IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HANNAH BLAKENEY,
on behalf of herself and all
others similarly situated,

Plaintiff,

v.

ARTHUR J. GALLAGHER & CO.,

Defendant.
_____/

Case No. 1:23-cv-16624

Honorable Thomas M. Durkin

PLAINTIFF'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO FACILITATE NOTICE UNDER 29 U.S.C. SECTION 216(b)

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INTRODUCTION

Plaintiff Hannah Blakeney ("Plaintiff" or "Blakeney") and Opt-In Plaintiffs Elliott Ivins (ECF No. 5), Jodeci Gordon (ECF No. 5), Alexander Campling (ECF No. 14), Alex Banks (ECF No. 14), Deanne Velez (ECF No. 19) (collectively "Plaintiffs"), are former Client Services Associates for Defendant Arthur J. Gallagher & Co. ("Defendant" or "Gallagher"). Plaintiffs bring this action on behalf of themselves and other similarly situated Client Services Associates, however titled, including Client Service Associates I, II, and Small Business Client Associates (collectively, "CSAs")[1] alleging that Defendant denied them overtime compensation in willful violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b). Through this Motion, Plaintiff seeks an Order granting court-facilitated notice under Section 216(b) of the FLSA.

Plaintiffs and the putative collective are classified as non-exempt under the Fair Labor Standards Act, meaning they are entitled to overtime pay at one-and-one-half-time times their regular rate of pay. Defendant's CSAs uniformly share the same job duties, compensation plan, terms and conditions of employment, and all each subject to Defendant's same policies and practices which precluded them from reporting all of their overtime.

At this early "notice" stage of the two-stage FLSA certification process, Plaintiffs have exceeded the "modest" showing on Defendant's nationwide policy and practice which violates the FLSA. Accordingly, pursuant to § 216(b), Plaintiffs request the Court conditionally certify a collective action and issue notice to similarly situated CSAs so that all affected current and former CSAs will have the opportunity to join the collective and exercise their rights under the FLSA.

[1] However, specifically excluding those California-based CSAs who specifically released their FLSA claims in *Hernandez v. Arthur J. Gallagher Service Company, LLC*, 3:22-cv-01910-H-DEB (S.D. Cal.).

I. STATEMENT OF FACTS

A. CSAs Are Under Defendant's Centralized Control, Are Uniformly Classified as Non-Exempt, and Have Substantially the Same Duties, Compensation, and Expectations.

Defendant is "a global leader in insurance, risk management and consulting services." ECF No. 1 (Complaint) at ¶ 2 (citing https://www.ajg.com/ (last visited September 7, 2024)). As part of its business operations, Defendant employs CSAs throughout the United States. *Id*. at ¶ 3.

CSAs provide "routine client support." *Id*. at ¶ 4.[2] The duties of CSAs are clerical in nature and include assisting customers, responding to inquiries via phone and email, servicing small business accounts, and other customer service-related tasks. ECF (Complaint) No. 1 at ¶ 4.[3] Defendant does not dispute this. ECF No. 22 (Answer) at ¶ 4.

Defendant provides CSAs similar training with respect to their uniform job duties and expectations, providing CSA with uniform training material and curriculum as part of training.[4]

Defendant undisputedly pays CSAs on an hourly basis. ECF No. 22 (Answer) at ¶¶ 6, 45, 49.[5] Defendant classifies all CSAs as non-exempt and overtime-eligible. *Id.* at ¶¶ 6, 45.[6]

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[2] Declaration of Hannah Blakeney ("Blakeney Decl.") at ¶ 5; Declaration of Jodeci Gordon ("Gordon Decl.") at ¶ 5; Declaration of Alex Banks ("Banks Decl.") at ¶ 5; Declaration of Deanne Velez ("Velez Decl.") at ¶ 5.

[3] Blakeney Decl. at ¶¶ 5, 16 (Blakeney witnessed other CSAs performing the same job duties); Gordon Decl. at ¶ 5 (regardless of whether she was working from the office or remotely, her CSA job duties remained the same), ¶ 17 (witnessing other CSAs performing the same job duties); Banks Decl. at ¶¶ 5, 15 (same, training alongside other CSA on the same job duties); Velez Decl. at ¶ 5 (same).

[4] Blakeney Decl. at ¶ 16 ("During training, we were all provided with uniform training manuals and expected to keep up with the training curriculum established by AJG for all CSAs."); Gordon Decl. at ¶ 17 (same); Banks Decl. at ¶ 15.

