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FILED
MAY 13 2004
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY *[Signature]* DEPUTY

DOCKETED ON CM
MAY 13 2004
BY *[Signature]* 037

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ROBERT NIGG, et al.,) Case No. SA CV 03-1611-GLT (ANx)
)
Plaintiffs,) ORDER ON PARTIES' MOTIONS
)
vs.)
)
UNITED STATES POSTAL SERVICE,)
)
Defendant.)

DOCKETED ON CM
MAY 13 2004
BY *[Signature]* 037

Defendant's motion to dismiss or transfer is **ADVANCED** and **DENIED**.
Defendant's *ex parte* application for a stay is **GRANTED IN PART**.
Plaintiffs' motion for preliminary certification and permission to send
notice is **GRANTED**.

I. BACKGROUND

Plaintiffs, current and former postal inspectors employed by
Defendant, allege they were improperly classified as "exempt" employees
and denied overtime protections of the Fair Labor Standards Act
("FLSA"), 29 U.S.C. § 201 *et seq.* Plaintiffs also allege Defendant
failed to properly compensate them for time spent on "duty assignment"
and while driving to and from work in Postal Service vehicles.

1 Plaintiffs now move: (1) to preliminarily certify a collective
2 action under the FLSA; (2) to require Defendant to provide the last
3 known names, addresses, telephone numbers and email addresses (if known)
4 of all postal inspectors employed since April 7, 2001; and (3) for
5 permission to send notice to similarly-situated postal inspectors.
6 Defendant does not directly oppose Plaintiffs' motion for preliminary
7 certification. Defendant instead argues the Court lacks subject matter
8 jurisdiction, and moves to dismiss the case or transfer it to the
9 United States Court of Federal Claims. Defendant has also filed an ex
10 parte application for a stay under 28 U.S.C. § 1292(d)(4)(B).

11 II. DISCUSSION

12 A. Subject Matter Jurisdiction

13 Defendant contends the Court lacks subject matter jurisdiction
14 over Plaintiffs' case, and moves to dismiss under Fed.R.Civ.P. 12(b)(1)
15 or to transfer the case to the Court of Federal Claims. Because
16 Plaintiffs have had an opportunity to respond to the merits of this
17 motion, it is ADVANCED for immediate consideration with Plaintiffs'
18 motion and Defendant's ex parte application for a stay.^{1/}

19 Defendant argues the Court lacks subject matter jurisdiction
20 because the Tucker Act, 28 U.S.C. §§ 1346 and 1491,^{2/} vests exclusive
21 jurisdiction over this FLSA action in the Court of Federal Claims. In
22 support of its argument, Defendant relies on cases in which the

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24 ^{1/} Because of the stay discussed in Section II.B., *infra*,
25 the Court will not address the merits of Defendant's motion to
dismiss Plaintiffs' state-law claim.

26 ^{2/} The Tucker Act defines the jurisdictional limits of non-
27 tort actions against the United States. The Act vests
28 jurisdiction in the United States Court of Federal Claims for all
non-tort actions involving more than \$10,000. 28 U.S.C. §
1346(a)(2).

1 plaintiff brought an FLSA claim against a governmental agency other than
2 the United States Postal Service. As discussed below, suits against the
3 Postal Service are subject to a unique jurisdictional scheme, and
4 Defendants reliance on its cited authority is misplaced.

5 Under settled principles of sovereign immunity, "the United
6 States, as a sovereign, 'is immune from suit, save as it consents to be
7 sued ... and the terms of its consent to be sued in any court define
8 that court's jurisdiction to entertain the suit.'" United States v.
9 Testan, 424 U.S. 392, 399 (1976) (quoting United States v. Sherwood, 312
10 U.S. 584, 586 (1941)). The United States may waive sovereign immunity,
11 but any waiver must be unequivocally expressed and is strictly
12 construed in favor of the government. United States v. King, 395 U.S. 1,
13 4 (1969). If Plaintiffs cannot fit their claim within a waiver of
14 sovereign immunity, the Court lacks jurisdiction and must dismiss the
15 action. United States v. Dalm, 494 U.S. 596, 609-10 (1990); United
16 States v. Mitchell, 445 U.S. 535, 538 (1980); accord Fed.R.Civ.P.
17 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise
18 that the court lacks jurisdiction of the subject matter, the court shall
19 dismiss the action.").

