

1 issued an order affirming the majority of the Court's grant of summary judgment, but vacating
2 the grant of summary judgment as to Plaintiffs' claim that Defendant violated the FLSA by
3 failing to compensate technicians for time spent on personal data transmissions ("PDT")
4 allegedly performed at the end of each work day. *See Rutti v. LoJack Corp., Inc.*, 596 F.3d
5 1046, 1061 (9th Cir. 2010). The Ninth Circuit remanded the case for resolution of the PDT
6 claim.

7 Plaintiffs now bring the instant motion for conditional certification of the purported FLSA
8 class and for an order facilitating notice to absent class members. Oral argument was held on
9 this Motion on December 20, 2010.

10 II. LEGAL STANDARD

11 It is within the discretion of the district court to certify a FLSA collective action. *Smith v.*
12 *T-Mobile USA, Inc.*, 2007 WL 2385131 at *3 (C.D. Cal. 2007) (citing *Leuthold v. Destination*
13 *America, Inc.*, 224 F.R.D. 462, 466 (N.D. Cal. 2004)). The court may authorize the named §
14 216(b) plaintiffs to send notice to all potential plaintiffs and may set a deadline for those
15 plaintiffs to "opt-in" to the suit. *Id.*; *see also Pfohl v. Farmers Ins. Group.*, 2004 WL 554834 at
16 *2 (C.D. Cal. 2004). To certify a FLSA collective action, the court must evaluate whether the
17 proposed lead plaintiffs and the proposed collective action group are "similarly situated" for the
18 purposes of § 216(b). *Reed v. County of Orange*, 266 F.R.D. 446, 449 (C.D. Cal. 2010). Courts
19 generally follow one of two approaches to determine whether the proposed plaintiffs are
20 "similarly situated": (1) evaluating the FLSA collective action in terms of Fed. R. Civ. P. 23's
21 class certification requirements; or (2) applying a two-step approach involving initial notice to
22 prospective plaintiffs followed by a final evaluation of whether such plaintiffs are similarly
23 situated. *See Leuthold*, 224 F.R.D. at 466. Most courts prefer the second method. *See Edwards*
24 *v. City of Long Beach*, 467 F.Supp.2d 986 (C.D. Cal. 2006).

25 Under the two-tiered approach, the court first decides "based primarily on the pleadings
26 and any affidavits submitted by the parties, whether the potential class should be given notice of
27 the action." *Id.* at 467; *see also Pfohl*, 2004 WL 554834 at *2. Given the limited amount of
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1 evidence generally available at this stage in the proceedings, courts usually evaluate first-tier
2 requests for class certification “under a fairly lenient standard [, which] typically results in
3 conditional class certification.” *Pfohl*, 2004 WL 554834 at *2. The second step occurs after the
4 taking of significant discovery, at which time the party opposing collective action treatment may
5 move for an order decertifying the class. *Reed*, 266 F.R.D. at 449. Whether to decertify is a
6 factual determination, made by the court, based on the following factors: (1) the disparate factual
7 and employment settings of the individual plaintiffs; (2) the various defenses available to the
8 defendants with respect to the individual plaintiffs; and (3) fairness and procedural
9 considerations. *Id.*

10 **III. DISCUSSION**

11 The parties are in dispute over whether the first-tier or second-tier certification analysis
12 ought be applied to Plaintiffs’ Motion. Plaintiffs’ moving papers invoke the lenient, first-tier
13 standard. *See* Pl.’s Mot. at 3 (asserting that they may “meet the burden of demonstrating that the
14 class members are similarly situated for the purposes of class certification by making a modest
15 factual showing ...”). Defendant, by contrast, contends that because extensive discovery has
16 already taken place, the Court should evaluate Plaintiffs’ Motion under the more rigorous
17 second-tier approach.

18 The Court agrees with Plaintiffs. Although some discovery has been conducted, after
19 considering the arguments propounded at oral argument, the Court concludes that the more
20 prudent course it to adhere to the traditional two-step approach, allowing for the dissemination
21 of notice upon a modest factual showing that the parties are similarly situated. *See Leuthold*,
22 224 F.R.D. at 468 (holding that “[a]lthough it is a close question, given that extensive discovery
23 has already taken place, the Court agrees with plaintiffs that the court ought to begin the FLSA
24 class certification analysis with the question whether notice should be sent to the prospective
25 class.”). The ultimate propriety of collective action treatment can be determined at the second-
26 stage analysis, once notice has been mailed.

27 The Court concludes that Plaintiffs have met their modest factual burden under the tier-
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1 one analysis.

2 **IV. DISPOSITION**

3 The Court GRANTS Plaintiffs' Motion. Plaintiffs are authorized to mail the proposed
4 notice to all persons employed by Lojack Corporation, Inc. As Installation Technicians and/or
5 Senior Installation Technicians, employed youtside of California who performed the PDT
6 transaction for Defendant during the class period. Defendants are ORDERED to produce a
7 computer readable date file containing the names, addresses, social security numbers and
8 telephone numbers of all such potential opt-in Plaintiffs so that notice may be implemented.

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12 IT IS SO ORDERED.

13 DATED: January 14, 2011

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16 DAVID O. CARTER

17 United States District Judge
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