[5] Blakeney Decl. at ¶¶ 3-4 (paid $20/hour); Gordon Decl. at ¶¶ 3-4 ($27.18/hour); Banks Decl. at ¶¶ 3-4 ($32.69/hour); Velez Decl. at ¶¶ 3-4 ($21.00/hour).

[6] Blakeney Decl. at ¶ 3; Gordon Decl. at ¶ 3; Banks Decl. at ¶ 3; Velez Decl. at ¶ 3.

B. CSAs Regularly Work Overtime Hours to Meet Their Job Expectations.

CSAs were scheduled for 37.5 or 40 hours of work per week plus a scheduled, uncompensated meal break each day.[7] However, due to the demands of their jobs, CSAs regularly worked more hours than they were schedule in order to timely complete their job duties.[8] As a result of CSAs being required to work time each week in addition to their scheduled shifts, during uncompensated meal breaks, and/or during their days off, CSAs customarily worked up to approximately up to 50 hours per week.[9]

While Defendant required CSAs to enter time on a manual time keeping system, including recording of scheduled meal breaks, Defendant generally expected CSA to record only their scheduled time inclusive of any scheduled meal break, without regard to hours actually worked.[10]

C. All CSAs Are Subject to the Same Policy and Practice Which Violates the FLSA.

Plaintiffs and others similarly situated were employed by Defendant as CSAs during the three years preceding the filing of this lawsuit.[11] Throughout Plaintiffs' employment, Defendant willfully violated the FLSA by failing to pay Plaintiffs and other similarly situated CSAs overtime compensation for all hours worked in excess of 40 in a workweek.[12] Pursuant to Defendant's

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[7] Blakeney Decl. at ¶ 7; Gordon Decl. at ¶ 7; Banks Decl. at ¶ 7; Velez Decl. at ¶ 7.

[8] Blakeney Decl. at ¶¶ 8-10 (noting that "[a]lthough I was typically scheduled to work 37.5 hours a week, I was required to work time in addition to my scheduled hours in order to complete my job duties," often working after the end of her shift, during her uncompensated meal break, and on days off); Gordon Decl. at ¶¶ 8-11 (same, working "before the branch opened to the public," "during my uncompensated meal break[s]," post-shift, and on days off); Banks Decl. at ¶¶ 8-9 (same, working "before the branch opened to the public" and "during my uncompensated meal break[s]"); Velez Decl. at ¶¶ 8-9 (same, working before and after her scheduled shift, and during uncompensated meal breaks).

[9] Blakeney Decl. at ¶ 11 (50 or more hours per week), ¶¶ 17-18 (witnessing other CSAs regular working overtime hours each week); Gordon Decl. at ¶ 12 (50 hours per week), ¶¶ 18-19 (witnessing other CSAs working overtime hours each week); Banks Decl. at ¶ 10 (42.5 hours per week), ¶ 16 (witnessing other CSAs regularly working overtime hours each week; Velez Decl. at ¶ 10 (50 or more hours per week).

[10] Blakeney Decl. at ¶ 13; Gordon Decl. at ¶ 14; Banks Decl. at ¶ 12; Velez Decl. at ¶ 12.

[11] Blakeney Decl. at ¶ 2 (employed as a CSA in Mississippi); Gordon Decl. at ¶ 2 (Georgia); Banks Decl. at ¶ 8 (California); Velez Decl. at ¶ 10 (Illinois).

[12] Blakeney Decl. at ¶¶ 11-15; Gordon Decl. at ¶¶ 12-16; Banks Decl. at ¶¶ 10-14; Velez Decl. at ¶¶ 10-14

common, uniform, and widespread policy and practice, Defendant prohibited and/or discouraged CSAs from recording all of the overtime hours they worked.[13] As part of its policy and practice, Defendant does not pay for overtime that is worked without pre-approval.[14] However, this pre-approval was rarely granted and commonly discouraged by Defendant.[15] In addition, Defendant has a policy and practice of requiring CSAs to clock out for an unpaid meal break, but regularly required them to perform work during their unpaid meal break.[16] Thus, although CSAs regularly worked overtime, that is, more than 40 hours in a work week, despite any alleged written policies to the contrary, Defendant's uniform *de facto* policies and practices required that CSAs typically record only 40 hours per week on their time sheets without regard to the actual hours they needed to work to meet the demand of their jobs.[17]

D. The Proposed FLSA Collective

Because CSAs are similarly situated in all relevant respects, *see supra*, Plaintiffs seek conditional certification for the following "FLSA Collective:"

> All Customer Service Associates who worked for Defendant at any time in the three (3) years prior to the filing of this action.[18]

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[13] Blakeney Decl. at ¶¶ 12-15 (supervisor instructed Blakeney to "fix" time sheets to remove overtime); Gordon Decl. at ¶¶ 13-16 (supervisors advised "overtime would not be approved unless it was to attend a class or for travel," but not for regular duties); Banks Decl. at ¶¶ 11-14 (supervisor made it clear to Banks to work all hours necessary to complete job duties but notwithstanding, overtime pay was "not in the budget"); Velez Decl. at ¶¶ 11-14 (supervisors "made it clear to me that I had t work as much time as necessary to complete my job duties and meet deadlines. . . . My supervisors [also] . . . instructed me not to record overtime, but also required that I timely complete my assignments.").

[14] Blakeney Decl. at ¶¶ 13-15; Gordon Decl. at ¶¶ 14-16; Banks Decl. at ¶¶ 12-14; Velez Decl. at ¶¶ 12-14.

[15] Blakeney Decl. at ¶¶ 12-15; Gordon Decl. at ¶¶ 13-16; Banks Decl. at ¶¶ 11-14; Velez Decl. at ¶¶ 11-14.

[16] Blakeney Decl. at ¶¶ 9, 13; Gordon Decl. at ¶¶ 9, 14; Banks Decl. at ¶¶ 9, 12; Velez Decl. at ¶¶ 9, 12.

[17] Blakeney Decl. at ¶¶ 11-15 (Ex. A to Blakeney Decl. reflecting same total pay (i.e., same hours recorded) each week); Gordon Decl. at ¶ 12-16 (Ex. A to Gordon Decl. reflecting same total pay (i.e., same hours recorded) every single week except one in which overtime of 30 minutes was pre-approved for training purposes, but not for regular, expected job duties); Banks Decl. at ¶ 10-14; Velez Decl. at ¶¶ 10-14.

[18] But excluding those California-based CSAs who specifically released their FLSA claims in *Hernandez v. Arthur J. Gallagher Service Company, LLC*, 3:22-cv-01910-H-DEB (S.D. Cal.).

II. LEGAL STANDARDS FOR CONDITIONAL CERTIFICATION OF FLSA COLLECTIVE ACTIONS

A. Overview.

The FLSA allows workers to bring a collective action to recover unpaid overtime wages on behalf of themselves "and other employees similarly situated." 29 U.S.C. § 216(b). An FLSA collective action is different from a Fed.R.Civ.P. 23 class action because plaintiffs wishing to join an FLSA collective action must affirmatively consent ("opt-in") to the action. *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7th Cir. 2012); *Allen v. Marshall Field & Co.*, 93 F.R.D. 438, 441 (N.D. Ill. 1982).

The Supreme Court has described the judicial and legislative benefits of the collective action mechanism:

> A collective action allows . . . plaintiffs the advantage of lower individual costs to vindicate rights by the pooling of resources. The judicial system benefits by . . . efficient resolution in one proceeding of common issues of law and fact arising from the same alleged . . . activity.

Hoffmann-La Roche v. Sperling, 493 U.S. 165, 170 (1989). However, these benefits cannot be realized if the employees who suffered from the unlawful activity do not receive timely notice of the collective action and of their opportunity to opt-in. *Id.* Accordingly, courts have the power to facilitate the issuance of notice of an action to potential class members. *Id.* at 170-71; *Woods v. New York Life Ins. Corp.*, 686 F.2d 578, 580 (7th Cir. 1982).

Speed is of the essence when issuing notice: "In FLSA collective actions, potential opt-in plaintiffs do not become parties to a suit until they file written consent with the court. The statute of limitations therefore continues to run on opt-in plaintiffs' claims until they give their consent to join the suit." *Young Chul Kim v. Capital Dental Tech. Lab, Inc.*, 279 F. Supp. 3d 765, 769 (N.D. Ill. 2017). For this reason, plaintiffs typically seek first stage conditional certification and court-

facilitated notice early in the litigation before discovery has commenced. *Sanford v. Preferred Staffing*, No. 17-cv-1071, 2018 WL 11358459, at *1 (E.D. Wis. Nov. 5, 2018) ("Early conditional certification is encouraged so that employees can opt in before the running of any limitations period.") (citations omitted).

B. The Two-Step Process for Certification of FLSA Collective Actions and Plaintiffs' Lenient Burden for Satisfying the Similarly Situated Requirement.

This Honorable Court has summarized the legal standards for conditional certification of FLSA collective actions in this Circuit:

> The FLSA generally provides that "employees are entitled to overtime pay (i.e., one and one-half times the regular rate) for any hours worked in excess of forty hours per week, unless they come within one of the various exemptions set forth in the Act." *Schaefer—LaRose v. Eli Lilly & Co*., 679 F.3d 560, 572 (7th Cir. 2012) (citing 29 U.S.C. §§ 207, 213). The FLSA also "gives employees the right to bring their FLSA claims through a 'collective action' on behalf of themselves and other 'similarly situated' employees." *Alvarez v. City of Chicago*, 605 F.3d 445, 448 (7th Cir. 2010) (citing 29 U.S.C. § 216(b)). . . .
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> "Courts of this Circuit employ a two-step process for determining whether an FLSA lawsuit should proceed as a collective action." *Vargas v. Sterling Eng'g, Inc*., No. 18-CV-5940, 2020 WL 1288982, at *2 (N.D. Ill. Mar. 18, 2020). At step one, the Court determines whether "similarly situated" plaintiffs exist, such that a notice to opt in can be sent to them. *Id.*; *Gomez v. PNC Bank, Nat'l Ass'n*, 306 F.R.D. 156, 173 (N.D. Ill. 2014), *aff'd sub nom. Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360 (7th Cir. 2015); *Briggs v. PNC Fin. Servs. Grp., Inc*., No. 15-CV-10447, 2016 WL 1043429, at *1 (N.D. Ill. Mar. 16, 2016). The plaintiff has the burden to "show that the potential claimants are similarly situated by making a modest factual showing sufficient to demonstrate that they and potential plaintiffs together were victims of a common policy or plan that violated the law." *Strait v. Belcan Engineering Group, Inc*., 911 F. Supp. 2d 709, 718 (N.D. Ill. 2012) (citation omitted).
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> Courts have described this "modest factual showing" as a "low standard of proof," *Bergman v. Kindred Healthcare, Inc*., 949 F. Supp. 2d 852, 855 (N.D. Ill. 2013), that requires only a "minimal showing." *Jirak v. Abbott Labs., Inc*., 566 F. Supp. 2d 845, 847 (N.D. Ill. 2008). Although the burden is low, plaintiffs must still "provide some evidence in the form of affidavits, declarations, deposition testimony, or other documents to support the allegations that other similarly situated employees were subjected to a common policy that violated the law." *Vargas*, 2020 WL 1288982, at *2. . . .

Ford v. U.S. Foods, Inc., No. 19-cv-5967, 2020 WL 5979553, at *1-2 (N.D. Ill. Oct. 8, 2020) (Durkin, *J.*); *see also Berger v. Perry's Steakhouse of Ill., LLC*, No. 14 C 8543, 2018 WL 1252106, at *5 (N.D. Ill. Mar. 12, 2018) (Durkin, *J.*) (explaining FLSA collective certification standards); *Gomez v. PNC Bank, N.A.*, 306 F.R.D. 156, 173-174 (N.D. Ill. 2014) (Durkin, *J.*) (same).

At the second "final" certification stage, courts consider: "(1) whether the plaintiffs share similar or disparate factual and employment settings; (2) whether the various affirmative defenses available to the defendant would have to be individually applied to each plaintiff; and (3) fairness and procedural concerns." *Mielke v. Laidlaw Transit, Inc.*, 313 F. Supp. 2d 759, 762 (N.D. Ill. 2004). The second stage begins after "potential plaintiffs have been given a chance to 'opt-in' to the collective action and discovery is complete," allowing courts to "more rigorously review[] whether the representative plaintiff and the putative claimants are in fact similarly situated so that the lawsuit may proceed as a collective action." *Smallwood v. Illinois Bell Tel. Co.*, 710 F. Supp. 2d 746, 750 (N.D. Ill. 2010) (citations omitted).

C. Matters Not Before the Court on Conditional Certification.

During the first stage certification analysis, "[t]he Court's determination as to whether a collective action may be appropriate . . . does not involve adjudication of the merits of the claims." *Girolamo*, 2016 WL 3693426 at *2. Thus, affirmative defenses—individual or collective— are not considered at this initial notice stage. *See, e.g., Slaughter v. Caidan Mgmt. Co., LLC*, 317 F. Supp. 3d 981, 990 (N.D. Ill. 2018).

