

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, et al., on behalf of	)	
themselves and all other similarly	)	
situated individuals,	)	8:08CV90
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
NEBRASKA BEEF, INC., and	)	
NEBRASKA BEEF, LTD.,	)	
	)	
Defendants.	)	
_____	)	

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DAVID CHUOL, on behalf of himself	)	
and all other similarly situated	)	
individuals,	)	8:08CV99
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
NEBRASKA BEEF, LTD.,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on the findings and recommendations (Filing No. 173 in 8:08cv90 and Filing No. 278 in 8:08cv99) issued by the magistrate judge recommending that the court deny the defendants’ motions to dismiss (Filing No. 125 in 8:08cv90 and Filing No. 227 in 8:08cv99) and grant the plaintiffs’ motions to certify a class (Filing No. 112 in 8:08cv90 and Filing No. 214 in 8:08cv99). Defendants have objected to the findings

and recommendations as allowed by 28 U.S.C. § 636(b)(1) and NELR 72.4. Filing No. 174 in 8:08cv90 and Filing No. 279 in 8:08cv99.

The plaintiffs filed for conditional class certification pursuant to 28 U.S.C. § 216(b) which was granted. Filing Nos. 8 and 36, 8:08CV90; Filing No. 32 and 142, 8:08CV99. The plaintiffs in both cases are current or former employees of the defendants. Plaintiffs filed actions pursuant to the Fair Labor Standards Act (FLSA), [29 U.S.C. § 201](#) *et seq.*, contending that defendants violated the FLSA by failing to pay them for pre- and post-shift activities.<sup>1</sup> Plaintiffs seek damages for violations of federal and state wage-and-hour laws and minimum wage laws, and overtime compensation.

### **Standard of Review**

A district court reviews de novo those portions of a magistrate judge's order that are objected to by a party. [Grinder v. Gammon, 73 F.3d 793, 792 \(8th Cir. 1996\)](#). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1). A district court may reconsider a magistrate judge's ruling where it has been shown that the ruling is clearly erroneous or contrary to law. [Ferguson v. United States, 484 F.3d 1068, 1076 \(8th Cir. 2007\)](#) (citing 28 U.S.C. § 636(b)(1)(A)).

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<sup>1</sup>The magistrate judge set forth the specific facts in his findings and recommendations in each case. The court adopts these findings in their entirety for purposes of this motion and need not reiterate those facts in this order.

### **Class Certification**

The plaintiffs seek to certify the class. The magistrate judge thoroughly analyzed the requirements of Fed. R. Civ. P. 23(a), (b)(1) and (b)(3) as applied to this case. The court has carefully reviewed the record, and in particular the objections of the defendants and the findings and recommendations of the magistrate judge, as well as the relevant law. Defendants object contending that state law claims should be preempted and that this court should not allow supplemental jurisdiction over the state claims. The court finds that the decision of the magistrate judge addressed each of these objections and the findings and recommendations are correct in all respects. Accordingly, the court will adopt the findings and recommendations in their entirety.

### **Motions to Dismiss**

The defendants ask this court to dismiss plaintiffs' third, fourth, fifth, and sixth causes of action based on timeliness, preemption, and for failure to state a claim. The magistrate judge recommended that the motion be denied. The defendants filed numerous objections, Filing No. 173 in 8:08cv90 and Filing No. 279 in 8:08cv99. The court has carefully reviewed the findings of the magistrate judge and finds he is correct as a matter of fact and a matter of law. The magistrate judge conducted a thorough evaluation of the facts and the law and this court will adopt his findings and recommendations with regard to the motions to dismiss.

THEREFORE, IT IS ORDERED:

1. Defendants' objections, Filing No. 174 in 8:08CV90, and Filing No. 279 in 8:08CV99, are overruled;

2. The findings and recommendations of the magistrate judge, Filing No. 173 in 8:08CV90 and Filing No. 278 in 8:08CV99, are adopted in their entirety;
3. Defendants' motions to dismiss, Filing No. 125 in 8:08cv90 and Filing No. 227 in 8:08cv99 are denied; and
4. The plaintiffs' motions for class certification, Filing No. 112 in 8:08cv90 and Filing No. 214 in 8:08cv99, are granted as defined by the findings and recommendations of the magistrate judge.

DATED this 16<sup>th</sup> day of February, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge