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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID RIBOT, PERRY HALL, JR., DEBORAH MILLS, ANTHONY BUTLER, JENNIFER BUTLER, JONATHAN LUNA and LOIS BARNES, individually, and on behalf of all others similarly situated, Plaintiffs, v. FARMERS INSURANCE GROUP, FARMERS INSURANCE EXCHANGE, 21st CENTURY INSURANCE COMPANY and AIG INSURANCE SERVICE, INC., Defendants.	Case No. CV 11-02404 DDP (FMOx) **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CLASS CERTIFICATION AND MOTION FOR CONDITIONAL CERTIFICATION** [Dkt. Nos. 127 & 135]

Presently before the court are Plaintiff David Ribot, Perry Hall, Jr., Deborah Mills, Anthony Butler, Jennifer Butler, Jonathan Luna, and Lois Barnes (collectively "Plaintiffs")'s Motion for Class Certification Pursuant to Federal Rule of Civil Procedure 23 ("Class Certification Motion") and Motion for Conditional Certification Under 29 U.S.C. 216(b) ("Conditional Certification Motion"). Having considered the parties' submissions and

supplemental briefing and heard oral argument, the court adopts the following order.

I. BACKGROUND

Plaintiffs are current and former employees of Farmers Insurance and Twenty-First Century Insurance Company[1] who worked as "Customer Service Representatives" ("CSRs") in call centers, called ServicePoints and Help Points, in California, Oregon, Kansas, Texas, and Michigan. (Second Amended Complaint ("SAC") ¶¶ 1.4-1.5.) Plaintiffs' "principal job duty" was "to handle in-bound telephone calls from insurance agents and policyholders, to answer questions concerning home and automobile insurance policies, provide agents with technical support, underwriting advice, and assistance with billing and customer service to policy holders." (Id. ¶ 6.3.) Plaintiffs allege that they were "required to arrive approximately 15 minutes before their scheduled shift in order to boot up their computers, load programs, log on to the telephone system, review emails and other essential work activities." (Id. ¶ 1.7.) They also allege that they performed post-shift duties, "including customer service calls that extend beyond the end of their shift and the tasks associated with shutting down their computer systems," for which they were not compensated. (Id.)

Plaintiffs filed their original Complaint on March 22, 2011. In July 2011, Plaintiffs learned of an investigation by the Department of Labor Wage and Hour Division ("DOL") into similar allegations at facilities in Oklahoma, Kansas, Oregon, Michigan, and Texas. Farmers and the DOL settled those claims on June 15,

[1]Acquired by Farmers in 2009.

2011. (Mot., Exhs. 1-3, FLSA Narratives.) The DOL reports indicate that Farmers changed its policy, requiring employees to log into the phone prior to booting up the computer and other activities. (See, e.g., Exh. 3 at 5.) The DOL found that Farmers was in compliance at ServicePoint locations by February 1, 2010, and at HelpPoint locations by May 10, 2010.

II. CLASS CERTIFICATION

Plaintiffs seek certification of five state law class actions to recover unpaid wages, overtime compensation, liquidated damages, attorneys' fees, and costs on behalf of current and former Customer Service Representatives ("CSRs") who are alleged to have been required to perform off-the-clock work. Each class comprises Farmers or 21st Century Insurance facilities in one of five states (California, Kansas, Texas, Michigan, Oregon).

A. Legal Standard

The party seeking class certification bears the burden of showing that each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are met. See Hanon v. Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). Rule 23(a) sets forth four prerequisites for class certification:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); Hanon, 976 F.2d at 508. These four requirements are often referred to as numerosity, commonality, typicality, and adequacy. See Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 156 (1982). "In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974) (internal quotation marks and citation omitted). This court, therefore, considers the merits of the underlying claim to the extent that the merits overlap with the Rule 23(a) requirements, but will not conduct a "mini-trial" or determine at this stage whether Plaintiffs could actually prevail. Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981, 983 n.8 (9th Cir. 2011).