Nor does the court decide substantive issues or require conclusive support of plaintiff's claims. *Molina v. First Line Solutions LLC*, 566 F. Supp. 2d 770, 786 (N.D. Ill. 2007). Similarly, the court does not resolve factual disputes at this stage. *Latipov v. AN Enter., Inc.*, No. 23-cv-1859 2024 WL 474166, at *5 (N.D. Ill. Feb. 7, 2024) (citations omitted).

In addition, Plaintiffs do not need to prove their claims at the conditional certification stage. *Fields v. Bancsource, Inc*., No. 1:14-CV-7202, 2015 WL 3654395, at *4 (N.D. Ill. June 10, 2015) ("[W]hether the common policies violate the FLSA is a question to be addressed later; all that Plaintiff needs to show at this stage is that he and the prospective class members he seeks to give notice of the suit are situated similarly.") (emphasis added).

Similarly, the "Court does not make credibility determinations at this stage." *Boyd v. Alutiiq Global Solutions, LLC*, No. 11-CV-753, 2011 WL 3511085, at *4 (N.D. Ill. Aug. 8, 2011). As this Court has noted, in determining whether to conditionally certify and FLSA collective the Court "does not . . . weigh evidence, determine credibility, or specifically consider opposing evidence presented by a defendant." *Ford*, 2020 WL 5979553, at *2 (citation omitted).

Relatedly, the fact that job duties may vary has no bearing on conditional certification where the "overall mission" was the same. *Vargas*, 2020 WL 1288982, at *3 (citations omitted). "Concerns regarding a lack of common facts among potential collective members and the need for individualized inquiries should be raised at step two, not step one." *Williams v. TopHat Logistical Sols., LLC*, No. 23 C 1573, 2023 WL 8190366 , at *7 (N.D. Ill. Nov. 27, 2023) (citations omitted).

D. The Notice Process

Once the Court determines that the case is appropriate for conditional certification, it then authorizes notice to prospective collective members. The Supreme Court has held that the benefits to the judicial system of collective actions "depend upon employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate." *Hoffmann-La Roche*, 493 U.S. at 170. In the absence of timely notice, aggrieved employees are deprived of the opportunity to participate until after their claims are diminished or extinguished by the passage of time. Because "delaying the notification

procedure . . . could have the undesirable effect of preventing potential opt-in plaintiffs from presenting their FLSA claims," the FLSA's broad remedial intent favors early notice. *Larsen v. Clearchoice Mobility*, No. 11 C 1701, 2011 WL 3047484, at *2 (N.D. Ill. July 25, 2011).

III. ARGUMENT

A. The Court Should Conditionally Certify the FLSA Collective.

Plaintiffs meet the minimal burden for conditional certification by demonstrating that Defendant subjects them and the other similarly situated CSAs to a common policy or plan that allegedly violated the law. *See Terry v. TMX Fin. LLC*, No. 13 C 6156, 2014 WL 2066713, at *3 (N.D. Ill. May 19, 2014). Via their pleadings, four sworn declarations, and documentary evidence (including pay stubs reflecting the same total pay (i.e., hours recorded) each week) provided at this preliminary stage, Plaintiffs have demonstrated Defendant's common policy and practice to deprive them of overtime pay. *Molina*, 566 F. Supp. 2d at 786.

Other courts have conditionally certified FLSA collective actions on comparable, or less evidence, where like here, plaintiffs alleged a common policy and practice of proscribing the reporting of more than 40 hours (or simply not paying for hours worked over 40 in a work week), or by requiring "pre-approval" for overtime when, in fact, the "pre-approval" was discouraged and only granted in rare circumstances. *Hannah v. Huntington Nat'l Bank*, Case No. 18-cv-7564, 2020 WL 2571898 (N.D. Ill May 21, 2020) (conditionally certifying FLSA collective of mortgage loan officers whose employer "discouraged" and "actively prevented" them from recording their overtime hours worked and required them to report only 40 hours in a work week);[19] *Pfefferkorn*

[19] Although the *Hannah* court limited the conditionally certified collective to employees who worked at a single location, it did so because the *Hannah* plaintiff presented evidence only from employees who worked at that location. In contrast, Plaintiffs Motion is supported by six CSAs who worked in six states, their pleadings, the sworn affidavits of four CSAs, and paystubs reflecting the same time worked and paid each week, thereby supporting nationwide certification. *See infra*.

