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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

VERONICA STENULSON and on behalf of all others similarly situated, **Plaintiff,** **v.** **ROI SOLUTIONS, LLC,** **Defendant.**	**MOTION FOR CONDITIONAL CERTIFICATION AND COURT SUPERVISED NOTICE TO PUTATIVE CLASS MEMBERS PURSUANT TO 29 U.S.C. §216(b)** **Civil No.: 2:20-cv-00614-DBB** **Judge David Barlow**

TO THE HONORABLE DAVID BARLOW:

Plaintiff Veronica Stenulson, on behalf of herself, all opt-in plaintiffs, and others similarly situated ("Plaintiff and the Putative Class Members"), files this Motion for Conditional Certification and Notice to the Putative Class Members, and will respectfully show the following:

I. INTRODUCTION

Plaintiff respectfully requests that the Court conditionally certify the following class under the FLSA: **All Hourly Call-Center Employees Who Were Employed by ROI Solutions, LLC, Anywhere In The United States, At Any Time From September 2, 2017 Through the Final Disposition of This Matter.** ("Putative Class Members"). The Putative Class Members that Plaintiff seeks to represent performed similar (if not identical) job duties, were subject to the same company-wide policy, and suffered a common injury. Plaintiff has met the lenient standard for conditional certification and respectfully request that this Court conditionally certify this case as a collective action and authorize notice to be sent to the Putative Class Members. Notice at this stage is critical so that these workers can make an informed decision about whether to join this suit and stop the statute of limitations from running on their claims for unpaid overtime compensation.[1]

II. FACTUTAL BACKGROUND

On September 2, 2020 Plaintiff Veronica Stenulson commenced this collective/class action against ROI Solutions, LLC ("ROI"), alleging that the company failed to pay its Hourly Call-Center Employees for all hours worked, including the correct amount of overtime compensation. *See* ECF No. 2. Plaintiff Stenulson asserted her FLSA claim as a collective action under Section 16(b) of the FLSA, 29 U.S.C. §216(b) and Montana state law claim as a class action under Federal Rule of Civil Procedure 23.[2]

[1] Unlike Rule 23 class actions in which the statute of limitations is tolled for all potential class members with the filing of the complaint, the statute of limitations under the FLSA is not tolled with the commencement of the action or even with an order granting conditional certification. *See Fisher v. Michigan Bell Telephone Co.*, C.A. 2:09-cv-10802, 2009 WL 3427048, at *8 (E.D. Mich. Oct. 22, 2009). Rather, the statute of limitations continues to run on each individual's claim until they file their written consent to join the action with the court. *See id.*

[2] Plaintiff moves only for conditional certification under FLSA section 216(b), and not Rule 23 class certification, at this time.

ROI Solutions, LLC offers professional call center services providing inbound, outbound, and internet chat services for its customers worldwide.[3] Plaintiff and Opt-In Plaintiffs collectively worked for ROI from home and at ROI's call centers in and throughout the United States.[4] ROI's pre-shift work policy applies equally to each of its facilities and to each employee who works from home. Plaintiff challenges the illegal company-wide policy wherein ROI requires Plaintiff and the Putative Class Members to begin work, off-the-clock, early each day without pay. According to ROI's policy, Plaintiff and the Putative Class Members were (and continue to be) required to begin working prior to their shift start time in order to prepare their computer, necessary systems/programs, and read company emails/alerts prior to clocking in, at which point they must immediately begin working, taking calls or otherwise being productive. *See* Declaration ("Decl.") of Veronica Stenulson, at ¶ 7 (Exhibit "Ex." 1); Decl. of Morgan Ewell, at ¶ 7 (Ex. 2); Decl. of Isaiah Waitkevich, at ¶ 7 (Ex. 3); Decl. of Forrest Christiansen, at ¶ 7 (Ex. 4); Decl. of Dallas Nickerson, at ¶ 13 (Ex. 5).

