THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DONALD CARLSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

UNITED NATURAL FOODS, INC. & SUPERVALU, INC.,

Defendants.

NO. 3:20-cv-05476-JCC

PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION AND JUDICIAL NOTICE AND EQUITABLE TOLLING

NOTED FOR CONSIDERATION: MARCH 12, 2021

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I. INTRODUCTION

This is a straightforward collective action against Defendants United Natural Foods, Inc. ("UNFI") and SuperValu Inc. ("SuperValu") (together "Defendants") that arises out of Defendants' unlawful employment policies and practices. Those unlawful policies and practices include misclassifying as exempt Plaintiff and similarly situated employees who performed customer account coordination activities ("Collective Members") and failing to pay them overtime compensation in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"). Defendants unlawful policies and practices also include suffering and permitting off-the-clock work by Plaintiff and Collective Members after they were reclassified as non-exempt and failing to pay them for all overtime hours worked. This is precisely the type of case that should be conditionally certified under the FLSA.

Until February 2020, Defendants classified Plaintiff and each of the Collective Members as exempt from the FLSA; paid them a fixed salary; and did not pay them overtime compensation even though they routinely worked more than 40 hours per week. But Plaintiff and the Collective Members performed primarily non-exempt work consisting of, *inter alia*, coordinating the loading and unloading of food containers; assisting with the logistics of transporting goods to the domestic distribution centers; facilitating with customer returns; and completing inventory and logistics-related paperwork and data entry (referenced herein as "customer account coordination activities"). Indeed, in February 2020, UNFI reclassified Plaintiff and the Collective Members as non-exempt employees and began paying them for recorded overtime hours even though there was no corresponding change to their job duties.

Because there was no change to their job duties, Plaintiff and the Collective Members continued to work more than 40 hours per week as non-exempt employees. But now there was pressure to limit the number of overtime hours worked. As a result, Plaintiff and Collective Members worked some of their overtime hours off the clock and without pay. UNFI suffered and permitted this work and knew or should have known it was being performed.

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Plaintiff Don Carlson supports these allegations with the pleadings on file. This showing is more than sufficient to meet the lenient standard that courts apply when evaluating motions for court-authorized FLSA notices. Notice is necessary so that other Collective Members, all of whom worked for Defendants out of two locations, can find out about their right to join this case, toll the statute of limitations on their claims, and collectively vindicate their unpaid wage claims.

Plaintiff seeks to send notice to:

> All current or former employees of SuperValu and UNFI in the United States who at any time between September 2017 and February 2020 performed customer account coordination activities while classified as exempt from overtime laws.[1]

Plaintiff further requests that the Court enter an order providing the following relief:

1. Directing Defendants to produce to Plaintiff within seven days of the entry of the Court's order:

> A list, in electronic, delimited, and importable format, of all members of the collective action, as defined above, including each member's: (1) name, (2) last known mailing address, (3) last known telephone number, (4) last known personal email address, (5) job title, (6) dates and location of employment, (7) employee number, (8) date of birth, and (9) Social Security number (last four digits only).

2. Approving the form and content of Plaintiff's proposed judicial notice, reminder notice, and a notice website through which proposed opt-in plaintiffs can submit a consent form, all of which are attached as Exhibits 1-3 to the Declaration of Toby Marshall in Support of Plaintiff's Motion for Conditional Certification and Judicial Notice ("Marshall Declaration")[2];

[1] The statute of limitations was tolled from August 26, 2020 to February 5, 2021 for all Collective Members, a period of 163 days. *See* Dkt. Nos. 26, 33.

[2] All exhibits are attached to the Marshall Declaration.

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3. Authorizing Plaintiff to send the proposed judicial notice to all Collective Members via U.S. Mail and email, as well as via website, and to send a reminder notice 21 days before the expiration of the opt-in period; and

4. Providing Collective Members 60 days from the time notice is initially sent out to opt-in and join the lawsuit.

II. STATEMENT OF FACTS

A. Procedural history.

On May 21, 2020, Plaintiff Donald Carlson filed this lawsuit against Defendants on behalf of himself and similarly situated employees who failed to receive overtime wages for hours worked in excess of forty (40) per week. In the operative complaint, Plaintiff asserts claims under the FLSA on behalf of a proposed collective and under Washington law on behalf of a proposed class. The case was originally assigned to Judge Ronald R. Leighton but was reassigned to Judge John C. Coughenour in September 2020 following Judge Leighton's retirement.

On June 25, 2020, Defendants filed a Partial Motion to Dismiss the Complaint and to Strike Class Allegations, noting the motion for July 17, 2020. Dkt. 12. Defendants contended: (1) that Plaintiff's wage and hour allegations do not constitute an "unfair or deceptive act or practice" within the meaning of Washington's Consumer Protection Act, one of Plaintiff's state-law claims; and (2) that Plaintiff's class allegations should be stricken based on several arguments. *See generally* Dkt. No. 12. Notably, Defendants did not seek dismissal of Plaintiff's individual or collective claims under the FLSA.

Defendants re-noted the motion several times, and the parties jointly requested a continuation of the deadlines in the Court's initial scheduling order to permit settlement talks. Dkt. Nos. 22, 24, 25. On August 31, 2020, the Court approved the Parties' Stipulated Motion Staying the Case and extended all deadlines pending mediation.

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During the months that followed, the parties prepared for a video mediation session, which took place via Zoom on January 27, 2021 before experienced mediator Michael Reiss, Esquire. Marshall Decl. ¶ 2. In advance of the mediation, the parties exchanged payroll data and other documents. *Id*. The parties also prepared and exchanged detailed mediation statements regarding the Collective Members at issue here. *Id*. Through this process, it was determined that there are 32 total potential members of the FLSA collective, all of whom worked for Defendants out of either Tacoma, Washington or Pompano Beach, Florida. *Id*. The mediation was unsuccessful, and Plaintiff now files this motion to preserve the statute of limitations for the Collective Members. *Id*. ¶ 3.

After mediation, the parties met and conferred regarding Defendants' partial motion to dismiss and strike. *Id*. ¶ 3. The parties agreed that Plaintiff would file an amended complaint, removing the claim under the Consumer Protection Act and modifying the starting date of the proposed Rule 23 class. *Id*. Plaintiff did so on February 18, 2021. *Id*. As a result, Defendants' partial motion to dismiss and strike is moot. *See* Dkt. No. 36 at 1.

B. The parties.

1. Defendants.

Defendant SuperValu is a food wholesaler and retailer that supplies its own grocery store brands as well those of other foods retailers. Dkt. No. 37 ¶ 22. Defendant UNFI is a wholesale distributor of bulk foods and products for the grocery stores within its chain. *Id*. ¶ 23. UNFI delivers products to customers throughout North America, including natural product superstores, independent retailers, supermarket chains, e-commerce retailers, and food service customers. *Id*.

In October 2018, UNFI acquired SuperValu for approximately $2.9 billion, making UNFI the largest publicly traded grocery distributor in America with expected annual sales of over $21 billion. *Id*. ¶ 24. After the acquisition, SuperValu became a wholly owned subsidiary of UNFI. *Id*. ¶¶ 10, 25. UNFI's acquisition of SuperValu included "the assumption of outstanding

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debt and liabilities" of SuperValu. *Id*. ¶ 24. Defendants employed Plaintiff and continue to employ members of the proposed FLSA collective. *Id*. ¶¶ 11, 14.

2. Plaintiff and the proposed FLSA collective.

i. *Plaintiff Carlson's employment with Defendants*.

Plaintiff Carlson worked continuously for Defendants from 2010 until approximately August 2020. SuperValu first hired Plaintiff as a Warehouse Coordinator in the company's International Division in Tacoma, Washington. *Id*. ¶ 11. When UNFI acquired SuperValu in October 2018, Plaintiff became an employee of UNFI was transferred to UNFI's International Division location in Centralia, Washington. *Id*. ¶ 12. Plaintiff continued performing the same tasks with UNFI that he was performing with SuperValu. *Id.* ¶¶ 13, 37.

Before the acquisition, SuperValu substantially controlled Plaintiff's working conditions, classified him as exempt, and failed to pay him overtime compensation. *Id*. ¶ 35. After the acquisition, UNFI substantially controlled Plaintiff's working conditions, classified him as exempt, and failed to pay him overtime compensation. *Id*. ¶ 36.

UNFI reclassified Plaintiff as non-exempt in February 2020. *Id*. ¶ 37. From that point on, Plaintiff regularly performed some of his overtime work each week off the clock, and UNFI failed to pay him for those unrecorded overtime hours. *Id*. ¶¶ 3, 40, 42.

ii. *Plaintiff and all Collective Members share similar job duties and responsibilities*.

