

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PLANO CHAMBER OF COMMERCE, et al.,

PLAINTIFFS,

v.

THOMAS E. PEREZ, et al.,

DEFENDANTS.

Civil Action No. 4:16-cv-732-ALM

STATE OF NEVADA, et al.,

PLAINTIFFS,

v.

UNITED STATES DEPARTMENT OF
LABOR, et al.,

DEFENDANTS.

Civil Action No. 4:16-cv-731-ALM

BUSINESS PLAINTIFFS' UNOPPOSED MOTION TO CONSOLIDATE

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Under Federal Rule of Civil Procedure 42, Plaintiffs, a broad and diverse coalition of more than fifty-five Texas and national business groups (collectively “the Business Plaintiffs”), through their undersigned counsel, file this unopposed Motion to Consolidate these proceedings with the suit filed in this Court by a group of twenty-one states (collectively “the Plaintiff States”), *Nevada v. Dep’t of Labor*, No. 4:16-cv-00731-ALM, and would respectfully show the Court as follows:

I. NATURE AND STAGE OF THE PROCEEDINGS

On September 20, 2016, the Business Plaintiffs filed a Complaint in the Eastern District of Texas challenging the U.S. Department of Labor’s (DOL’s) rule *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, 81 Fed. Reg. 32,391 (May 23, 2016) (hereafter the “new Overtime Rule”). On October 14, 2016, the Business Plaintiffs filed a motion for summary judgment seeking to enjoin, vacate and set aside the new Overtime Rule.

The Plaintiff States also filed suit with this Court challenging the new Overtime Rule on September 20, 2016. The Plaintiff States have filed a Motion for Preliminary Injunction in the parallel case of *Nevada v. Dep’t of Labor*, No. 4:16-cv-00731-ALM pending before this Court. The Business Plaintiffs support the Plaintiff States’ Motion requesting that the new Overtime Rule be enjoined. Defendants and the Plaintiff States do not oppose this Motion to Consolidate.

II. STANDARD OF REVIEW AND REQUEST

Plaintiffs’ Motion to Consolidate is governed by Federal Rule of Civil Procedure 42. Rule 42 provides, when “actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate

the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” FED. R. CIV. P. 42(a). The purpose of consolidation is “to expedite trial and eliminate unnecessary repetition and confusion.” *Miller v. United States Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1984); *see also Gate Guard Servs. L.P. v. Solis*, No. V-10-91, 2011 WL 2784447, at *14 (S.D. Tex. July 12, 2011) (Rainey, J.) (citing 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2381 (3d ed.) (“The purpose of this rule is to give the district court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties.”)). Federal courts have broad discretion to consolidate or manage cases under Rule 42. *Batazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50 (5th Cir. 1981); *see also Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 432 (5th Cir. 2013) (“The trial court’s managerial power is especially strong and flexible in matters of consolidation.”).

Business Plaintiffs request for this Court to consolidate these proceedings with the suit challenging the new Overtime Rule by Plaintiff States. Both cases involve a common question of law and fact involving the legality of the new Overtime Rule. Consolidation will aid in efficiency and avoid duplicative efforts on the part of all parties and the Court, since the same rule is before the Court in both cases. Neither Defendants nor Plaintiff States oppose this motion. Therefore, the Business Plaintiffs request for this case to be consolidated with the suit filed by the Plaintiff States.

III. CONCLUSION

For the foregoing reasons, the Business Plaintiffs respectfully request the Court to consolidate these proceedings with *Nevada v. Dep’t of Labor*, No. 4:16-cv-00731-ALM.

Dated: October 17, 2016

Respectfully submitted,

/s/ Robert F. Friedman

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CERTIFICATE OF CONFERENCE

Undersigned counsel has complied with the meet and confer requirement in LOCAL RULE CV-7(h), neither Defendants nor the Plaintiff States oppose this Motion.

/s/ Maurice Baskin

Maurice Baskin

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2016, a copy of the foregoing Motion for Summary Judgment was filed electronically via the Court's ECF system. The following persons have been served via FedEx Overnight Delivery:

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