ROI's policy requiring off-the-clock work without compensation applies equally to all Hourly Call-Center Employees. *See* Exs. 1-5, at ¶ 4 ("Hourly Call-Center Employees all follow the same policies and procedures, as set by ROI."); Exs. 1-4, at ¶ 6 ("I know that my job and my coworkers' jobs were substantially similar, because (regardless of job title or department) we all attended the same orientation together and we were all taught the same ROI policies and procedures for logging into the computer, opening our programs, and getting started for the day. All Hourly Call-Center Employees are taught together to follow the same policies and procedures, as set forth by ROI."); Ex. 5, at ¶ 12 ("As a Lead Supervisor, I attended the same orientation as all other Hourly-Call Center Employees. Myself and all Hourly Call-Center Employees are taught together to follow the same policies and

[3] https://roicallcentersolutions.com/

[4] At the time of filing this Motion, twenty-four (24) current and former hourly call-center employees who worked for ROI have filed consents to join this lawsuit.

procedures, as set forth by ROI."). All Hourly Call-Center Employees suffer from this company-wide policy requiring off-the-clock work without pay. *See* Exs. 1-4, at ¶¶ 4, 6-8, 13, 16-17 and Ex. 5, at ¶¶ 4, 12, 14-16. This is true regardless of the ROI location or facility where the Putative Class Members worked (or whether they worked from home), the department they worked in, or the job title they held—ROI required all Hourly Call-Center Employees uniformly to abide by its company-wide policy and arrive early to perform necessary off-the-clock work without compensation. *See* Exs. 1–4, at ¶¶ 4, 6–8, 13, 16-17 and Exs. 5, at ¶¶ 4, 12, 14–16.

Plaintiff and the Putative Class Members are not allowed to clock in until their scheduled shift after they are "call ready" despite ROI's requirement that they arrive early—unfortunately, they can only be call ready after their computer and all of ROI's programs are up and running[5] *See* Exs. 1–4, at ¶¶ 4, 6-8, 13, 16–17 and Ex. 5, at ¶¶ 4, 12, 14–16. Plaintiff and the Putative Class Members would spend up to fifteen (15) to twenty (20) minutes off the clock each work-day while getting "call ready."[6] Exs. 1–4, at ¶8; Ex. 5, at ¶ 14. ROI taught Plaintiff and the Putative Class Members this policy during their orientation and training and required them to comply with it.[7] *See* Exs. 1–4, at ¶¶ 6–7 and Ex. 5, at ¶12. Because ROI only pays its employees during their regularly scheduled shift time (and not when they are booting up their computers and programs) ROI failed to compensate Plaintiff and the Putative Class Members for all hours worked. *See* Exs. 1–4, at ¶ 13 and Ex. 5, at ¶ 17.

ROI knows Plaintiff and the Putative Class Members are not compensated for all hours worked. *See* Exs. 1–4, at ¶ 14; Ex. 5, at ¶ 8. In addition to Plaintiff and the Putative Class Member's

[5] "Call ready" means the Hourly Call-Center Employee is logged into their computer with all ROI programs and systems open and operational, and the employee is "productive" and ready to take calls. *See* Exs. 1-4, ¶ 7-8; Ex. 5, ¶ 13-14.

[6] In the event of a computer crash, the start-up process could take significantly longer. *See* Exs. 1–4, at ¶¶ 4, 6-8, 13, 16–17 and Ex. 5, at ¶¶ 4, 12, 14–16

[7] In addition to the pre-shift off-the-clock start-up process, Hourly Call-Center Employees must repeat a similar start-up process before they are allowed to clock back in after their lunch break. *See* Exs. 1–4, at ¶ 11. This post lunch off-the-clock work takes an additional seven (7) to ten (10) minutes. *See* Exs. 1–4, at ¶ 11.

scheduled work time, they regularly work an additional one (1) to two (2) hours off-the-clock each week performing these necessary start-up tasks before their shift and after lunch. *See* Exs. 1–4, at ¶¶ 11, 16; Ex. 5, at ¶ 7. As a result of ROI's corporate policy and practice of requiring Plaintiff and the Putative Class Members to perform work for ROI, including their start-up and rebooting tasks, while off-the-clock before their shift and after lunch, Plaintiff and the Putative Class Members were not compensated for all hours worked, including all hours worked in excess of forty (40) in a workweek at the rates required by the FLSA. *See generally* Exs. 1–5.

