

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

JOSEPH VALDEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

COX COMMUNICATIONS LAS
VEGAS, INC., VIDEO INTERNET
PHONE INSTALLS, INC., QUALITY
COMMUNICATIONS, INC., SIERRA
COMMUNICATIONS, CO.,

Defendants.

2:09-CV-01797-PMP-RJJ

ORDER

Before the Court for consideration are Defendant Quality Communications, Inc's fully briefed Motions to Decertify Collective Class and Sever Claims (Doc.'s #180, #181). Also before the Court is Plaintiff's Motion to File a Supplemental Response in Opposition (Doc. # 200). Having considered the arguments of counsel set forth in their papers, and at the hearing conducted on March 28, 2011, the Court finds that Defendant Quality Communications, Inc's, Motions (Doc.'s #180 & #181) must be granted.

After more than 18 months of litigation, Plaintiff has not identified a viable Plaintiff capable of acting as Class Representative in a class action or a collective action against the Subcontractor Defendants. Additionally, the record adduced before the Court suggests that it is highly unlikely that putative Plaintiffs qualified

1 to serve as Class Representatives would be “similarly situated” to each other,
2 because there is no generally applicable policy or procedure employed by the
3 Subcontractor Defendants with respect to overtime pay practices. As a result,
4 Plaintiff is unable to meet the requirements of 29 U.S.C. § 216(b) for maintenance
5 of a collective action. Moreover, because individual determinations would be
6 necessary to resolve the overtime pay claims of potential Plaintiffs, the Court finds a
7 collective action is inappropriate.

8 Having previously concluded that Plaintiff Valdez is not qualified to act as
9 a Class Representative, and there appearing to be no other viable Plaintiff who can
10 do so, this Court finds that Plaintiff has not demonstrated that this action should be
11 certified conditionally or otherwise as a collective action under 29 U.S.C. § 216(b).
12 Of course, such a finding does not preclude Plaintiff Valdez from pursuing his
13 individual claims against each of the Defendants in this action.

14 **IT IS THEREFORE ORDERED** that Defendant Quality
15 Communications, Inc’s Motions to Decertify Collective Class and Sever Claims
16 (Doc.’s #180, #181) are **GRANTED**.

17 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to File a
18 Supplemental Response in Opposition (Doc. #200) is **GRANTED**.

19
20 DATED: June 20, 2011.

21
22 

23 PHILIP M. PRO
24 United States District Judge
25
26