

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BERNARD WAITHAKA, *et al.*,

10 Plaintiffs,

11 v.

12 AMAZON, INC., *et al.*,

13 Defendants.

CASE NO. C19-1320-JCC

ORDER

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15 This matter comes before the Court on Plaintiff's motion to certify a question to the
16 Supreme Judicial Court of Massachusetts or, in the alternative, to certify an order for
17 interlocutory appeal (Dkt. No. 187). Having thoroughly considered the parties' briefing and the
18 relevant record, the Court DENIES the motion for the reasons explained herein.

19 **I. BACKGROUND**

20 Plaintiff previously moved to certify a class of similarly situated delivery drivers on three
21 state employment claims. (*See generally* Dkt. No. 172.) The Court ordered and received
22 supplemental briefing on the viability of one claim for business expenses under the
23 Massachusetts Wage Act. (*See* Dkt. Nos. 182, 183, 184, 185.) The Court denied Plaintiff's
24 motion for class certification and dismissed his Wage Act claim for failure to state a viable
25 claim. (Dkt. No. 186 at 8–10, 20) (explaining that the Wage Act protects against deductions from
26 wages, not agreements that require employees to pay certain business expenses). Now, after

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1 receiving an adverse ruling, Plaintiff moves to certify the Wage Act issue to the Massachusetts
2 Supreme Judicial Court.¹ (Dkt. No. 187 at 5–8.) In the alternative, Plaintiff requests that the
3 Court certify its order to the Ninth Circuit for interlocutory review. (*Id.* at 8–9.)

4 **II. DISCUSSION**

5 **A. Motion to Certify Question**

6 Federal courts may certify a question of state law to the Massachusetts Supreme Judicial
7 Court when the answer is determinative and it appears there is no controlling precedent. Mass.
8 Sup. Jud. Ct. Rule 1:03(1). Certification to a state supreme court is within the Court’s discretion.
9 *Lehman Bros. v. Schein*, 416 U.S. 386, 390 (1974). Factors that the Court considers on a motion
10 to certify include the novelty of the issue, comity between courts, and public policy
11 ramifications. *Murray v. BEJ Mins., LLC*, 924 F.3d 1070, 1072 (9th Cir. 2019). Particularly
12 relevant here “is a presumption against certifying a question to a state supreme court after the
13 federal district court has issued a decision.” *Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir.
14 2008). To overcome this presumption, a party that belatedly moves for certification must show
15 “particularly compelling reasons why it should be allowed a second chance at victory.” *All. for*
16 *Prop. Rts. and Fiscal Resp. v. City of Idaho Falls*, 742 F.3d 1100, 1108 (9th Cir. 2013) (cleaned
17 up).

18 Plaintiff asserts that the Court’s dismissal of his Wage Act claim came in the absence of
19 direct precedent from the Supreme Judicial Court. (Dkt. No. 187 at 6.) But Plaintiff now
20 contradicts his motion for partial summary judgment because he did not move to certify the
21 question when it first arose. (*See generally* Dkt. No. 172.) Instead, he argued that the case law
22 supported his claim for business expenses under the Wage Act, (*id.* at 17 n.5), and said the same
23 in supplemental briefing, (Dkt. No. 183 at 2–4). The Court thoroughly considered these
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25 ¹ Plaintiff asks the Court to certify the following question: “whether the Massachusetts Wage Act
26 requires an employer to compensate employees for business expenses required in order for a
worker to perform their job.” (Dkt. No. 187 at 2.)

1 submissions and disagreed based on its reading of the relevant precedent. (*See* Dkt. No. 186 at 7–
2 11.) In other words, the law was sufficiently clear and the question was not wholly novel. This is
3 unsurprising when the Wage Act has been in place for well over a century.² *See Tze-Kit Mui v.*
4 *Mass. Port Auth.*, 89 N.E.3d 460, 462 (Mass. 2018) (Wage Act originally enacted in 1879). Nor
5 has Plaintiff identified an inconsistency that would require resolution by the Supreme Judicial
6 Court. *Cf. Allen v. Dameron*, 2016 WL 4772484, slip op. at 2 (W.D. Wash. 2016) (finding
7 inconsistency in Washington state law). This Court does not require a Supreme Judicial Court
8 decision that is perfectly on point to reach a question of Massachusetts law, so long as there is
9 “sufficient state law to enable this [C]ourt to make a decision on the issues.” *Syngenta Seeds,*
10 *Inc. v. County of Kauai*, 842 F.3d 669, 681 (9th Cir. 2016). In that case, “certification is
11 inappropriate.” *Id.*