Since he began working for SuperValu in September 2010, Plaintiff has held several job titles, including Warehouse Coordinator, Customer Care Coordinator—SVI, Operations Coordinator—SVI, and Account Coordinator—Int'l. *Id*. ¶ 28. Regardless of the job title, Plaintiff's job duties have always included customer account coordination activities—namely, coordinating the loading and unloading of food containers; assisting with the logistics of transporting goods to the domestic distribution centers; facilitating customer returns; and completing inventory and logistics-related paperwork and data entry. *Id*. ¶ 29; *see also* Exs. 4–5. Like Plaintiff, the primary job duties of the Collective Members involved only non-exempt

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work consisting of the same customer account coordination activities. Dkt. No. 37 ¶ 46; *see also* Ex. 6.

On February 7, 2020, UNFI sent Plaintiff a letter informing him that, as part of a broader "Position Alignment" across the company, he was being classified as a non-exempt employee effective February 9, 2020. *See* Ex. 7 (Position Alignment Letter). The letter explained that UNFI had "reviewed position descriptions," "assessed [his] role with UNFI," and determined that his position "aligns with the title of Account Coordinator-Int'l, which is a non-exempt (hourly) position." *Id*. Notably, the letter was clear that the only change being made was to the "job description." Plaintiff was told that he would "be paid overtime for hours worked over 40 in a work week" and that he would "need to accurately record all time worked." *Id*. Notably, though, the letter made no mention whatsoever of any change in Plaintiff's existing duties. *See id*. Indeed, Plaintiff's job duties remained the same after the reclassification. Dkt. No. 37 ¶ 37.

Defendants provided substantially similar letters to at least 31 other Collective Members who worked out of Defendants' Tacoma, Washington and Pompano Beach, Florida locations, notifying them that they were being reclassified as non-exempt hourly employees. *See* Dkt. No. 37 ¶ 38; *see also* Marshall Decl. ¶ 10.

iii. *Plaintiff and the Collective Members worked substantial amounts of uncompensated overtime*.

Plaintiff's work schedule during the relevant period was Monday through Friday, 3:00 a.m. to 1:00 p.m., with an hour or two of additional work from home each day, for a total of 50-60 hours per week. Dkt. No. 37 ¶ 32. Except for weeks in which he took vacation days or other leave, Plaintiff is unable to recall a single workweek in which he did not work more than 40 hours. *Id*. But until February 9, 2020, Defendants did not pay Plaintiff any overtime wages. *Id*. ¶ 33. Instead, they misclassified him as exempt from overtime and paid him on a salary basis. *Id.* Like Plaintiff, the Collective Members regularly worked more than 40 hours per week within the applicable statutory period but failed to receive any overtime compensation. *Id.*

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¶ 47.

After reclassifying Plaintiff and Collective Members as non-exempt employees, UNFI expected then to continue performing the same work but in fewer hours than before. *Id*. ¶¶ 37, 38, 40. As a result, Plaintiff and Collective Members regularly worked some overtime hours off the clock in the workweeks after February 9, 2020, and UNFI failed to pay them for those hours. *Id*. ¶ 40.

Simply put, Defendants treated Plaintiff and the 31 other Collective Members who worked out of Defendants' Tacoma, Washington and Pompano Beach, Florida locations, uniformly in terms of compensation scheme, job duties, and work schedules, such that conditional certification of the group is appropriate here.

III. AUTHORITY AND ARGUMENT

A. The Court should conditionally certify the proposed collective and authorize timely notice to similarly situated employees.

The FLSA authorizes employees to sue for unpaid overtime wages in a "collective action" on behalf of "other employees similarly situated." 29 U.S.C. § 216(b). The collective action mechanism serves the "broad remedial goal" of the FLSA because it avoids a "multiplicity of duplicative suits" by allowing employees whose claims are often small and not likely to be brought on an individual basis to join together and "pool[ ] resources" to lower costs and efficiently resolve common issues of law and fact. *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170-73 (1989); *see also Bollinger v. Residential Capital, LLC*, 761 F. Supp. 2d 1114, 1119 (W.D. Wash. 2011) ("FLSA collective actions serve to lower the cost of litigation for individual claimants and promote efficiency in resolution of claims and the use of judicial resources.").

