



1 stayed until after the Court rules on Plaintiff’s motion for conditional certification as a collective  
2 action. The Court continued the scheduling conference to October 5, 2015 and required the  
3 parties to file briefing on whether the discovery should be stayed until resolution of the  
4 conditional certification motion. (ECF No. 11.)

5 On October 1, 2015, the parties filed their briefs. (ECF Nos. 12, 13.) On October 5,  
6 2015, an informal conference was held. The parties were ordered to produce some documents  
7 and a further status conference was set for November 13, 2015. (ECF No. 14.) A telephonic  
8 status conference took place on November 13, 2015. Counsel Cory Lee appeared telephonically  
9 for Plaintiff and counsel Sandra Rappaport appeared telephonically for Defendant.

10 **II.**

11 **LEGAL STANDARD**

12 “Prior to certification of a class action, discovery is generally limited and in the discretion  
13 of the court.” Del Campo v. Kennedy, 236 F.R.D. 454, 459 (N.D. Cal. 2006); Vinole v.  
14 Countrywide Home Loans, Inc., 571 F.3d 935, 942 (9th Cir. 2009) (In federal court, the scope of  
15 pre-certification discovery lies entirely within the discretion of the court). However, even where  
16 a potentially dispositive motion is pending, the Federal Rules do not provide for automatic or  
17 blanket stays of discovery. Tradebay, LLC v. eBay, Inc., 278 F.R.D. 597, 600 (D. Nev. 2011).  
18 The Ninth Circuit has held that under certain circumstances it is an abuse of discretion to prevent  
19 a party from conducting discovery relevant to a potentially dispositive motion. Tradebay, LLC,  
20 278 F.R.D. at 601.

21 The Federal Rules of Civil Procedure provide that “[p]arties may obtain discovery  
22 regarding any nonprivileged matter that is relevant to any party’s claim or defense. . . . Relevant  
23 information need not be admissible at the trial if the discovery appears reasonably calculated to  
24 lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Relevancy is broadly  
25 defined for the purposes of discovery, but it does have “ultimate and necessary boundaries.”  
26 Gonzales v. Google, Inc., 234 F.R.D. 674, 680 (N.D. Cal. 2006) (citations omitted).

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1 **III.**

2 **DISCUSSION**

3 The parties agree that this action should be bifurcated with the first phase addressing the  
4 conditional certification of the FLSA collective action. At issue is whether Plaintiff should be  
5 entitled to conduct discovery prior to the conditional certification motion. In this instance,  
6 Plaintiff has alleged a collective action under the FLSA and state law class action claims  
7 pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendant contends that the ruling  
8 on the conditional certification motion will be useful in shaping the scope of the class action and  
9 seeks a stay of discovery to avoid the burden and expense of pre-certification discovery.  
10 Therefore, Defendant seeks a brief stay of pre-certification discovery until the Court rules on  
11 Plaintiff's motion for conditional certification as a collective action.

12 The FLSA provides that a collective action may be brought to recover damages for  
13 employees that are similarly situated. 29 U.S.C. § 216 (b). Unlike Rule 23, the FLSA limits  
14 participation in a collective action to those parties that "opt-in" to the suit. Murillo v. Pacific  
15 Gas & Elec. Co., 266 F.R.D. 468, 470 (E.D. Cal. 2010). "To maintain a collective action under  
16 the FLSA a plaintiff must demonstrate that the putative collective action members are similarly  
17 situated." Harris v. Vector Marketing Corp., 716 F.Supp.2d 835, 837 (N.D. Cal. 2010) (citations  
18 omitted). The FLSA does not define "similarly situated" and the Ninth Circuit has not  
19 interpreted the term, Millan v. Cascade Water Services, Inc., \_\_\_ F.R.D. \_\_\_, 2015 WL 5916750, at  
20 \*9 (E.D. Cal. October 8, 2015), but courts in this circuit that address the issue have adopted a  
21 two-step approach to determine whether a class is "similarly situated", Murillo, 266 F.R.D. at  
22 471; Lewis v. Wells Fargo Co., 669 F.Supp.2d 1124, 1127 (N.D. Cal. 2009).

23 The requisite showing for conditional certification of a collective action is not as  
24 stringent as the requirements to certify a class under Rule 23 of the Federal Rules of Civil  
25 Procedure. Lewis, 669 F.Supp.2d at 1127. Since there is a limited amount of evidence before  
26 the court, the first step in this analysis uses a very lenient standard which typically results in  
27 conditional certification of the class. Murillo, 266 F.R.D. at 471; Leuthold v. Destination  
28 America, Inc., 224 F.R.D. 462, 467 (N.D. Cal. 2004). The district court examines the pleadings

1 and affidavits to determine whether the proposed class should be notified of the action. Id.