Plaintiff and the Putative Class Members have been denied compensation for the additional one (1) to two (2) hours of off-the-clock work they performed each week. *See* Exs. 1-4, at ¶¶11, 16; Ex. 5, at ¶ 7. ROI's policy and practice described above applied (and continues to apply) to Plaintiff and Putative Class Members and evinces ROI's systemic failure to comply with the overtime requirements of the FLSA.

III. ISSUE PRESENTED

The issue herein is whether the Putative Class Members—current and former Hourly Call-Center Employees—should be notified about the existence of this action so that they can make an informed decision about whether to join this suit and stop the statute of limitations from running on their claims for unpaid wages and overtime compensation, and whether Plaintiff has met the lenient standard for conditional certification under 216(b) of the FLSA. The merits of Plaintiff's claims or ROI's common defenses are not before the Court at this time; nor are they an appropriate inquiry for purposed of conditional certification.

IV. ARGUMENT AND AUTHORITY

A. LEGAL STANDARD FOR SECTION 216(b) NOTICE TO PUTATIVE CLASS MEMBERS

The FLSA's "collective action" provision allows one or more employees to bring an action for overtime compensation on "behalf of himself or themselves and other employees similarly

situated." 29 U.S.C. § 216(b). The standard for certification at this stage is a lenient one to effectuate the broad remedial purpose of the FLSA. *See Binks v. Grand Canyon Educ., Inc.*, 2:10CV00571 DS, 2011 WL 4527418, at *1 (D. Utah Sept. 28, 2011); (citing *Thiessen v. Gen. Elec. Capital Corp.,* 267 F.3d 1095, 1103 (10th Cir. 2001)); *Johnson v. Acad. Mortg. Corp.*, 2:12-CV-276 TS, 2012 WL 5416200, at *1 (D. Utah Nov. 2, 2012). Indeed, Section 216(b) only requires an employee to show that he is suing his employer for himself, individually and on behalf of other employees "similarly situated." *See Thiessen,* 267 F.3d at 1102 (citing *Mooney v. Aramco Servs. Co.,* 54 F.3d 1207, 1213–16 (5th Cir 1995)). The plaintiff's claims need not be **identical** to the potential opt-ins but need only be **similar**. *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1096 (11th Cir. 1996).

Courts in the Tenth Circuit use the two-step "*Lusardi*" approach to determine whether to certify an FLSA collective action. *See Thiessen*, 267 F.3d at 1105; *see also Pack v. Investools, Inc.*, 2:09-CV-1042 TS, 2011 WL 3651135, at *3 (D. Utah Aug. 18, 2011); *Binks,* 2011 WL 4527418, at *1. The first step, known as the notice step, "mandates 'nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan[ ]'" and typically results in conditional certification. *Johnson*, 2012 WL 5416200, at *1 (citing *Thiessen*, 267 F.3d at 1102). "The sole consequence of conditional certification is the sending of court-approved written notice to employees, who in turn become parties to a collective action only by filing written consent with the court." *Blankenship v. Kwick Rentals, LLC,* No. CIV-15-1057-D, 2016 WL 4734686, at *4 (W.D. Okla. Sept. 9, 2016).

When making the determination at the first "notice" stage, courts do not reach the merits of the case, focusing instead on whether the complaint and other allegations show that potential class members are "similarly situated."[8] *See Turner v. ACD Direct, Inc.*, 1:12-CV-00208-DB, 2013 WL

[8] The second step, "following the completion of the opt-in process and further discovery, the Defendant may ask the Court to reevaluate the conditional certification to determine whether there is sufficient

12110065, at *3 (D. Utah May 16, 2013); *Blankenship,* 2016 WL 4734686, at *5. At this stage, "a court need only consider the substantial allegations of the complaint along with any supporting affidavits or declarations." *Fuentes v. Compadres, Inc.,* No. 17-CV-01180-CMA-MEH, 2018 WL 1128517, at *3 (D. Colo. Mar. 2, 2018); *see also Johnson*, 2012 WL 5416200, at *1 (finding plaintiff's complaint, along with her affidavit, provided sufficient evidence for conditional certification); *Binks*, 2011 WL 4527418, at *2 (finding plaintiff's complaint and filed declarations satisfied the burden for conditional certification).