20 The Supreme Court's two-part jurisdictional/immunity analysis, set
21 forth in FDIC v. Meyer, 510 U.S. 471 (1994), applies here. For this
22 suit to proceed, there must first be a sufficient waiver of sovereign
23 immunity for actions against the Postal Service. If there is a waiver,
24 the substantive prohibitions of the law at issue, the FLSA, must apply
25 to the Postal Service. See Meyer, 510 U.S. at 483-84.

26 The first part is easily satisfied, as "[t]he sue-and-be-sued
27 clause [39 U.S.C. § 401] waives immunity, and makes the Postal Service
28 amenable to suit, as well as to the incidents of judicial process." U.S.

1 Postal Service v. Flamingo Industries (USA) Ltd., __ U.S. __, 124 S.Ct.
2 1321, 1327 (2004). The second part is easily satisfied as well, as the
3 FLSA allows employees to sue the Postal Service for FLSA violations. 29
4 U.S.C. §§ 203(e)(2) and 216(b).

5 This does not end the analysis, however, because Defendant
6 contends the Tucker Act mandates jurisdiction is proper only in the
7 Court of Federal Claims. Defendant is incorrect. As Plaintiffs
8 correctly note, jurisdiction lies in this Court pursuant to 39 U.S.C. §
9 409(a), which provides "the United States district courts shall have
10 original but not exclusive jurisdiction over all actions brought by or
11 against the Postal Service." As the Ninth Circuit has held, "[t]he
12 plain language of this statute grants United States district courts
13 original jurisdiction over lawsuits by or against the Postal
14 Service...." Flamingo Industries (USA) Ltd. v. U.S. Postal Service, 302
15 F.3d 985, 995 (9th Cir. 2002), *overruled on other grounds*, 124 S.Ct.
16 1321 (2004). This conclusion is supported by the holding in Arceneaux
17 v. U.S. Postal Service, 2003 WL 1936402 (E.D. La. 2003), which is
18 apparently the only case deciding whether the district courts have
19 jurisdiction over FLSA claims against the Postal Service by postal
20 employees.^{3/}

21 Defendant only passingly mentions § 409(a), and does so in arguing
22 the Tucker Act supercedes the clear jurisdictional grant in § 409(a).
23 Defendant does not cite any authority for this proposition, and does not
24 distinguish the clear language of the statute or the binding Flamingo
25 case Ninth Circuit precedent. The specific jurisdictional language of §

26 _____
27 ^{3/} In Donovan v. U.S. Postal Service, 530 F.Supp. 872, 889
28 (D.D.C. 1981), the court held jurisdiction was proper over the
plaintiff's FLSA claim under § 409(a), but acknowledged
jurisdiction was not disputed.

1 409(a) is in contrast to the general jurisdictional language of § 1331.
2 The Court declines to nullify the jurisdictional grant in § 409(a), as
3 that section and the Tucker Act are easily read together to make both
4 effectual. Under the Tucker Act, an FLSA action against a federal
5 entity would normally be proper only in the Court of Federal Claims.
6 However, an FLSA action against the Postal Service is proper in the
7 Court of Federal Claims or the district courts, as § 409(a) grants
8 "original but not exclusive jurisdiction" to the district courts.

9 The Court has subject matter jurisdiction over Plaintiffs' FLSA
10 claims. Defendant's motion to transfer to the Court of Federal Claims
11 is DENIED.

12 B. Defendant's Ex Parte Application for a Stay

13 On May 6, 2004, Defendant filed an *ex parte* application to stay
14 proceedings pending a ruling on its motion to dismiss or transfer, also
15 filed May 6, 2004. Defendant's application is GRANTED IN PART.

16 28 U.S.C. § 1292(d)(4)(B) provides, in relevant part:

17 When a motion to transfer an action to the Court of
18 Federal Claims is filed in a district court, no further
19 proceedings shall be taken in the district court until
20 60 days after the court has ruled upon the motion....

21 The Court has ruled on the merits of Defendant's motion to transfer,
22 and this action is STAYED for 60 days from the date of this order.^{4/}

23 Plaintiffs contend the stay should not apply to their motion to
24 preliminarily certify and send notice because the FLSA statute of
25 limitations continues to run for each potential class member until he or
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27 ^{4/} This stay prevents the Court from reaching the merits of
28 Defendant's motion to dismiss Plaintiffs' state-law claim at this
time.

1 she files a valid opt-in form. See Partlow v. Jewish Orphans' Home of
2 Southern Cal., Inc., 645 F.2d 757, 760 (9th Cir. 1981) ("It is true
3 that the FLSA statute of limitations continues to run until a valid
4 consent is filed."). The Court agrees.

