NOT FOR PUBLICATION

FILED

JUN 11 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIFFANY HILL, individually and on behalf of all others similarly situated, Plaintiff-Appellee, v. XEROX BUSINESS SERVICES, LLC; et al., Defendants-Appellants.	No. 14-36029 D.C. No. 2:12-cv-00717-JCC MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Argued and Submitted February 7, 2017
Resubmitted June 7, 2019
Seattle, Washington

Before: PAEZ and CALLAHAN, Circuit Judges, and ENGLAND,[**] District Judge.

This case arises from a dispute between Tiffany Hill ("Hill") and Xerox

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Morrison C. England, Jr., United States District Judge for the Eastern District of California, sitting by designation.

Business Services, LLC and its predecessor companies (collectively, "Xerox"), over the method by which Xerox calculated wages owed to Hill and others similarly situated. After denying Xerox's motion for partial summary judgment, the district court certified its ruling for intermediate interlocutory appeal. We have jurisdiction pursuant to 28 U.S.C. § 1292(b), and we affirm.

Because this appeal raised unsettled issues under Washington's Minimum Wage Act, we certified the following question of state law to the Washington Supreme Court:

> Whether an employer's compensation plan, which includes as a metric an employee's "production minutes," qualifies as a piecework plan under Wash. Admin. Code § 296-126-021.

Hill v. Xerox Bus. Servs., LLC, 868 F.3d 758, 760 (9th Cir. 2017). The Washington Supreme Court accepted our certified question and answered it in the negative. *Hill v. Xerox Bus. Servs., LLC*, 426 P.3d 703, 708 (Wash. 2018). The court held: "an employer's payment plan that includes as a metric an employee's 'production minutes' does not qualify as a piecework plan under WAC 296-126-021." *Id.* at 705. Pursuant to the Washington Supreme Court's opinion, the district court's denial of partial summary judgment is affirmed.

AFFIRMED.