B. BASIS FOR SIMILARLY SITUATED CONDITIONAL CERTIFICATION FINDING

Courts in the Tenth Circuit have repeatedly certified cases involving call-center employees, recognizing that, at the notice stage, the standard is lenient and conditional certification is favored. *See e.g., Pack,* 2011 WL 3651135 (certifying a class of sales representatives in a call center who worked more than forty hours a week and were allegedly not compensated); *Binks*, 2011 WL 4527418 (certifying class of online enrolment counselors that recruit and enroll students who were required to work more than forty hours per week and not paid overtime); *Johnson*, 2012 WL 5416200; *Turner*, 2013 WL 12110065 (certifying a companywide class of home agents and inbound customer service representatives who were allegedly not paid for all time worked). Under the applicable law, Plaintiffs have clearly met this lenient burden and conditional certification is appropriate based on the detailed pleadings and the declarations on file in support of this motion. *See generally* Exs. 1-5

Plaintiff and the Putative Class Members have shown, through specific and detailed declarations that: (a) they all performed similar call-center duties; (b) they were all subjects to ROI's uniform company-wide corporate policy improperly requiring off-the-clock pre-shift work without pay; (c) they were non-exempt employees of ROI; (d) they routinely worked over forty hours in a

similarity between the Representative Plaintiff and opt-in Plaintiff to allow the matter to proceed to trial on a collective basis." *Russell v. Ill. Bell Tel. Co.,* 575 F. Supp. 2d 930, 933 (N.D. Ill. 2008).

workweek; (e) they were paid an hourly rate; (f) they did not receive all of their overtime compensation and were not compensated at their appropriate regular rate(s) of pay; and (g) other current and former hourly call-center employees employed by ROI were treated the same way. *See generally* Exs. 1–5. Additionally, since Plaintiff filed this lawsuit on September 2, 2020, twenty-four (24) other current and former hourly call-center employees have filed their pre-notice opt-in consent forms, further showing that other individuals were affected by ROI's improper and illegal policies. This Court is well within its authority to issue notice based on this fact alone.

ROI's uniform and systematic company-wide corporate policy improperly requiring its non-exempt hourly call-center employees to perform work off-the-clock and without pay applies equally to the Plaintiff as it does to all of the Putative Class Members across the company. *See generally* Exs. 1–5. These substantial allegations more than show a company-wide policy or plan applicable to Plaintiff and the Putative Class Members and supports conditional certification.

Consequently, this Court should authorize notice to the Putative Class Members and allow Plaintiff to distribute the Notice/Consent forms attached hereto as Exhibit 6 to the Putative Class Members. Given the weight of evidence supporting conditional certification, and in light of ROI's blatant violations of the FLSA, the issuance of immediate Court-approved notice to the Putative Class Members is both appropriate and within this Court's discretion.

V. RELIEF SOUGHT

Plaintiff seeks the issuance of notice to all putative plaintiffs and the disclosure of the names and contact information (including the addresses, e-mail addresses, and telephone numbers) of all current and former hourly non-exempt employees who worked for ROI at any time within the past three years.

A. PLAINTIFF'S PROPOSED SCHEDULE AND NOTICE/CONSENT FORM

To facilitate the notice process and preserve the rights of those who have not yet opted-in (or learned of this lawsuit), Plaintiff has attached a proposed Notice and Consent form to be approved by the Court. *See* Ex. 6. These forms are based on various Notice and Consent forms previously approved by courts within the Tenth Circuit, though they have been modified for this particular case. Additionally, Plaintiffs seek an Order from this Court adopting the Notice Schedule identified in Exhibit 7. It provides for a 90-day notice period with a reminder notice. *See* Ex. 7.