12 Comity also cuts against certification to a state court when a federal court has already
13 ruled because federal courts are “competent to apply federal *and* state law.” *McKesson v. Doe*,
14 592 U.S. 1, 5 (2020) (emphasis added). This is especially true here due to other issues with class
15 certification, *see infra* Part II(B), that make an answer on the Wage Act question less than
16 determinative. (*See* Dkt. No. 186 at 18.) Finally, the Court notes that it already considered public
17 policy when describing the relationship between the Massachusetts Wage Act and Minimum
18 Wage Law in its prior order. (*See id.* at 6–7.) It explained that the two statutes are
19 complementary and that the former is not the only protection for workers. (*Id.* at 10.)

20 Plaintiff only brought his motion to certify the question after receiving an adverse
21 decision from the Court and has not overcome the presumption against such *post hoc* requests for
22 certification. The Court does not find Plaintiff’s arguments compelling. Therefore, Plaintiff’s

23 ² A different district court exercised its discretion to certify a similar question (and others) more
24 than a decade ago. *Schwann v. FedEx Ground Package Sys., Inc.*, 2014 WL 496882, slip op. at 4
25 (D. Mass. 2014). But here, the Court had the benefit of subsequent precedent, and the posture of
26 that case was distinguishable because the district court had not yet made a ruling on the question.
Id. at 1. Additionally, the district court there sought guidance on a broader range of questions
that covered both business expenses *and* deductions. *Id.* at 3–4.

1 motion to certify a question to the Massachusetts Supreme Judicial Court is DENIED.

2 **B. Motion for Interlocutory Review**

3 A district court also has discretion to certify an order for interlocutory appeal if (1) it
4 involves a controlling question of law (2) as to which there is substantial ground for difference of
5 opinion and (3) an immediate appeal from the order may materially advance the ultimate
6 termination of the litigation. 28 U.S.C. § 1292(b); *see also Swint v. Chambers Cnty. Comm'n*,
7 514 U.S. 35, 47 (1995) (“Congress thus chose to confer on district courts first line discretion to
8 allow interlocutory appeals”). Interlocutory appeals are rare because they are “a departure from
9 the normal rule that only final judgments are appealable.” *James v. Price Stern Sloan, Inc.*, 283
10 F.3d 1064, 1067 n.6 (9th Cir. 2002). As the party moving for review, Plaintiff has the burden of
11 showing that all three elements are met. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475
12 (1978) (overruled on other grounds). He has failed to do so for at least the third element.

13 In its order denying class certification, the Court found that the Wage Act claim suffered
14 from predominance issues under Rule 23(b)(3). (Dkt. No. 187 at 18) (explaining the difficulty of
15 establishing liability and damages across thousands of class members’ phones and vehicles).
16 Even assuming this claim should not have been dismissed, the result for Plaintiff’s original
17 motion would be the same. Plaintiff sought classwide resolution of his claims, including under
18 the Wage Act, and did not prevail, in part, because individual issues predominated over common
19 questions.³ (*See* Dkt. No. 186 at 19.) The Court does not find an appeal of its order would
20 advance this litigation. Therefore, because he fails to satisfy at least one statutory factor,
21 Plaintiff’s motion for interlocutory review is DENIED.

22 **III. CONCLUSION**

23 For the foregoing reasons, Plaintiff’s motion to either certify a question to the Supreme
24 Judicial Court of Massachusetts or an order for interlocutory appeal (Dkt. No. 187) is DENIED.

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26 ³ The Ninth Circuit also recently denied Plaintiff’s Rule 23(f) petition. (*See* Dkt. No. 196 at 1.)

1 DATED this 6th day of March 2025.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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