2 All of Sun-Maid’s non-exempt hourly employees are members of the General Teamsters,  
3 Local 431, and the terms and conditions of their employment are governed by the collective  
4 bargaining agreement between Defendant and Local 431. Defendant contends that since Plaintiff  
5 was a temporary employee who was only employed for eighteen days he is not similarly situated  
6 to the class of Sun-Maid’s non-exempt hourly employees. However, the first step in the  
7 conditional certification analysis only requires Plaintiff to show that “there is some factual basis  
8 beyond the mere averments in [his] complaint for the class allegations.” Harris, 716 F. Supp. 2d  
9 at 837. Plaintiff need not show that he held the same position as the putative class members, but  
10 just that their positions are similar. Villarreal v. Caremark LLC, 66 F.Supp.3d 1184, 1189 (D.  
11 Ariz. 2014). To grant conditional certification, the Court need only be satisfied that there is a  
12 reasonable basis for the plaintiff’s claims of injuries to the class. Id.

13 Plaintiff argues that a stay of discovery is improper because he is separately entitled to  
14 conduct discovery to show typicality, commonality and numerosity under Rule 23 for his  
15 remaining claims. However, since the parties have agreed to litigate the conditional certification  
16 under the FLSA in this first stage, the stay of discovery on the Rule 23 claims would save  
17 Defendant the burden and expense of pre-certification discovery which could prove to be  
18 unnecessary in this action if Plaintiff fails to obtain conditional certification of the federal claims.  
19 Additionally, the parties have agreed to have the motion for conditional certification of the FLSA  
20 claim filed in mid-January, so any stay of discovery would be for approximately ninety days, a  
21 relatively brief period of time.

22 Plaintiff also contends that he needs to conduct discovery to show that Defendant  
23 subjected the putative class members to a “single decision, policy, or plan.” Plaintiff is seeking  
24 1) Defendant’s written policies, procedures and training for donning and doffing sanitary gear,  
25 including Defendant’s Good Manufacturing Practices, and Sanitation Standard Operating  
26 Procedures, meal periods, clocking in and out at the beginning and end of shifts and the  
27 beginning and end of meal periods, and for calculating and paying wages thereof; 2) a 40%  
28 sampling of electronic punch records in native format for the putative class for the class period;

1 and 3) the corresponding electronic pay records in native format for the 40% sample.

2 The Court has discretion in controlling the scope of pre-certification discovery to balance  
3 a plaintiff's need for discovery to substantiate his class allegations and concerns regarding overly  
4 burdensome discovery requests directed on a defendant in situations where the plaintiff is clearly  
5 making a blind shot in the dark, hoping to find evidence supporting what are, at the time, highly  
6 speculative claims. In balancing these considerations, the Court will give Plaintiff the  
7 opportunity to substantiate his claims while saving Defendant from bearing the costs of what  
8 appears at this stage to be highly speculative class allegations not yet supported by any solid  
9 evidence.

10 Defendant shall produce the written policies, procedures and training for donning and  
11 doffing sanitary gear in place at the time of Plaintiff's employment, including Defendant's Good  
12 Manufacturing Practices, and Sanitation Standard Operating Procedures, meal periods, clocking  
13 in and out at the beginning and end of shifts and the beginning and end of meal periods, and for  
14 calculating and paying wages thereof. However, the Court finds that requiring Defendant to  
15 produce three years of punch and payroll records in native format is overly burdensome at this  
16 stage of the litigation. The Court shall require Defendant to produce the electronic pay records  
17 for the year 2014 for all employees who were required to wear protective gear at the facility  
18 where Plaintiff was employed. All other discovery shall be stayed pending resolution of the  
19 motion for conditional certification of the collective action in this case.

20 **IV.**

21 **CONCLUSION AND ORDER**

22 Based on the foregoing, IT IS HEREBY ORDERED that:

- 23 1. Defendant's motion for a stay of the discovery in this action is GRANTED IN  
24 PART AND DENIED IN PART as follows:
- 25 a. Within twenty (20) days from the date of service of this order, Defendant shall  
26 produce the written policies, procedures and training for donning and doffing  
27 sanitary gear, including Defendant's Good Manufacturing Practices, and  
28 Sanitation Standard Operating Procedures, meal periods, clocking in and out at

1 the beginning and end of shifts and the beginning and end of meal periods, and for  
2 calculating and paying wages thereof which were in place during Plaintiff's  
3 employment;

4 b. Within twenty (20) days from the date of service of this order, Defendant shall  
5 produce the electronic pay records for the year 2014 for all employees who were  
6 subject to donning and doffing of protective gear at the facility where Plaintiff  
7 was employed; and

8 c. All other discovery in this action is stayed pending resolution of the motion for  
9 conditional certification of the FLSA collective action;

10 IT IS SO ORDERED.

11 Dated: November 16, 2015

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14 UNITED STATES MAGISTRATE JUDGE