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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH WILLIS,

Plaintiff-Appellant,

v.

DRILTEK, INC.,

Defendant-Appellee.

No. 17-17397

D.C. No. 1:15-cv-00688-JLT

MEMORANDUM*

KENNETH WILLIS,

Plaintiff-Appellant,

v.

ENTERPRISE DRILLING FLUIDS,
INC.; DRILTEK, INC.; JAMES JOSLYN,

Defendants-Appellees.

No. 17-17472

D.C. No. 1:15-cv-00688-JLT

Appeal from the United States District Court
for the Eastern District of California
Jennifer L. Thurston, Magistrate Judge, Presiding

Argued and Submitted February 15, 2019
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: SCHROEDER and RAWLINSON, Circuit Judges, and LASNIK,**
District Judge.

Plaintiff Kenneth Willis appeals the district court's order granting summary judgment in favor of DrilTek, Inc. in Willis' putative class action claiming violations of state and federal wage and hour laws. We have jurisdiction of the appeal. The order granting summary judgment was appealable because there was nothing left for the district court to do. *See Klestadt & Winters, LLP v. Cangelosi*, 672 F.3d 809, 813 (9th Cir. 2012); *see also Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

Willis is seeking to recover overtime pay from DrilTek on the theory that DrilTek was a joint employer with Enterprise, the company that hired him. The district court correctly rejected that theory. At most, DrilTek criticized work done by one or two of Enterprise's engineers. Because DrilTek was the subcontractor in charge of overseeing operations, it scheduled work to be done by Enterprise's employees. DrilTek did not hire, fire, or control the wages and hours and working conditions of Willis and other engineers employed by Enterprise. DrilTek therefore did not exercise the requisite degree of control required by federal or

** The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

California law to make DrilTek an employer. *See Moreau v. Air France*, 356 F.3d 942, 946-47 (9th Cir. 2004); *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010).

AFFIRMED.