

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**SHAWN SMITH and JODY COTTONGIN,
Individually, and On Behalf of Others
Similarly Situated**

PLAINTIFFS

v.

No. 4:21-cv-232-DPM

**PREMIER ENVIRONMENTAL SERVICES, INC.,
and SAM MCFADIN**

DEFENDANTS

ORDER

1. Smith and Cottongin sue on behalf of themselves and other similarly situated workers. Since the filing of this lawsuit, two others, Michael Hall and Payton Jones, have consented to join the action and opted in as plaintiffs. All these individuals allegedly worked for Premier Environmental Services, Inc., an Arkansas-based fiber optic installation company, and Sam McFadin, the company's alleged owner. All of them claim they were underpaid. Smith and Cottongin move to conditionally certify a collective action. Premier Environmental Services and McFadin oppose certification. All material circumstances considered, the workers have made the modest factual showing required under the fairly lenient legal standard. *Helmert v. Butterball, LLC*, 2009 WL 5066759 at *3 (E.D. Ark. 15 Dec. 2009); *Freeman v. Wal-Mart Stores, Inc.*, 256 F.Supp.2d 941, 944-45 (W.D. Ark. 2003).

2. A point of clarification. The employers say that Hall isn't a plaintiff in this case. They argue that, without Hall, the collective shouldn't include finishing supervisors. The Court assumes the argument applies equally to Jones, who opted in after Smith and Cottongin filed their motion for certification. Smith and Cottongin are correct that Hall and Jones, regardless of certification status, are plaintiffs with their own individual actions. *Mickles v. Country Club, Inc.*, 887 F.3d 1270, 1278 (11th Cir. 2018). Hall and Jones, having filed their consents, are on equal footing with Smith and Cottongin.

3. Smith, Cottongin, Hall, and Jones are similarly situated. Even if parts of the workers' declarations contain hearsay, as the employers point out, the admissible evidence is more than sufficient at this early stage to allow conditional certification. The plaintiffs worked in different capacities, but under the same hourly/bonus pay structure, and they allege that they were affected in the same basic ways. *Smith v. Frac Tech Services, LLC*, No. 4:09-cv-679-JLH, Doc. 65 (E.D. Ark. 24 Nov 2009). Some modifications, however, are required. Cottongin's initial few weeks as a salaried locator aren't enough for the Court to include all salaried workers in the collective. Excluding Cottongin's brief stint on salary, the plaintiffs were hourly workers. And the "employees who performed the same duties" formulation Smith and Cottongin propose is too vague and ambiguous to certify. The Court therefore conditionally certifies the following group:

All drillers, locators, foreman, and finishing supervisors who worked for Premier Environmental Services, Inc., and Sam McFadin, and were paid an hourly rate, at any time since 24 March 2018.

The employers must provide plaintiffs' counsel (on an editable electronic spreadsheet) a list of names, addresses, and e-mail addresses of group members.

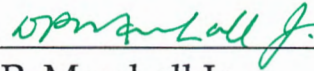
4. The notice, consent form, email, and follow-up notice are approved with tweaks. *Doc. 13-1, Doc. 13-2, Doc. 13-3, Doc. 13-4 & Doc. 13-5*. Update the group description. Although the Court hasn't found any, if references to salaried workers remain in the notice papers, please remove them. Plaintiffs' counsel must send the notice by regular mail with follow-up notice by email. Texts are not necessary. The employers must also post the notice at their Conway offices and any other company location in Arkansas where drillers, locators, foreman, and finishing supervisors are based. Here's the schedule:

- Premier Environmental Services, Inc., and McFadin produce spreadsheet by 21 January 2022
- Notice period opens 4 February 2022
- Opt-in period closes 4 May 2022

* * *

Motion, *Doc. 13*, granted as modified.

So Ordered.



D.P. Marshall Jr.
United States District Judge