B. Discussion

1. Ascertainability

"Although there is no explicit requirement concerning the class definition in FRCP 23, courts have held that the class must be adequately defined and clearly ascertainable before a class action may proceed." Pryor v. Aerotek Scientific, LLC, 278 F.R.D. 516, 523 (C.D. Cal. 2011)(internal citations and quotation marks omitted). "[A] class will be found to exist if the description of the class is definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member." O'Connor v. Boeing North American, Inc., 184 F.R.D. 311, 319 (C.D.Cal. 1998).

Defendants assert that the class is not ascertainable because the class definitions contain "representative job titles" rather

than a fixed set of positions or job descriptions. (Opp. to Class Cert. at 28; for class definitions, see Class Cert. Motion, Exh. 44.) They also assert that these "representative job titles" contradict Plaintiffs' papers where the putative class is defined as including employees with "customer facing job positions" whose "central job duty was to take inbound telephone calls from Defendants' policyholders and agents." (Class Cert. Motion at 13.)

The court finds that identifying the class members by their function rather than their position or title does not make it infeasible to determine which employees are class members. For purposes of clarity, the court modifies each class definition to include the more specific description of the job function, as follows:

> All persons who are, or have been, employed by Farmers Services, LLC., and/or Farmers Insurance Exchange in the State of [state name] as call center employees who performed the job duties of a "Customer Service Representative" or a similar <u>customer-facing</u> job position <u>with the central duty of taking inbound telephone calls from policyholders and agents</u>, during the time period between [date] and [date].

(Emphasis indicates the court's modifications.)

2. Overbreadth

a. Start date of class period

Defendants also assert that the class is overbroad because it includes members whose claims are barred by state statutes of limitations. For instance, the claims under California law have a four year statute of limitations. Cal. Bus. & Prof. Code § 17208.

The action was filed on March 22, 2011, so the class period would ordinarily begin no earlier than March 22, 2007. However, the California class period is defined as beginning on July 22, 2005. (Class Cert. Mot., Exh. 44.) Defendants speculate that Plaintiffs arrived at this class period by adding on a 19-month tolling period based on the DOL-Farmers Tolling Agreement. (Martoccia Decl., Exh. 32.)

i. DOL-Farmers Tolling Agreement

The Tolling Agreement states that the "Secretary or affected employees may ultimately bring legal proceedings under the Act," but that in order to allow time for settlement discussions, "the Firm agrees not to raise this tolling period in any other defense raised by the Firm (including laches) that otherwise would be available to the Firm concerning the timeliness of any legal proceedings that may be brought against the Firm." (Martoccia Decl. Exh. 32.)

Defendants argue that the Tolling Agreement "tolls only the DOL's ability to commence an action pending the resolution of the DOL investigation" and that because putative class members are "not parties to the agreement," it does not apply to suits initiated by them. (Opp. at 29 n. 108.) They also argue that the tolling agreement does not apply to state law claims because it does not mention such claims. (Id.)

Plaintiffs assert that according to its plain language, the Tolling Agreement bars Farmers from asserting any statute of limitations argument, no matter the cause of action or the party asserting that cause of action.

The court finds that the Tolling Agreement is reasonably interpreted as applying only to claims under the FLSA, not to state law claims. The Tolling Agreement mentions only FLSA claims. It frames the purpose of the Agreement by stating that "[t]he Secretary or affected employees may ultimately bring legal proceedings under the Act. However, the running of the statute of limitations . . . may bar the assertion of certain rights under the Act . . ." (Martoccia Decl., Exh. 32 at FIE001163 (emphasis added).) Additionally, paragraph 5 states that "The Firm agrees that this Agreement . . . may be introduced into evidence as proof of the tolling agreed to herein, in all legal proceedings that may be brought pursuant to Sections 16(b), 16(c), and/or 17 of the Act." (Id. at FIE001164.)

ii. Conclusion on class period start date

Because the statute of limitations is tolled only for claims under the FLSA, the putative class, which is asserting only state law claims, cannot benefit from it. For this reason, the start date of all classes should reflect the relevant state law statute of limitations without including any tolling on the basis of the DOL-Farmers Tolling Agreement.[2]

b. End date of class period

Defendants also assert that the class period is overbroad because of the modification of phone login procedures at ServicePoint contact centers after February 1, 2010, and at HelpPoint contact centers after May 10, 2010. According to the

[2] This modification of class start dates does not affect any other potential claims to tolling that class members might ultimately assert, apart from the DOL-Farmers Tolling Agreement.