The benefits of a collective action "depend on employees receiving accurate and timely notice concerning the pendency of the [case], so that they can make informed decisions about whether to participate." *Hoffmann-La Roche*, 493 U.S. at 170. Unlike a class action under Federal Rule of Civil Procedure 23, in which employees are members of the class

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unless they affirmatively opt out, each individual member or "party plaintiff" of an FLSA collective action must affirmatively opt in to the case by filing a written consent to join the suit. Until those individuals opt in, the statute of limitations on their claims continues to run, making timely notice critical. *See Bollinger*, 761 F. Supp. 2d at 1122; *see also Randolph v. Centene Mgmt. Co.*, No. 14-cv-5730, 2015 WL 2062609, at *4 (W.D. Wash. May 4, 2015) (quoting *Hoffmann-La Roche*, 493 U.S. at 170).

Courts follow a two-stage approach to adjudicating collective actions. *See Bolding v. Banner Bank*, No. 17-cv-0601 (RSL), 2017 WL 6406136, at *1 (W.D. Wash. Dec. 15, 2017) ("In the Ninth Circuit, certification of a collective action is generally a two-step process."); *see also Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1219 (11th Cir. 2001) (two-stage approach is "an effective tool for district courts to use in managing these often complex cases"). At the first stage, where this case currently sits, "the issue is whether plaintiffs have identified other employees who are similarly situated to them, such that they are potential opt-in plaintiffs and should be given notice of the action." *Bolding*, 2017 WL 6406136, at *1. The second stage begins after notice has issued, the opt-in period has expired, discovery has been completed, and "the case is ready to be tried." *Id.* At that point, the Court conducts "a more searching review." *Id.*

With this motion, Plaintiff respectfully asks the Court to take the first step in the collective action process by finding that other Collective Members are likely to be similarly situated to Plaintiff and authorizing accurate and timely notice pursuant to 29 U.S.C. § 216(b).

B. Plaintiff meets the lenient similarly situated standard.

The standard for determining whether individuals are similarly situated is "lenient" and "usually results in certification." *Bollinger*, 761 F. Supp. 2d at 1119 (quoting *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 468 (N.D. Cal. 2004)). "[T]he similarly situated requirement of 29 U.S.C. § 216(b) is considerably less stringent than the requirement of Fed. R. Civ. P. 23(b)(3) that common questions predominate." *Heagney v. European Am. Bank*, 122

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F.R.D. 125, 127 n.2 (E.D.N.Y. 1988) (internal quotation marks omitted); *see also Troy v. Kehe Food Distribs., Inc.*, 276 F.R.D. 642, 649 (W.D. Wash. 2011) (noting that "FLSA collective actions are not subject to the numerosity, commonality, and typicality rules of a class action suit brought under Rule 23"). The lenient standard is appropriate because, at this early stage, the plaintiff has not yet had discovery and has access only to "minimal evidence." *See Orquiza v. Walldesign, Inc.*, No. 11-cv-1374, 2012 WL 3561971, at *2 (D. Nev. Aug. 16, 2012) (citations omitted).

"Because 'the sole consequence of conditional certification is the sending of court-approved written notice to employees'. . . little more is required than 'substantial allegations, supported by declarations or discovery, that the putative [collective] members were together the victims of a single decision, policy, or plan and a showing that plaintiffs are generally comparable to those they seek to represent.'" *Bolding*, 2017 WL 6406136, at *1 (citations omitted). At this stage, the court "does not resolve factual disputes, decide substantive issues going to the ultimate merits, or make credibility determinations." *Douglas v. Xerox Bus. Servs. LLC*, No. 12-cv-1798, 2014 WL 3396112, at *3 (W.D. Wash. July 10, 2014) (citations omitted). Rather, the court need only find there is a "reasonable basis" for plaintiff's claims of widespread injury. *Bollinger*, 761 F. Supp. 2d at 1119 (quoting *Khadera v. ABM Indus., Inc.*, 701 F. Supp. 2d 1190, 1194 (W.D. Wash. 2010)).

Plaintiff satisfies this lenient burden. The proposed collective includes employees who performed similar job duties, who were paid pursuant to the same pay policy, and who all worked uncompensated overtime before and after Defendants' reclassification efforts in February 2020. Whether Defendants violated the FLSA by engaging in a common policy and practice of classifying Collective Members as exempt and failing to pay them overtime compensation through February 9, 2020 is a legal question that is the same for all such members. *See, e.g.*, *Rozeboom v. Dietz & Watson, Inc.*, No. 2:17-CV-01266-RAJ, 2018 WL 2266692, at *2 (W.D. Wash. May 17, 2018) ("In 'misclassification' cases such as this one,

