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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

DAVID COLLINGE, et al.,
Plaintiffs,
vs.
INTELLIQUICK DELIVERY, INC. et al.,
Defendants.

2:12-cv-00824 JWS
ORDER AND OPINION
[Re: Motion at Docket 32]

I. MOTION PRESENTED

At docket 32, plaintiffs David Collinge, Melonie Priestly, and Heather Arras (collectively “plaintiffs”) move for conditional certification of a collective action under 29 U.S.C. § 216(b). Defendants IntelliQuick Delivery, Inc. et al., (collectively “defendants”) oppose the motion at docket 49. Plaintiffs’ reply is at docket 54. Oral argument was requested but would not assist the court.

II. BACKGROUND

Intelliquick is a delivery and courier service that is incorporated and does business in Arizona. Plaintiffs currently work or have worked for IntelliQuick as delivery drivers. There are three categories of delivery drivers at IntelliQuick: freight driver, route drivers, and on-demand drivers. The details of each category are not relevant to the

1 present motion, but there are plaintiffs from each and some who have worked for
2 IntelliQuick in all three capacities. Plaintiffs maintain that they have been misclassified
3 as independent contractors, when they are actually employees, and that they have not
4 been paid overtime or minimum wages as required by the Fair Labor Standards Act
5 (“FLSA”).¹ Plaintiffs filed this lawsuit to recover wages allegedly owed them under that
6 statute. Plaintiffs brought their lawsuit as a collective action pursuant to 29 U.S.C.
7 § 216(b) and now seek conditional certification of their proposed class.

8 **III. DISCUSSION**

9 **A. Conditional Certification**

10 Section 216(b) of Title 29 states that actions to recover unpaid minimum wages
11 or unpaid overtime “may be maintained against any employer . . . by any one or more
12 employees for and [o]n behalf of himself or themselves and other employees similarly
13 situated.”² Section 216(b) requires that employees file consent in writing in order to
14 become plaintiffs. A class may include any employee who is “similarly situated” to the
15 named plaintiff employees. The Ninth Circuit has not construed the meaning of
16 “similarly situated” in context of the FLSA. A majority of courts apply a two-tiered
17 approach to certification of a collective action under § 216(b).³

18 At the first—or “notice”—stage, the court determines, based on the pleadings and
19 submitted declarations, whether conditional certification is appropriate and potential
20 class members should be given notice of the action.⁴ At the second stage, after
21 discovery is complete, the court applies a stricter “similarly situated” standard and
22 considers factors including “(1) disparate factual and employment settings of the
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25 ¹29 U.S.C. § 201 *et seq.*

26 ²29 U.S.C. § 216(b).

27 ³*See, e.g., Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1219 (11th Cir. 2001).

28 ⁴*Id.* at 1218.

1 individual plaintiffs; (2) the various defenses available to defendant which appear to be
2 individual to each plaintiff; and (3) fairness and procedural considerations.”⁵

3 Defendants argue that the court should apply a minority approach and use the
4 criteria of Federal Rule of Civil Procedure 23 to evaluate whether potential plaintiffs are
5 similarly situated.⁶ The court declines to stray from the majority approach.

6 At the notice stage, “[b]ecause the court has minimal evidence, [the similarly
7 situated] determination is made using a fairly lenient standard, and typically results in
8 conditional certification of a representative class.”⁷ The only question therefore, is
9 whether the pleadings and declarations provided by plaintiffs establish that notice
10 should be given to potential class members. Plaintiffs seek to have the following class
11 certified:

12 All current and former drivers or couriers, who made pick-ups or deliveries
13 for or on behalf of IntelliQuick Deliveries, Inc. as a Freight Driver, Route
14 Driver and/or On-Demand Driver within the State of Arizona and who were
or are classified or paid as independent contractors and/or not classified
or paid as employees at any time on or after April 9, 2009.⁸

15 Defendants argue that *Colson v. Avnet, Inc.*,⁹ held that conditional certification is
16 categorically inappropriate when the underlying claims are based on misclassification—in
17 this case, the alleged misclassification of plaintiffs and the proposed class as
18 independent contractors and not employees. Defendants have mischaracterized that
19 case’s holding. The plaintiff’s evidentiary showing consisted of declarations from one
20 employee, whose “allegations . . . lack[ed] specificity with regard[] to time or place, and
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23 ⁵*Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1103 (10th Cir. 2001) (internal
24 quotations omitted).

25 ⁶*See, e.g., Shushan v. Univ. of Colo.*, 132 F.R.D. 263 (D. Colo. 1990).

26 ⁷*Mooney v. Aramco Servs. Co.*, 54 F.3d 1207, 1213 (5th Cir. 1995).

27 ⁸Doc. 32 at 13.

28 ⁹687 F. Supp. 2d 914 (D. Ariz. 2010).