DOL, these changes brought Farmers into compliance; Plaintiffs do not contest that the violations related to pre-shift work ceased with the modification of the log-in procedures. (Opp. to Class Cert at 29.) As discussed in sections II.B.4.b.iii-iv below, the court finds that Plaintiffs have presented a common question of law and fact only as to their claims regarding pre-shift work. The class is accordingly limited to the period prior to the change in policy regarding log-on procedures, namely February 1, 2010, at ServicePoint contact centers and May 10, 2010, at HelpPoint contact centers.

3. Numerosity

To meet the requirements of Rule 23(a), Plaintiffs must first demonstrate that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Courts will typically find the numerosity requirement satisfied when a class includes 40 or more members. See Rannis v. Recchia, 380 Fed. Appx. 646, 651 (9th Cir. 2010).

Plaintiffs' evidence of numerosity is the FLSA Narrative Report, which identified 1,288 affected employees in Kansas, 446 in Oregon, 650 in Michigan, and 557 in Texas. (Exh. 3, 5-6.) They also provide deposition testimony on the number of customer service representatives at various facilities. (See Thomas Dep. 25:4-8, 36:2-36-17; A. Butler Depo 43:10-17; J. Butler Depo 33:8-11; Salgado Depo. 25:12-15; Peters Depo. 37:23-38:10; Ribot Depo. 39:1-5.) Defendants argue that Plaintiff have not presented any evidence that each state class meets the numerosity requirement. The court disagrees. Plaintiffs have presented evidence that does not establish the exact size of the class but does establish that

each subclass contains a large number of members, and Defendants have presented no evidence suggesting otherwise. "Where the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied." Orantes-Hernandez v. Smith, 541 F. Supp. 351, 370 (C.D. Cal. 1982).

The court finds that the numerosity requirement is satisfied.

4. Commonality

Second, Plaintiff must demonstrate that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient . . . ." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). Indeed, "[e]ven a single [common] question will do," so long as that question has the capacity to generate a common answer "apt to drive the resolution of the litigation." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551, 2556 (2011) (internal quotation marks omitted).

Defendants challenge Plaintiffs' showing of commonality on the grounds that they have not offered any evidence to support their specific state law causes of action; they have not shown a common policy to require off-the-clock work; and they have not offered a viable method of demonstrating class-wide injury based on common proof.

a. State Law Causes of Action

Defendants argue that Plaintiffs have not offered any evidence to support their causes of action under state law, which include

failure to pay minimum wage, failure to compensate for overtime, breach of contract, quantum meruit, failure to provide adequate wage statements, and failure to pay all wages owed upon termination. (Opp. to Class Cert. at 13-18.) Defendants assert that Plaintiffs have failed to show how they can establish the elements of each state law claim on a classwide basis. With respect to breach of contact, for instance, Defendants assert that Plaintiffs do not set forth the terms of any contracts, explain how they were breached, or explain how to adjudicate such a cause of action on a classwide basis. (Id. at 15.)

Plaintiffs contend that they do not need to present such evidence at this time. (Reply to Class Cert. at 6.) They claim to have presented evidence of common questions of law and fact centering on the issue of why customer service representatives were not paid for work they did before and after their shifts. Resolving these common questions will be the basis for determining whether there were violations of state laws during the merits phase. They compare the determination on state law claims to determination of damages, which does not in itself defeat class certification even if it is not susceptible to class treatment. See Yokoyama v. Midland Nat. Life Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010)(internal quotation marks and citation omitted)("The potential existence of individualized damage assessments . . . does not detract from the action's suitability for class certification. Our court long ago observed that the amount of damages is invariably an individual question and does not defeat class action treatment.").

