

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LUIS ENRIQUE RODRIGUEZ, etc.,)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 371
)	
SAFE COURIERS AND DELIVERY)	
SERVICES, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This action, brought under Fair Labor Standards Act ("FLSA") §216(b) ("Section 216(b)"), has triggered a motion by plaintiff's counsel "for an order to authorize notice to similarly situated persons pursuant to 29 U.S.C. §216(b)," followed by a response by defense counsel. Because this Court finds defendants' response wholly unpersuasive, the motion is granted.

Essentially defense counsel advances the self-levitating argument that (1) because FLSA applies only to, and permits suits and opt-in participation only by, "employees" and (2) because the people who work for defendants are assertedly independent contractors rather than employees, no Section 216(b) notices to those people are permissible. But that difference of opinion--employee v. independent contractor--is at the heart of the parties' Article III case or controversy, and defense counsel have no more right to have that subject resolved in their clients' favor on their ipse dixit than plaintiff's counsel would have had to a contrary determination by asking this Court to take

their word for it.¹

This Court declines defense counsel's invitation to deny the current motion, just as it declines counsel's surprising invitation to accept Justice Scalia's dissent in Hoffmann-La Roche, Inc. v. Sperling, 493 U.S. 165, 176-77 (1989) as establishing the law of the land regarding Article III. Finally, this action has previously been set for a June 25, 2010 status hearing, and that date will be retained as the occasion to discuss the future course of this litigation.



Milton I. Shadur
Senior United States District Judge

Date: June 21, 2010

¹ It should be plain that this Court is not now subscribing to either side's characterization of the persons rendering courier service under defendants' auspices--that determination remains for the future.