v. Primesource Health Grp., LLC, No. 17-cv-1223, 2019 WL 354968 (N.D. Ill. Jan. 29, 2019) (conditionally certifying FLSA collective of various positions all asserting defendant's policy of not paying for hours worked over 40 in a work week); *Pieksma v. Bridgeview Bank Mortg. Co.*, LLC, No. 15 C 7312, 2016 WL 7409909 (N.D. Ill. Dec. 22, 2016) (granting nationwide conditional certification based upon declarations representing four different offices where plaintiffs alleged that they did not receive all of their overtime hours worked based upon defendant's policy of not permitting them to record or report more than 40 hours in a work week); *Blakes v. Ill. Bell Tel. Co.*, No. 11 CV 336, 2011 WL 2446598 (N.D. Ill. June 15, 2011)[20] (conditionally certified FLSA collective based on seven declarations asserting that plaintiffs were underpaid because "overtime must be pre-approved by a supervisor and AT&T Illinois routinely disciplines cable splicers who seek overtime compensation that has not been pre-approved[,] result[ing in] cable splicers [ ] [be[ing] intimidated into not asking for overtime pay due to them."); *Anyere v. Wells Fargo, Co., Inc.*, No. 09 C 2769, 2010 WL 1542180 (N.D. Ill. Apr. 12, 2010) (granting nationwide conditional certification based upon five affidavits where plaintiffs asserted they were required to log only 40 hours a week and were not compensated for additional time worked before or after their shifts); *see also Bitner v. Wyndham Vacation Resorts, Inc.*, 301 F.R.D. 354 (W.D. Wis. 2014) (granting conditional certification based upon defendant's alleged policy and practice of requiring employees to "under-report hours and to work more than forty hours per week without overtime and minimum wage compensation."); *Garcia v. Moorehead Communs., Inc.*, 1:12-cv-208, 2013 WL 4479234 (N.D. Ind. Aug. 19, 2013) (based upon four declarations, court conditionally certified FLSA collective of employees allegedly pressured to underreport their hours worked).

[20] While the *Blakes* collective was later decertified, that does not compromise its value as precedent for conditional certification. *Ballou v. i-Talk, LLC*, No. 11 C 8465, 2013 WL 3944193, at *6 (N.D. Ill. July 31, 2013) ("Conditional certification is appropriate, however, even though these individualized issues could conceivably require decertification at a later stage.").

Courts in other jurisdictions concur and regularly conditionally certify FLSA collectives based upon a defendant's policy or practice of disallowing employees from reporting more than 40 hours and/or a policy or practice of discouraging employees from reporting overtime and/or encouraging employees to under-report their hours worked. *Pearl v. Clearlink Partners, LLC*, 546 F. Supp. 3d 32 (D. Mass. 2021) (granting nationwide conditional certification based upon plaintiffs' affidavits where plaintiffs asserted that were only permitted to record 40 hours per work week but actually worked overtime hours for which they were not paid); *Pittmon v. CACI Int'l, Inc*., No. 21-02044, 2021 WL 4642022 (C.D. Cal. Aug. 27, 2021) (granting nationwide conditional certification based on eight declarations asserting that defendant's failed to pay all overtime owed based upon its policy of discouraging employees from recording more than 40 hours in a work week); *Darling v. Dignity Health*, No. 4:20-cv-6043, 2021 WL 3053050 (N.D. Cal. July 20, 2021) (granting nationwide conditional certification based upon 10 declarations where plaintiffs asserted that defendant's restrictive pre-approval policy for overtime resulted in off-the-clock work); *Jordan v. Meridian Bank*, No. 17-5251, 2019 WL 1255067 (E.D. Penn. Mar. 19, 2019) (granting nationwide conditional certification based upon six declarations from two of defendant's branches, where plaintiffs' alleged that they were not paid for all overtime hours worked due to defendant's policy of only paying for pre-approved overtime).

In the instant case, the record is comparable to or exceeds the evidence presented in these cases, including the pleadings, four declarations, and pay records demonstrating the exact same time recorded week-in and week-out. In addition, Defendant is being sued for state law wage and hour violations based upon, among other things, its failure to pay California-based non-exempt hourly employees (including CSAs) all compensation, including overtime pay, to which they are due. *Hernandez v. Arthur J. Gallagher Service Company, LLC*, 3:22-cv-01910-H-DEB (S.D. Cal.),

ECF No. 35 (Second Amended Complaint). Defendant has agreed to a settlement in *Hernandez*, with final approval of the settlement recently granted on August 26, 2024. *Id*. at ECF No. 61. Hernandez provides further support for conditional certification in the instant case. *Alvirde v. Fresh Farms Int'l Mkt., Inc*., No. 14 CV 715, 2014 WL 7265072 (N.D. Ill. Dec. 19, 2014) (conditionally certifying a collective action based on declarations of employees as well as consideration of the previous settlement of a similar lawsuit against the same defendant).