The court agrees with Plaintiffs that if they establish a common question of fact as to pre-shift and/or other off-the-clock work, the issue of whether those facts ultimately violate state laws can be determined at a later phase and is comparable to a damages calculation, which does not defeat class treatment even if it involves individual calculations.

b. Common Policy

Defendants assert that Plaintiffs have not provided proof of a common policy of requiring off-the-clock work, and that they cannot make such a showing because Defendants have always prohibited off-the-clock work.[3] Plaintiffs respond that, to the contrary, they have provided proof of a number of common policies relevant to the alleged off-the-clock work requirement. The court shall address each purported policy separately.

i. Instructions from supervisors

Plaintiffs have presented substantial deposition testimony to the effect that supervisors instructed customer service representatives that they needed to be ready to work by the time their shift started, implying or explicitly stating that employees needed to arrive early to perform preliminary tasks. See, e.g., Exh. 28, Lampton Depo., 47:18-20 ("You were just told if – if you were not ready and working by 8:00, that there was a possibility that you could be written up, counseled."); id. 83:10-11 (a manager repeatedly "said that policy was everybody was to be at their desk

[3] Defendants refer generally to employee handbooks without point to specific sections, citing Andernacht Decl., Exh. A; Booth Decl., Exh. C; and Lingo Decl., Exh. D. The court declines to scour the 50-70 page handbooks for passages where off-the-clock work is prohibited.

ready to work at their scheduled time."); Exh. 38, Ernst Depo., 123:25-124:7 (it was verbally communicated that employees needed to be ready to answer calls at the beginning of their shift); Exh. 29, A. Butler Depo., 92:9-92:21; 146:20-24 ("So if a customer service representative did not arrive early enough to perform the pre-shift tasks before their scheduled shift they were 'talked to' by management instead of 'admonished'"); Exh. 36, Mills Depo., 89:24-90:17 ("So when the 8:00 o'clock time came, or whatever time you're supposed to time in, you can get into the computer – not get into it, but be able to navigate it to get all ready to go . . ."); Exh. 32, Thomas Depo., 34:3-11 ("We were told that we need to be ready for work at our scheduled time, we need to be on the phone at that time . . . . At one point we were told that we needed to come in earlier so that we could log on and be on our phone at our scheduled time."); Exh. 37, Peters Depo., 33:24-34:1 ("[T]hey advised us that we need to be up and going by our time – when our time starts. Be willing – able to take a call."); and Exh. 35, Luna Depo., 60:7-8 ("[W]e were told to show up 10 to 15 minutes prior to our shift starting."). (See also Reply to Class Cert. at 2-3 nn. 3-6.)

This testimony from multiple facilities is sufficient evidence that supervisors instructed employees to arrive early to perform functions necessary to being ready to work at their designated shift time.

ii. Schedule adherence

Plaintiffs argue that "CSRs were presented with a no-win situation: comply with Defendants' policy to perform pre-shift work every day while off-the-clock, or start working at their scheduled

time, but be considered out-of-adherence, tardy, and be unable to effectively perform their duties." (Class Cert. Mot. at 9.) Plaintiffs point to the "schedule adherence" metric used in employee performance evaluations. Adherence measures a CSR's availability to take calls while logged into the system. A CSR is out of adherence if she is logged in but unavailable to take calls, as indicated by a code she enters into the phone. One employee explained schedule adherence as follows:

> Farmers scheduled you to be in different work modes throughout the workday such as "available," "lunch," or "meeting." If you were in a work mode that did not match up with the work mode that was scheduled for you, you'd be considered "out of adherence," which would negatively impact your performance scores.
>
> Farmers scheduled you to be in "available" mode at the start of your shift or very soon thereafter. However, once you clicked "available," you would almost immediately start receiving calls from customers. So, if you started receiving calls without first having all of your programs up and running, you wouldn't be prepared with the tools needed to effectively help the customer in a timely manner. . . .
>
> The only other option you had at the start of your shift was to use "aux" mode while you waited for your programs to finish loading. However, you couldn't take calls while being in "aux," so it hurt your adherence score throughout the day like "after call work," you

didn't want to use "aux" mode each and every morning that you reported to work.

