

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-01632-CMA-BNB

MARK SMITH, individually and on behalf  
of other similarly situated persons,

Plaintiff,

v.

PIZZA HUT, INC.,

Defendant.

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**ORDER**

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This matter arises on the **Joint Motion to Modify the Scheduling Order** [Doc. # 114, filed 4/30/2010] (the “Motion”), which is DENIED as premature.

This action was commenced on July 9, 2009, by the filing of a complaint. The district judge granted the defendant’s motion to dismiss on March 11, 2010, finding that the plaintiff had failed to state a plausible claim for relief under Ashcroft v. Iqbal, \_\_ U.S. \_\_, 129 S. Ct. 1937 (2009). Order [Doc. # 98]. She allowed the plaintiff 21 days within which to file an amended complaint that “complies with the Twombly/Iqbal plausibility standard.” Id. at p. 6. The plaintiff filed an amended complaint [Doc. # 99] on March 31, 2010. The defendant has again moved to dismiss, arguing:

- (1) Plaintiffs ignored the Court’s March 11, 2010 Order dismissing the original Complaint and have failed to provide facts sufficient to raise a plausible claim that a nationwide class of Pizza Hut’s delivery drivers were paid below federal minimum wage in violation of the Fair Labor Standards Act (“FLSA”); and (2)
- Plaintiffs did not seek leave from Court to plead their new state law claims as required, and the claims are invalid as a matter of

law.

Pizza Hut's Rule 12(b)(6) Motion [Doc. # 106, filed 4/23/2010] at p. 1.

In view of the history of this case and the pending motion to dismiss, I will await a ruling by the district judge on Pizza Hut's Rule 12(b)(6) Motion prior to setting a schedule for the preparation of this case for trial.

IT IS ORDERED that the Motion [Doc. # 114] is DENIED as premature.

IT IS FURTHER ORDERED that the parties shall file a status report within ten days of any ruling on Pizza Hut's Rule 12(b)(6) Motion informing me of the status of the case and recommending pretrial matters, if any, to be scheduled.

Dated May 4, 2010.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge