

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

David Collinge, et al. v. Intelliquick Delivery, Inc., et al.

THE HONORABLE JOHN W. SEDWICK

2:12-cv-00824 JWS

PROCEEDINGS:

ORDER FROM CHAMBERS

August 1, 2012

At docket 43, plaintiffs David Collinge, *et al.* (collectively “plaintiffs”) move for equitable tolling of the statute of limitation. Defendants Intelliquick Delivery, Inc., *et al.*, (collectively “defendants”) oppose the motion at docket 53. Plaintiffs’ reply is at docket 56. Oral argument was requested but would not assist the court.

For named plaintiffs in collective actions under the Fair Labor Standards Act (“FLSA”), the action commences when the complaint is filed. 29 U.S.C. § 256(a). For opt-in plaintiffs, however, the action commences upon filing of a written consent. *Id.* § 256(b). Plaintiffs argue that the statute of limitation should be tolled as of April 19, 2009, the date the complaint was filed, because “[d]efendants have actively sought to prohibit [d]rivers from even talking about the lawsuit under threat of termination.” Doc. 43 at 4. “Equitable tolling applies when [a] plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff’s control made it impossible to file a claim on time.” *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999).

The allegations in plaintiffs’ motion and the declarations supporting them do not provide a basis for equitable tolling. Even if Collinge’s allegation that several other drivers told him they are afraid to opt in is true, unless those drivers join the lawsuit, there is no occasion to toll the limitation period applicable to their claims. In other words, plaintiffs’ argument is not ripe. To the extent plaintiffs have alleged retaliation under the FLSA, it is similarly unclear that defendants’ retaliatory acts have actually prevented anyone from asserting a claim for unpaid overtime. In any event, the appropriate course of action would be to amend the complaint to add additional claims for retaliation or to file a separate lawsuit. Finally, defendants’ refusal to provide a list of potential claimants did not constitute wrongful conduct because defendants were not under any obligation to provide such a list until the court ordered it.

For the reasons above, the motion at docket 43 is **DENIED**.