Gordon Decl. ¶¶ 8-10.

Schedule adherence appears as a metric in performance evaluations. See, e.g., Exh. 4 (Perry Hall's year end assessment from 2007) at FAR000019 ("Adherence is an area in which you need to address and make significant improvements, as you are currently at 74.93%. Our goal, as you know, is 85%. Please focus on improving this metric.") Performance reports indicate the importance of adherence in personnel evaluations. See, e.g., Exh. 5, Year End Assessment of Jonathan Luna, FAR 000053 ("[Y]our schedule adherence July - Oct. is 82.36%. You are not meeting the adherence to schedule goal. Our ability to handle calls and meet our service levels is contingent on the appropriate forecasting of staffing. Adherence to schedule means you are available to handle our customers calls which contributes to our ability to forecast accurately to meet our service level goals and limit abandoned calls.")

Plaintiffs argue that the adherence to schedule metric was part of the policy to require pre- and post-shift work. If a CSR arrived at 8:00 a.m. for an 8:00 a.m. shift and immediately logged into the phone prior to booting up the computer, she would also have to indicate that she was not able to accept incoming calls by entering a code. This time would count toward her schedule adherence; she would be considered to be out of adherence for the 10 to 15 minutes during which she was preparing her computer to handle calls. "CSRs were presented with a no-win situation: comply with Defendants' policy to perform pre-shift work every day while

off-the-clock, or start working at their scheduled time, but be considered out-of-adherence, tardy, and be unable to effectively perform their duties." (Class Cert. Mot. at 9.)

Defendants respond that schedule adherence could not have been a pressure on employees to work off the clock because the target adherence rate was only 85%, giving full-time employees approximately 75 minutes per day of time during which they could be out of adherence. Plaintiffs assert that the target adherence rate was not 85% but 90%, citing Jennifer Butler's performance report (Reply re Cond'l Cert at 9; Exh. 11 at TWE000041)("Jennifer, your adherence stands at 91.48% and you are exceeding your expectations in this area. We discussed the importance of adherence when you first entered the unit. I noticed that you were not ready excessively. We discussed that your not ready [status] impacts your adherence, and once this was brought to your attention, you worked diligently and decrease[d] your not ready time immediately. Recently, your not ready time has increased. You have been made aware and said that you would work to decrease your not ready time so that you continue to exceed your expectations in this area. You understand the importance of adhering to schedule, which positively impacts your adherence. It's nice to know that you focus and work to meet our unit goal of 90% daily.")

Defendants are correct that being out of adherence for 10 to 15 minutes would not in itself result in an employee being unable to meet the 85-90% adherence target. However, other activities such as bathroom breaks also entered into the calculation of

adherence.[4] Furthermore, as seen in Jennifer Butler's performance evaluation, employees were praised in their performance evaluations for exceeding adherence goals, and increased adherence rates appear to lead to a more positive performance report. Pressure to adhere as much as possible is expressed in the performance reports.[5] Particularly when taken in conjunction with instructions from supervisors, the schedule adherence policy thus can be considered to be part of a policy to encourage pre-shift work.

Defendants also assert that employees were not deemed out of adherence while loading computer programs after logging into the phones. They cite the "2011 Guidelines for Schedule Adherence" which states: "At the start of their shift CSA's must hard log into the phone before booting up the PC. Once the PC is ready the CSA should log out of the phone and log into CTI. This process records the CSA's arrival time for attendance purposes. During the start up process the CSA is considered in adherence when logged into the phone and not logged into CTI." (Andernacht Decl., Exh. B at FIE000480.) However, this policy addresses the system after changes had been made as a result of the DOL investigation, and there is no indication that it was the previous policy. To the

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[4] Plaintiffs claim that employees are considered out of adherence if they took phone calls past their shift, when calls spilled into their lunch breaks, when they needed to enter notes after a phone call finished, "and so on," but the footnotes supporting these claims are empty (Reply to Class Cert. at 12 nn. 35-36) or do not support the claim they are making (id. n. 34).