1 [whose] filing [was] filled with statements that lack[ed] personal knowledge,”¹⁰ a trainee
2 who “was never even employed by [the defendant],”¹¹ and plaintiff’s counsel, who had
3 “no personal experience with [the] [d]efendant’s employment practices.”¹² The court
4 concluded that “[t]here is no indication that any district court within [the Ninth] Circuit
5 has ever granted conditional certification based on” such a showing.¹³ Plaintiffs have
6 provided five declarations from current and former employees (or independent
7 contractors) of IntelliQuick.

8 At this stage, plaintiffs must demonstrate that “the putative class members were
9 together the victims of a single decision, policy, or plan.”¹⁴ Plaintiffs have submitted
10 declarations from the three named plaintiffs, and two other, current IntelliQuick drivers.
11 All of them state that they were misclassified as independent contractors. All of them
12 state that they were paid a flat rate regardless of how long it took them to perform their
13 duties. All of them state that IntelliQuick retained control over their routes. None of
14 them received overtime pay.

15 Collinge worked as an on-demand driver, a route driver, and a freight driver and
16 therefore has personal knowledge of all three positions. Arras also worked in all three
17 capacities.¹⁵ Melonie Priestly worked as a route driver.¹⁶

18 Collinge states “that IntelliQuick . . . unilaterally changed assignments, routes
19 and pay for [d]rivers in each category, [that] IntelliQuick . . . imposed unilateral
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21 ¹⁰*Id.* at 928.

22 ¹¹*Id.* at 929.

23 ¹²*Id.*

24 ¹³*Id.* at 930.

25 ¹⁴*Thiessen*, 267 F.3d at 1102.

26 ¹⁵Doc. 32-4 at 3.

27 ¹⁶Doc. 32-5 at 3. Plaintiffs’ motion suggests that Priestly also worked as an on-demand
28 driver, but that allegation is not supported by her declaration.

1 deductions and fines called ‘chargebacks’ on the pay of all [d]river categories”¹⁷ and that
2 “IntelliQuick . . . controlled almost all aspects of [his] daily work.”¹⁸ Arras’s declaration
3 provides that she was personally aware of the “chargeback” system.¹⁹ Priestly also
4 states that IntelliQuick changed her route²⁰ and reduced her pay through
5 “chargebacks.”²¹

6 Collinge states that he was not permitted to take time off without permission, that
7 IntelliQuick regularly and unilaterally reduced his pay, and that IntelliQuick would deduct
8 fees from his paycheck.²² Arras and Priestly also state that IntelliQuick deducted a
9 variety of fees from their paychecks.²³ Collinge states that route and freight drivers
10 report to work at an IntelliQuick warehouse, record their start and end times, and wear
11 matching uniforms.²⁴ Arras was also required to report to work at IntelliQuick’s
12 warehouse.²⁵

13 In short, the declarations of the named plaintiffs support their position that they,
14 and others in the proposed class, were subjected to a single policy or plan that included
15 misclassification as independent contractors and did not include overtime pay or, in
16 some cases, minimum wages. The substance of Campagna and Morena’s declarations
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19 ¹⁷Doc. 32-3 at 3.

20 ¹⁸*Id.* at 4.

21 ¹⁹Doc. 32-4 at 7.

22 ²⁰Doc. 32-5 at 4.

23 ²¹*Id.* at 5.

24 ²²Doc. 32-3 at 6–8.

25 ²³Doc. 32-4 at 8–9; doc. 32-5 at 5.

26 ²⁴Doc. 32-3 at 10–11. Priestly’s declaration also implies that she wore a uniform.
27 Doc. 32-5 at 5.

28 ²⁵Doc. 32-4 at 5–6.

1 is nearly identical to the substance of the named plaintiffs' declarations. Plaintiffs have
2 made an adequate showing that conditional certification is appropriate.

3 **B. Proposed Notice**

4 Defendants argue that plaintiffs' proposed notice is inadequate. Specifically,
5 defendants argue that ninety days from the date of the notice is "unwarranted" as an
6 opt-in period and that thirty days would be sufficient. The court is skeptical that thirty
7 days would be enough time to provide notice to potential class members. However, it
8 also should not take ninety days "to notify all putative class members, correct invalid
9 addresses and follow-up with putative class members."²⁶ The court concludes that sixty
10 days from the date of the notice is an appropriate opt-in period.

11 **V. CONCLUSION**

12 For the reasons above, plaintiffs' motion at docket 32 for conditional class
13 certification is **GRANTED** as follows:

14 1) It is **ORDERED** conditionally certifying a class that includes "All current and
15 former drivers or couriers, who made pick-ups or deliveries for or on behalf of
16 IntelliQuick Deliveries, Inc. as a Freight Driver, Route Driver, or On-Demand Driver
17 within the State of Arizona and who were or are classified or paid as independent
18 contractors or not classified or paid as employees at any time on or after April 9, 2009."

19 2) Defendants shall provide to plaintiffs' counsel the last known contact
20 information for potential class members.

21 3) Plaintiffs' proposed notice is approved provided the opt-in period is amended
22 to sixty days.

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²⁶Doc. 54 at 11.

