

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:25-CV-00398-SCR-MTO**

**BENJAMIN HARRIS AND
MARTICILLA ROBERTS,
*individually on behalf of Plaintiffs,
and all others similarly situated,***

Plaintiffs,

v.

SHOE SHOW, INC.,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiffs’ Pre-Discovery Motion for Conditional Collective Certification and Court-Authorized Notice to Potential Opt-In Plaintiffs Pursuant to 29 U.S.C. § 216(b) (Doc. No. 17) and Defendant’s Emergency Motion for Expedited Discovery and to Stay Briefing on Plaintiffs’ Pre-Discovery Motion for Conditional Certification (Doc. No. 19). The case was reassigned to the undersigned on January 16, 2026.

Having considered the arguments, record, and applicable authority, including the text of 29 U.S.C. § 216(b), the Court will grant Defendant’s Emergency Motion for Expedited Discovery (Doc. No. 19), deny as moot Defendant’s Motion to Stay Briefing on Plaintiffs’ Pre-Discovery Motion for Conditional Certification (Doc. No. 19), and deny without prejudice Plaintiffs’ Pre-Discovery Motion for Conditional Collective Certification and Court-Authorized Notice to Potential Opt-In Plaintiffs Pursuant to 29 U.S.C. § 216(b) (Doc. No. 17). See 29 U.S.C. § 216(b) (“An action to recover the liability prescribed in the preceding sentences may be maintained against any employer . . . by any one or more employees for and in behalf of himself or themselves and other employees similarly situated” but not stating the court may grant conditional

certification) (emphasis added)); see also Swales v. KLLM Transport Srvcs., L.L.C., 985 F.3d 430 (5th Cir.2021) (“[A] district court should identify, at the outset of the case, what facts and legal considerations will be material to determining whether a group of ‘employees’ is ‘similarly situated.’ And then it should authorize preliminary discovery accordingly.”); Hubbard v. Southwood Realty Co., No. 3:24-CV-00481-MEO-DCK, 2026 WL 823169 (W.D.N.C. Mar. 25, 2026) (denying motion for conditional certification and allowing discovery on the issue of whether employees were similarly situated, noting the words “conditional certification” do not appear in the text of 29 U.S.C. § 216(b) and that the Fourth Circuit has “remained silent” on the issue of conditional certification); Mathews v. USA Today Sports Media Grp., LLC, No. 1:22-CV-1407, 2023 WL 3676795 (E.D. Va. Apr. 14, 2023) (recognizing that the “FLSA says nothing at all about ‘conditional certification’” and concluding the “correct approach . . . is the one authorized by FLSA’s text. Courts must determine, at the outset, whether a proposed collective is ‘similarly situated’ to the named plaintiffs.”); Clark v. A&L Homecare & Training Ctr., LLC, 68 F.4th 1003 (6th Cir. 2023) (adopting part of the preliminary injunction standard to FLSA notice, holding that “for a district court to facilitate notice of an FLSA suit to other employees, the plaintiffs must show a ‘strong likelihood’ that those employees are similarly situated to the plaintiffs themselves . . . requir[ing] a showing greater than the one necessary to create a genuine issue of fact, but less than the one necessary to show a preponderance.”).

Considering all of this, **IT IS, THEREFORE, ORDERED** that Plaintiffs’ Pre-Discovery Motion for Conditional Collective Certification and Court-Authorized Notice to Potential Opt-In Plaintiffs Pursuant to 29 U.S.C. § 216(b) (Doc. No. 17) is **DENIED without prejudice**;

IT IS FURTHER ORDERED that Defendant’s Emergency Motion for Expedited Discovery (Doc. No. 19) is **GRANTED**. No later than **fourteen (14) days** from the date of this

Order the parties shall meet and confer on a proposed limited precertification discovery plan specific to the issue of whether Plaintiffs in this action are similarly situated to the proposed collective under 29 U.S.C. § 216(b) and file a joint status report with a proposed precertification discovery plan.

IT IS FURTHER ORDERED that Defendant's Motion to Stay Briefing on Plaintiffs' Pre-Discovery Motion for Conditional Certification (Doc. No. 19) is **DENIED as moot**.

IT IS FURTHER ORDERED that this Order is without prejudice to all parties filing any appropriate motion(s) following precertification discovery.

SO ORDERED.

Signed: September 2, 2026

A handwritten signature in black ink, reading "Susan C. Rodriguez", is written over a horizontal blue line.

Susan C. Rodriguez
United States District Judge