5 The stay statute also provides, "[t]he stay of proceedings in the
6 district court shall not bar the granting of preliminary or injunctive
7 relief, where appropriate and where expedition is reasonably
8 necessary...." 28 U.S.C. § 1292(d)(4)(B). The legislative history of
9 this portion of the statute notes, "where time is of the essence, this
10 exception [permits] the granting of extraordinary relief while still
11 postponing consideration of the merits until after jurisdictional
12 questions are resolved." H.R. Rep. No. 100-889, at 53 (1988). Because
13 of the running statute of limitations, the Court finds the expedient
14 resolution of Plaintiffs' motion for preliminary certification, and the
15 notice Plaintiffs request, is appropriate and reasonably necessary
16 during the stay. Without a ruling now, substantial rights of numerous
17 people may be lost.

18 C. Plaintiffs' Motion to Preliminarily Certify

19 Plaintiffs seek to preliminarily certify their collective action
20 to allow notice to be sent to absent postal inspectors. In order for
21 the Court to preliminarily certify a collective action, the named
22 Plaintiffs must demonstrate they and the absent postal inspectors are
23 "similarly situated." 29 U.S.C. § 216(b); Grayson v. K-Mart Corp., 79
24 F.3d 1086, 1096 (11th Cir. 1996). At this early stage, this showing
25 "require[s] nothing more than substantial allegations that the putative
26 class members were together the victims of a single decision, policy, or
27 plan infected by discrimination." Wynn v. National Broadcasting Co.,
28 Inc., 234 F.Supp.2d 1067, 1081 (C.D.Cal. 2002) (quoting Sperling v.

1 Hoffman-LaRoche, Inc., 118 F.R.D. 392, 407 (D.N.J. 1988)). Plaintiffs
2 have made such allegations, and Defendant has not raised any objection.
3 The Court finds Plaintiffs and the absent postal inspectors are
4 "similarly situated," and preliminary certification is proper.^{5/}

5 Plaintiffs also seek to have Defendant provide the names and
6 contact information of the absent Plaintiffs. Defendant has not filed
7 any objection. The Court has broad discretion to allow the discovery of
8 the names and contact information of similarly-situated current and
9 former employees in "opt-in" collective actions. Hoffmann-La Roche Inc.
10 v. Sperling, 493 U.S. 165, 170 (1989). The Court finds Plaintiffs'
11 request for contact information is proper.

12 III. DISPOSITION

13 Defendant's motion to transfer to the United States Court of
14 Federal Claims is **ADVANCED** and **DENIED**.

15 Plaintiffs' motion for preliminary certification of a collective
16 action is **GRANTED**. Within 14 days of this order, Defendant shall
17 provide to Plaintiffs' counsel the last known names, addresses,
18 telephone numbers and email addresses (if known) of all postal
19 inspectors employed since April 7, 2001. Plaintiffs may then provide
20 notice of this action to these absent postal inspectors. The Court
21 appoints Magistrate Judge Nakazato to oversee and work out any
22 disagreements between the parties concerning notification of postal
23 inspectors, and either party may schedule an immediate appointment with
24 the Magistrate Judge to coordinate notice and how it will be given.

26 ^{5/} At a later stage, such as opposing a motion for
27 decertification after discovery has closed, Plaintiffs would be
28 required to provide a much stronger showing. See Wynn, 234
F.Supp.2d at 1082 (discussing the showings required at different
stages of litigation).

1 All other aspects of this action are STAYED for 60 days from the date
2 of this order.

3 Plaintiffs' opposition, if any, to Defendant's pending motion to
4 dismiss the state-law claim shall be filed 61 days from the date of
5 this order. Defendant's reply, if any, shall be filed 68 days from the
6 date of this order. The Court will then take the matter under
7 submission and notify the parties if a hearing is required.

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9 DATED: May 12, 2004

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GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 03-1611-GLT(ANx)

Date: May 13, 2004

Title: ROBERT NIGG v UNITED STATES POSTAL SERVICE

PRESENT:

THE HONORABLE GARY L. TAYLOR, JUDGE

LISA BREDAHL
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

Not Present

PROCEEDINGS: CHANGES IN TENTATIVE RULING

The Court has filed its order on pending matters. For the convenience of the parties, a new sentence has been added at page 4, line 25, and at page 7, line 20. The Court encourages the parties to meet promptly with the Magistrate Judge to work out notice problems.

DOCKETED ON CM
MAY 13 2004
BY Wm 037

MINUTES FORM 11
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Initials of Deputy Clerk WJ

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