Numerous courts in this District have granted conditional certification for substantially the same claims on less robust evidence. *See supra*. Accordingly, Plaintiffs have met their lenient burden of demonstrating that they and the putative FLSA Collective are similarly situated; therefore, the Court should conditionally certify the FLSA Collective.

B. Notice: Scope, Form and Dissemination

1. The Geographic Scope of Notice Should be Nationwide.

An FLSA action does not need named plaintiffs from each of a defendant's offices nationwide to merit conditional certification. *Ruffolo v. LaSalle Grp., Inc.*, No. 18 C 3305, 2019 WL 978659, at *6 (N.D. Ill. Feb. 28, 2019). That would defeat the purpose of a collective action. *Id*. "Where an apparent company-wide policy is behind the alleged FLSA violations, the plaintiff seeking certification for a company-wide class action should not be required to collect specific violations from each location or from each state before seeking authorization to provide notice to employees from all locations." *Id*. (citations omitted). In *Ruffolo* for example, the court authorized nationwide notice based upon the declarations of two plaintiffs who worked between the two of them at five facilities in Illinois and one in Wisconsin. *Id.* at *18-19; *see also Blakes*, 2011 WL 2446598 (nationwide conditional certification granted based on seven declarations); *Anyere*, 2010

WL 1542180 (same, based on five declarations); *Garcia*, 2013 WL 4479234 (same, based on four declarations); *Jordan*, 2019 WL 1255067 (based upon six declarations); among others.

Plaintiffs instant Motion is supported by CSAs who worked in six different states.[21] Notwithstanding their different locations, the allegations in this case stem from the same overtime violations. *See* Section I, *supra*. Given the geographic dispersion of CSAs asserting the same violations, the scope of notice should be nationwide.

2. The Temporal Scope of Notice Should be Three Years.

The statute of limitations for an FLSA claim is three years where, as here, plaintiffs allege a willful violation. 29 U.S.C. § 255(a); *see* ECF No. 1 at ¶¶ 12, 33, 50; *Smith v. Safety-Kleen Sys.*, No. 10 CV 6574, 2011 WL 142903, at *5 (N.D. Ill. Apr. 14, 2011) (notice issued to those employed three years prior to the complaint being filed) (internal citations omitted); *Shiner v. Select Comfort Corp.*, No. 09 CV 2630, 2009 WL 4884166, at *5 (N.D. Ill. Dec. 9, 2009) (same); *see also Quinn v. Auto Injury Solutions*, No. 20 CV 1966, 2020 WL 9397520, at *5 (N.D. Ill. Nov. 24, 2020) (same). Accordingly, the Court should authorize notice to all CSAs employed by Defendant in the three years prior to filing of this action, inclusive of any tolling whether by operation of law, equity, or the parties' agreement, as may be appropriate.[22] *Nehmelman*, 822 F. Supp. 2d at 764.

3. Plaintiff's Form of Notice is Fair, Adequate and Consistent With Court-Approved Notices in Other Similar Actions.

Plaintiff's proposed form of Notice, attached as Ex. A, meets the requirements of "timeliness, accuracy and information." *Hoffmann-La Roche*, 493 U.S. at 172. The Notice is

[21] Plaintiff Hannah Blakeney worked for Defendant in Brandon, Mississippi; Opt-In Plaintiff Elliott Ivins worked for Defendant in Seattle, Washington; Opt-In Plaintiff Jodeci Gordon worked for Defendant in Atlanta, Georgia; Opt-In Plaintiff Alexander Campling worked for Defendant in Henderson, Nevada; Opt-In Plaintiff Alex Banks worked for Defendant in San Francisco, California; and Opt-In Plaintiff Deanne Velez worked for Defendant in Peoria, Illinois.

[22] The parties agreed to toll the collective's statute of limitations for a total of 196 days. ECF No. 28

substantially similar to notice forms that other federal district courts have approved in similar cases. *See, e.g., In re: Jimmy John's Overtime Litigation*, No. 14-cv-05509 (N.D. Ill.). Plaintiff's proposed Notice will inform similarly-situated CSAs about this action and give them the opportunity to join. It also accurately describes the legal claims, the rights of prospective collective members, and their options. Finally, the Notice provides clear instructions on how to "opt-in" to the lawsuit[23] and sets forth the prohibition against retaliation for participation in an FLSA action.

