Supp. 3d at 1340) (internal quotation marks omitted). Courts are 16 to apply a lenient standard when determining whether to conditionally certify a collective. See 17 *Syed v. M-I, L.L.C.*, No. 1:12-cv-01718-AWI-MJS, 2014 WL 6685966, at *2 (E.D. Cal. Nov. 26, 18 2014).

19 ANALYSIS

20 Plaintiff's proposed FLSA class definition incorporates all of defendant's hourly 21 employees from October 17, 2021 to the present. (Doc. No. 9-1 at 8.) In his pending motion, 22 plaintiff argues that all of defendant's hourly employees are similarly situated because their jobs 23 require them to climb towers outdoors, and therefore defendant knew or should know that these 24 employees cannot readily be relieved of all work duties and safety duties during unpaid meal 25 breaks due to the very nature of their jobs. (Doc. No. 9-1 at 16.) In its opposition, defendant 26 argues that not all of defendant's hourly employees are similarly situated because they are not all 27 "Tower Technicians" responsible for climbing towers outdoors. (Doc. No. 12 at 17.) Defendant 28 // 1 argues that this job responsibility is crucial to plaintiff's theory that all proposed class members 2 cannot take meal breaks due to the nature of working on communication towers. (Id.)

3 In support of his motion, plaintiff offers declarations from three of defendant's hourly 4 employees—plaintiff, Victor Pimentel, and Brian Walsh, Jr. (Doc. Nos. 9-2, 9-3, 9-4.) Each 5 declaration refers to similarities between defendant's "telecom employees" or "telecom tower 6 employees" rather than its hourly employees. (Doc. Nos. 9-2, 9-3, 9-4.) The most that can be 7 said regarding hourly employees based on these declarations submitted by plaintiff is that all 8 telecom employees are hourly employees. (Doc. Nos. 9-2 at 1; 9-3 at 1; 9-4 at 1.) Plaintiff's 9 evidence does not, however, assert or provide support for the conclusion that all of defendant's 10 hourly employees are telecom employees, or that non-telecom hourly employees are otherwise 11 similarly situated. As such, it would not be appropriate for the court to grant conditional 12 certification of the class as proposed by plaintiff. *Cooley v. Air Methods Corp.*, No. 19-cv-00850-13 PHX-DLR, 2020 WL 9311858, at *4 (D. Ariz. Sept. 25, 2020) ("Plaintiffs' proposed class is too 14 broad. . . . The evidence Plaintiffs provide at the conditional certification stage exclusively 15 relates to AMC's policy of deducting sleep time from overtime compensation, not a more 16 widespread policy to otherwise neglect to compensate for overtime."); *Johnson v. Q.E.D. Env't 17 Sys. Inc.*, No. 16-cv-01454-WHO, 2017 WL 1685099, at *8 (N.D. Cal. May 3, 2017) ("Johnson 18 has testified that he and six or seven of his coworkers were regularly encouraged to miss meal 19 breaks to accommodate rush jobs. Plaintiffs have also presented evidence that from March 31, 20 2014–August 22, 2014 the San Leandro facility had an auto-deduct policy. This evidence, 21 together, is sufficient for plaintiffs to meet their burden at the conditional certification stage with 22 regard to a narrow group."); *Rodriguez v. RCO Reforesting, Inc.*, No. 2:16-cv-02523-WBS-CMK, 23 2017 WL 3421963, at *3 (E.D. Cal. Aug. 9, 2017) ("Plaintiffs Loa's and Rodriguez's 24 declarations discuss their knowledge of FLSA violations incurred by other H-2B visa workers, but make no 25 mention of those in corresponding employment. . . . The court will exercise its discretion to 26 narrow the scope of the proposed collective action and exclude those in corresponding 27 employment."). 28 // 1 "The court may, in its discretion, narrow the scope of the proposed collective action." 2 | Rodriguez, 2017 WL 3421963, at *2. However, the court finds that it would be premature to do 3 | so here. Neither party has proposed any class definition that

references telecom employees, 4 | telecom tower employees, or Tower Technicians or suggested that such class definitions would be 5 | appropriate here. Therefore, the court will deny plaintiff's motion without prejudice to its refiling 6 | in order to provide plaintiff with an opportunity to narrow the class definition as he sees fit or to 7 | supplement, before or after further discovery, the evidence substantiating plaintiff's assertion that 8 | defendant's hourly employees are similarly situated and that his presently proposed FLSA class is 9 | appropriate. Campbell, 903 F.3d at 1109 ("Denial of preliminary certification may be without 10 || prejudice and may be revisited by the district court after further discovery.")..!

11 CONCLUSION

12 Accordingly, plaintiff's motion for conditional certification (Doc. No. 9) is DENIED 13 without prejudice to refiling. 14 IT IS SO ORDERED. | pated: _ September 15, 2025 Da A. 2, ye

16 DALE A. DROZD

UNITED STATES DISTRICT JUDGE

18 19 20 21 22 23 24 25 26 ' The court declines to address defendant's remaining arguments regarding conditional 28 | certification or appropriate notice at this time.