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where the plaintiffs' theory is that defendant misclassified them as exempt, the plaintiffs must show that they and the putative class members performed similar job duties . . . . Critically, plaintiffs need not conclusively establish that collective action is proper, because defendants will be free to revisit this issue at the close of discovery."); *Wilson v. Maxim Healthcare Servs., Inc.*, No. 14-cv-789 (RSL), 2014 WL 7340480, at *8 (W.D. Wash. Dec. 22, 2014) (granting plaintiffs' motion for conditional certification to allow collective members to "collectively adjudicate" their overtime claims where plaintiffs alleged they were misclassified as exempt from overtime compensation and thus wrongly denied this compensation for time worked in excess of 40 hours per week, in violation of the FLSA and Washington's Minimum Wage Act). And whether UNFI violated the FLSA by engaging in a common policy and practice of suffering and permitting the same Collective Members to work off the clock after their reclassification is similarly a legal question that is the same for all such members. *See Bolding*, 2017 WL 6406136, at *2 (conditionally certifying collective action in an off-the-clock case).

C. The Court should approve the proposed notice forms and order Defendants to produce identifying information for similarly situated employees.

The benefits of the collective action mechanism "depend on employees receiving accurate and timely notice . . . so that they can make informed decisions about whether to participate." *Hoffmann-La Roche*, 493 U.S. at 170. Prompt court involvement is necessary both "to ensure[] that 'the task is accomplished in an efficient and proper way'" and because the claims of potential opt-in plaintiffs are being diminished or extinguished by the running of the statute of limitations. *Bollinger*, 761 F. Supp. 2d at 1122 (quoting *Hoffmann-La Roche*, 493 U.S. at 171). "[E]very day that passes is a day of damages each potential opt-in plaintiff will be unable to recover. Court-facilitated notice will prevent the continued erosion of these claims." *Lynch v. United Servs. Auto. Ass'n*, 491 F. Supp. 2d 357, 371 (S.D.N.Y. 2007).

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1. Plaintiff's proposed notice forms are accurate and informative, and the proposed notice methods are appropriate.

Plaintiff's proposed notice provides potential opt-in plaintiffs with an accurate description of this lawsuit as well as their rights under the FLSA. *See* Exs. 1-2.

U.S. Mail, email, and a case-specific website are all appropriate ways for potential opt-in plaintiffs to receive notice and submit consent forms. Courts agree that the issuance of notice in these ways will ensure that all proposed collective members are reached as soon as possible. *See Bazzell v. Body Contour Centers, LLC*, No. C16-0202JLR, 2016 WL 3655274, at *6-8 (W.D. Wash. July 8, 2016) (approving notice via U.S. mail and email); *see also Atkinson v. TeleTech Holdings, Inc.*, No. 14-cv-253, 2015 WL 853234, at *5 (S.D. Ohio Feb. 26, 2015) (recognizing that sending notice by both mail and email "advances the remedial purpose of the FLSA" and is "in line with the current nationwide trend"); *Rhodes v. Truman Med. Ctr., Inc.*, No. 13-cv-990, 2014 WL 4722285, at *5 (W.D. Mo. Sept. 23, 2014) ("[E]mail provides an efficient and cost-effective means of disseminating notice documents and has been endorsed by courts in the past."); *Prejean v. O'Brien's Response Mgmt., Inc.*, No. 12-cv-1045, 2013 WL 5960674, at *10 (E.D. La. Nov. 6, 2013) (granting request for notice by mail and email since "notice by both e-mail and first-class mail is both routine and reasonably calculated to accomplish the broad remedial goals of the notice provision of the FLSA").

Emailed notice is especially important given the Covid-19 pandemic, during which traditional where mail has been unusually slow and unreliable. Moreover, as one court recognized in 2015, arguments about the appropriateness of email notice should "rarely" be entertained: "Email is not the wave of the future; email is the wave of the last decade and a half. Many people use their email address as their primary point of contact, and in almost every situation, more opt-in plaintiffs will be on notice of a pending collective action if the putative class members are also notified via email." Ex. 8 (*Rodriguez v. Stage 3 Separation, LLC*, Slip Op., No. 14-cv-603, at *2 n.1 (W.D. Tex. Mar. 16, 2015), ECF 57); *see also Syed v. M-I, L.L.C.,* No. 1:12-cv-1718, 2014 WL 6685966, at *8 (E.D. Cal. Nov. 26, 2014) (finding that "email

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is an increasingly important means of contact" and ordering that notice be sent via hardcopy mail and email to all potential opt-ins); *Guy v. Casal Institute of Nevada, LLC*, No. 2:13-cv-2263, 2014 WL 1899006 (D. Nev. May 12, 2014), ("email is an efficient, reasonable, and low cost supplemental form of notice").

