

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION

TIMOTHY W. REPASS and WILLIAM	§	
SCOTT MCCANDLESS, individually and on	§	
behalf of all others similarly situated,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	MO:18-CV-107-DC
	§	
TNT CRANE AND RIGGING, INC.,	§	
<i>Defendant.</i>	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION**

BEFORE THE COURT is United States Magistrate Judge Ronald C. Griffin’s Report and Recommendation (R&R) filed in the above-captioned cause on January 17, 2019, in connection with Plaintiffs Timothy W. Repass and William Scott McCandless’s, individually and on behalf of all others similarly situated, Opposed Motion for Expedited Conditional Certification of Collective Action and Judicially-Supervised Notice Under Section 216(b) and Brief in Support (Motion for Conditional Certification and Notice). (Docs. 20, 28). After due consideration, the Court **ADOPTS** the Magistrate Judge’s R&R in its entirety. (Doc. 28).

**I. BACKGROUND**

On June 18, 2018, Plaintiffs filed their Original Complaint against Defendant under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201. (Doc. 1). Plaintiffs assert Defendant, a crane and rigging company providing lifting services across the Permian Basin, employed Plaintiffs and paid them an hourly wage plus a per diem of at least \$100 a day. *Id.* at 5. However, Plaintiffs allege Defendant failed to compensate Plaintiffs for drive time and off-the-clock work performed, in violation of the FLSA. *Id.* at 6–9. Thus, Plaintiffs brought this collective action seeking unpaid back wages from Defendant. *Id.* at 10. On July 11, 2018, Plaintiffs’ filed an

Amended Complaint, asserting an additional cause of action under the New Mexico Minimum Wage Act. (Doc. 12 at 15).

On August 17, 2018, Plaintiffs filed their Motion for Conditional Certification and Notice as to their FLSA claim, asking the court to conditionally certify a class defined as

**ALL CURRENT AND FORMER CRANE OPERATORS OF DEFENDANT WHO WORKED OUT OF DEFENDANT'S MIDLAND, SAN ANTONIO, OR HOUSTON YARDS AT ANY TIME IN THE LAST THREE YEARS.**

(Doc. 20 at 6). Upon conditional certification of Plaintiffs' proposed class, Plaintiffs request leave to send their proposed Notice—by mail, email, social media, and text message—to all current and former employees of Defendant who worked as crane operators for Defendant since February 15, 2015. *Id.* at 11. Plaintiffs further ask the Court to order Defendant to post the Notice of Collective Action in a conspicuous and accessible location at each of its places of work and seeks permission to maintain a website dedicated to posting the Notice and Consent Forms. *Id.* at 12. Finally, Plaintiffs request equitable tolling on the FLSA's statute of limitations. *Id.* Defendant filed its Response in opposition to Plaintiffs' Motion for Conditional Certification and Notice on September 7, 2018. (Doc. 23).

On October 5, 2018, the Court referred the case to the Magistrate Judge pursuant to 28 U.S.C. § 636 and Appendix C of the Local Court Rules for the Assignment of Duties to U.S. Magistrate Judges. (Doc. 25). On January 17, 2019, the Magistrate Judge issued his R&R, recommending the Court grant in part Plaintiffs' Motion for Conditional Certification and Notice. (Doc. 28). Specifically, the Magistrate Judge recommends the Court conditionally certify Plaintiffs' proposed class, order the parties to confer and attempt to agree upon the content and form of notice, and deny Plaintiffs' request for equitable tolling. *Id.* at 8.

## II. DISCUSSION

As outlined in the Magistrate Judge's R&R, any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file written objections within fourteen (14) days after being served with a copy of the findings and recommendation. 28 U.S.C. § 636(b)(1). Failure to file written objections to the R&R within fourteen (14) days after being served with a copy shall bar that party from *de novo* review by the district court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the district court to which no objections were filed. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150–53 (1985); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989) (per curiam).

To date, neither party has filed any objections to the Magistrate Judge's R&R in this case. The Court, after reviewing the Magistrate Judge's R&R for clear error, finds it to be neither clearly erroneous nor contrary to law. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court accepts the Magistrate Judge's findings and recommendations and adopts the R&R in its entirety.

## III. CONCLUSION

For the reasons stated above, the Court **ACCEPTS** the Magistrate Judge's findings and recommendations and **ADOPTS** the R&R in its entirety. (Doc. 28).

Accordingly, the Court **GRANTS IN PART** Plaintiffs' Motion for Conditional Certification and Notice. (Doc. 20). Thus, the Court **CONDITIONALLY CERTIFIES** Plaintiffs' proposed class.

The Court **ORDERS** the parties to confer and attempt to agree on the content, form, and distribution of notice to the proposed class. The Court **FURTHER ORDERS** the parties to file the Amended Proposed Notice within **FOURTEEN (14) DAYS** of the entry of this Order.

Finally, the Court **DENIES** Plaintiffs' request for equitable tolling.

It is so **ORDERED**.

SIGNED this 6th day of February, 2019.

A handwritten signature in black ink, appearing to read "David Counts", with a stylized star or asterisk symbol to the right of the name.

DAVID COUNTS  
UNITED STATES DISTRICT JUDGE