B. COURTS ROUTINELY REQUIRE THE PRODUCTION OF NAMES, ADDRESSES, E-MAIL ADDRESSES AND PHONE NUMBERS FOR THE NOTICE PROCESS.

Plaintiff respectfully request that the Court order ROI to provide counsel for Plaintiff the names, current or last known addresses, e-mail addresses, and phone numbers for current and former hourly workers fitting the description of the conditionally certified class. Courts in the District of Utah and throughout the Tenth Circuit routinely require defendants to produce the requested information.[9] *See Landry v. Swire Oilfield Services, L.L.C.,* 252 F. Supp. 3d 1079, 1129–30 (D.N.M. 2017) (ordering the defendant to provide last known addresses, e-mail addresses, and phone numbers); *Gordineer,* 2013 WL 179327, at *3; *Thomas v. Image Line, LLC*, 2:16-cv-00845-DBP (D. Utah February 6, 2017) (order granting unopposed motion for conditional certification and ordering defendants to provide last known address, e-mail address, and phone number).

Plaintiff seeks to disseminate the Notice and Consent form to the Putative Class Members via mail, e-mail, text message, and posting. Courts in the Tenth Circuit have found that authorizing notice

[9] Plaintiffs respectfully request that the Putative Class Members be given the option to execute their consent forms on-line through an electronic signature service. This service allows Putative Class Members to sign their consent forms electronically by clicking on a link in an encrypted e-mail designated only for that user, which in turn takes to them to a website where they can review the document they are signing, click a box indicating they have read and understood the consent form and insert information such as their name and date. *See Landry*, 252 F. Supp. 3d at 1130 (allowing electronic execution of consent forms).

via multiple methods will, "increase the probability of apprising collective action members of their rights." *Bagoue v. Developmental Pathways, Inc.*, 16-CV-01804-PAB-NRN, 2019 WL 1358842, at *4 (D. Colo. Mar. 25, 2019) (quoting *Lindsay v. Cutters Wireline Serv., Inc.,* No. 17-cv-01445-PAB-KLM, 2018 WL 4075877 at *3 (D. Colo. Aug. 27, 2018)); *see also See Smith v. Pizza Hut, Inc.*, 09-CV-01632-CMA-BNB, 2012 WL 1414325, at *10 (D. Colo. Apr. 21, 2012) (ordering defendant to post notice in employee areas until opt in period closes); *Sloan v. Renzenberger, Inc.*, 10-2508-CM-JPO, 2011 WL 1457368, at *4 (D. Kan. Apr. 15, 2011). Moreover, courts have recognized that notice sent via e-mail is no longer the *best* method by which to inform Putative Class Members of their right to join a collective action and have authorized text-message notice, stating that text-message notice will, "increase the chance of the class members receiving and reading the notice." *Landry*, 252 F. Supp. 3d at 1129; *Deakin v. Magellan Health, Inc.*, 328 F.R.D. 427, 436 (D.N.M. 2018) ("[N]otice by email and text is reasonable in today's mobile society and that these methods of communication may offer a more reliable means of reaching an individual even if that individual is away from home or has moved").

VI. CONCLUSION

Plaintiff respectfully requests that the Court grant this Motion and: (1) conditionally certify this action for purposes of notice and discovery; (2) order that judicially-approved notice be sent to all Putative Class Members; (3) approve the form and content of Plaintiff's proposed judicial notice and reminder notice; (4) order ROI to produce to Plaintiff's counsel the contact information (including the names, address, telephone number and e-mail address) for each Putative Class Member in a usable electronic format; (5) authorize a 90-day notice period for Putative Class Members to join the case; and (6) authorize notice to be disseminated via First Class mail, e-mail, posting and text-message to the Putative Class Members.

Date: December 14, 2020

Respectfully submitted,

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