Potential opt-in plaintiffs should be given 60 days to submit claim forms. *See Bazzell*, 2016 WL 3655274, at *6 & n.8; *see also Senne v. Kan. City Royals Baseball Corp.*, No. 14-cv-608, 2015 WL 6152476, at *19 (N.D. Cal. Oct. 20, 2015) ("[T]imeframes of sixty to ninety days appear to have become the presumptive standard in this District." (quoting *Sanchez v. Sephora USA, Inc.*, No. 11-cv-3396, 2012 WL 2945753, at *6 (N.D. Cal. July 18, 2012))).

2. A reminder notice is appropriate.

The Court should also authorize a reminder notice, attached as Exhibit 3 to the Marshall Declaration, to proposed collective members who have not submitted consent forms as of 15 days before the opt-in deadline. *Knox v. Jones Grp.*, 208 F. Supp. 3d 954, 964-65 (S.D. Ind. 2016) ("Deadline reminders are commonplace and will not appear to endorse the merits of the case."). Courts routinely allow such reminder notices. *See, e.g.*, *Bazzell*, 2016 WL 3655274 at *6 (approving sending of reminder letter on or about 15 days before opt-in deadline); *Kidd v. Mathis Tire & Auto Serv., Inc.*, No. 14-cv-2298, 2014 WL 4923004, at *3 (W.D. Tenn. Sept. 18, 2014) (finding reminder proper); *Thomas v. Kellogg Co.*, No. 13-cv-5136, 2014 WL 716152, at *3 (W.D. Wash. Jan. 9, 2014) (approving a post-card reminder to all class members who did not return opt-in form within 30 days); *Morris v. Lettire Const., Corp.*, 896 F. Supp. 2d 265, 275 (S.D.N.Y. 2012) ("Given that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in, we find that a reminder notice is appropriate.").

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3. The Court should order Defendants to produce information necessary for Plaintiff to disseminate notice to the proposed collective.

The identification of potential members of the collective is necessary for Plaintiff to notify them of the action as contemplated by the FLSA. *See Hoffmann-La Roche*, 493 U.S. at 170 (affirming district court decision permitting discovery of names and addresses of proposed class members). Accordingly, the Court should order Defendants to provide Plaintiff with a list of all potential opt-in plaintiffs and their contact information. To enable notice to be sent in a timely and effective fashion, Plaintiff specifically asks that the Court direct Defendants to produce, within seven days of its order, an electronic list of all persons who fit within the proposed class, including each proposed collective member's: (1) name, (2) last known mailing address, (3) last known telephone number, (4) last known personal email address, (5) job title, (6) dates and location of employment, (7) employee number, (8) date of birth, and (9) Social Security number (last four digits only).[3] Such an order is common under these circumstances and necessary to facilitate effective notice. *See, e.g.*, *Thomas*, 2014 WL 716152, at *2-3 (ordering defendants to provide contact information, "including last four digits of the [S]ocial [S]ecurity numbers of the class members whose notices [were] returned without forwarding addresses" and to produce the data "in a manipulable electronic format such as Microsoft Excel"). The information requested will aid in the prompt dissemination of the Court-approved notice.

D. The Court should equitably toll the statute of limitations for potential opt-in Plaintiffs.

Plaintiff respectfully asks the Court to prospectively toll the statute of limitations for all opt-in plaintiffs from April 12, 2021—thirty days after the consideration date of this motion—to the date of the Court's decision. As the Court has previously recognized, prospective equitable tolling is warranted both to account for scheduling or procedural delays beyond the control of Collective Members and given the remedial nature of the FLSA. *See Douglas v.*

[3] The last four digits of a Social Security number and a date of birth are useful in tracking change of address information.

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Xerox Bus. Servs., LLC, No. 12-cv-1798, 2014, 2014 WL 11320703, at *4-5 (W.D. Wash. Nov. 21, 2014); *see also McNutt v. Swift Transp. Co. of Az., LLC*, No. C18-5668 BHS, 2020 WL 3819239, at *9-10 (W.D. Wash. 2020) ("the period attributable to the Court represents a substantial delay beyond Plaintiffs' control").

IV. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully asks the Court to conditionally certify this case as a collective action, approve the proposed notice plan, order production of the collective list, and toll the statute of limitations for potential opt-in plaintiffs as necessary.

RESPECTFULLY SUBMITTED AND DATED this 18th day of February, 2021.

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