4. Dissemination of Notice

In order to send notice to the FLSA Collective the Court should order – as it has in the past – Defendant to produce in a computer-readable format the names, addresses, email address(es), phone numbers and dates of employment for all members of the FLSA Collective. *Ford*, 2020 WL 5979553, at *4 (this Honorable Court ordered defendant to "produc[] in excel format and include the following information: name, title, last known mailing address, telephone number, personal email address, dates of employment, and location(s) of employment."); *Berger*, 2018 WL 1252106, at *6 (N.D. Ill. Mar. 12, 2018) (this Court ordered that defendant "must produce to Plaintiffs' counsel, . . . in an agreed upon electronic format, the names, addresses, phone numbers, email addresses, and dates of employment.").

Plaintiff proposes that the Notice and Opt-in Consent Form be sent *via* first-class U.S. Mail, email, and text message to the members of the FLSA Collective. *See, e.g., Pfefferkorn*, 2019 WL 354968, at *6 ("dual postal mail and e-mail distribution is likely to advance[ ] the remedial purpose of the FLSA by increasing the likelihood that all potential opt-in plaintiffs will receive notice.");

[23] In particular, Plaintiffs' request that potential opt-in Plaintiffs interested in participating in this lawsuit be given 90 days from the Notice mailing to opt-in to this case. Plaintiff's request is consistent with established FLSA practice in this judicial district. *See, e.g., Campbell v. Marshall Int'l, LLC*, 623 F. Supp. 3d 927, 936 (N.D. Ill. 2022) (approving 90 days); *Pfefferkorn*, 2019 WL 354968, at *6; *Anyere v. Wells Fargo*, No. 09 C 2769, 2010 WL 1542180, at *4 (N.D. Ill. Apr. 12, 2010) (ordering a 120-day opt-in period).

Slaughter, 317 F. Supp. 3d at 994 (joining courts that have permitted notice by email because "of the prevalence of e-mail as a form of communication"); *Hudgins v. Total Quality Logistics, LLC*, No. 16 C 7331, 2016 WL 7426135, at *6 (N.D. Ill. Dec. 23, 2016) (same); *Mitchell v. Villas of Holly Brook Senior Living, LLC*, No. 22-CV-2269, 2024 WL 3342504, at *17 (C.D. Ill. July 8, 2024) (approving text notice; "any moderate intrusion caused by such a text message [or email] is outweighed by the interest in apprising all potential class members of this action."); *Alvarado v. Int'l Laser Prod., Inc.*, No. 18 C 7756, 2019 WL 3337995, at *3 (N.D. Ill. June 19, 2019) ("The court agrees with Plaintiffs that e-mail and text communication is the most straightforward and effective method of communicating with the potential class members.").

Further, Plaintiff proposes to send a reminder notice 45 days before the end of the 90-day opt-in period (or half-way through the notice period decided by the Court) to any and all potential opt-in Plaintiffs who have not yet returned their Opt-In Consent Forms. "Reminder notices are regularly authorized because they further '[t]he purpose of a step-one notice,' which is 'to inform potential class members of their rights.'" *Campbell v. Marshall Int'l, LLC*, 623 F. Supp. 3d 927, 935 (N.D. Ill. Aug. 1, 2022) (citations omitted); *Black v. P.F. Chang's China Bistro, Inc.*, No. 16-cv-3958, 2017 WL 2080408, at *12 (N.D. Ill. May 15, 2017).

CONCLUSION

Conditional certification is routinely granted in cases like this, where Plaintiffs have met their nominal burden to establish that a definable group of similarly-situated employees exist who are entitled to receive court-supervised notice and the opportunity to join this action. Therefore, for the reasons set forth above, Plaintiffs respectfully request that the Court grant this Motion, conditionally certify the FLSA Collective, and authorize notice to all CSAs nationwide.

/s/ Paolo Meireles
One of Plaintiffs' Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September 2024, I caused a true and correct copy of the foregoing Plaintiff's Motion And Memorandum Of Law In Support Of Motion To Facilitate Notice Under 29 U.S.C. Section 216(B) to be served via ECF notification to all counsel of record.

/s/ Paolo Meireles
One of Plaintiffs' Attorneys
Attorneys for Plaintiff and the FLSA Collective