[5] Defendants argue that the pressure of performance reports raises an individualized question because it is a subjective feeling that an employee may or may not have. (Opp. at 22.) The performance reports, however, are using "objective" criteria, and feeling pressure to meet criteria in performance evaluations is not subjective.

contrary, Defendants indicate that the phone log-in policy was changed in 2010.

iii. Timekeeping system

a. Policy

Plaintiffs argue that it was a Farmers' policy to modify timecards to reflect scheduled shifts rather than actual time worked: "Should a discrepancy be found between what the CSR entered as the time that they actually worked and what Defendants told them they worked - as reflected in clock-in times and the hours they were scheduled to work - the gatekeeper [i.e. the supervisor who approved the timecards] was required to reject the timecard and instruct the CSR to make 'corrections,' that is, inaccurately record the time that they actually worked." (Mot. at 7, and n. 22.) They present a complex set of evidence purportedly supporting this assertion. For instance, they point to Procedural Documentation for Timecard Processing which advises supervisors to compare timecards to the "Supervisor Timecard File" and to the login/logout time in the phone system, Avaya, and to reject incorrect timecards. (Exh. 16 at FAR000144, FAR000148, and FAR000149.)

Plaintiffs read these and other handbooks as requiring supervisors to force employees' timecards into the shifts for which the employees were scheduled, as opposed to the time they actually worked. It is not clear to the court that these handbooks in fact amount to such a policy. Neither party has given a clear picture of how timekeeping worked at Farmers such that the court would be in a position to interpret the requirements of the handbook. Defendants did not challenge Plaintiffs' characterization of the timekeeping system except to say Farmers' policy was that "the

electronic time card must show the specific time the employee starts work, the lunch period, and the time of leaving." (Mot., Exh. 13, Employee Manual at FIE00836.)

The court is not convinced that Plaintiffs have presented clear evidence of a policy of changing timecards to reflect the time employees were scheduled to work instead of the time they actually worked.

Even assuming that Plaintiffs have established such a policy, the court must consider whether individualized questions predominate over class questions. The court finds that individualized questions predominate and that therefore the question of the timekeeping policy is not suitable for class treatment.

As discussed above, Farmers' handbooks and policy documents do not present a clear picture of the timekeeping policy. In addition, Plaintiffs' deposition testimony on the timekeeping system is ambiguous. On the one hand, the testimony supports a claim that supervisors required employees to modify their timecards. (See, e.g., Salgado Depo, 59:3-22 ("Well, I had to clock out at 5:00, but if I was caught into a call that threw me to 5:10, then I would, yes. I would – we would clock out at 5:00, and then we were – I was supposed to send this email to our supervisor to let her know that I – you know, that I was caught into a call and that's the reason why I was – that I stayed until 5:10."); and Exh. 37, Peters Depo., 31:17-32:15 ("If the time that you logged in on the phone did not match the time that was on the green screens or vice-versa, they would reject it and talk to you and see what was going on, why it wasn't matching up.").) However, it does not

appear to be the case that employees were never compensated for post-shift work due to the timekeeping policy. See id. 33:8-19 (Peters testified that he revised his timecard to reflect that he had worked an additional 30 minutes after the end of a shift and the change was approved by his supervisor and he was paid).

Additionally, the deposition testimony raises the question of whether timecard modification was required only to comply with the rounding policy and was primarily used to correct discrepancies shorter than seven minutes, or whether discrepancies of longer periods were also required to be corrected.

Furthermore, Plaintiffs have failed to offer a method of common proof to demonstrate class-wide injury. In re Graphics Processing Units Antitrust Litigation, 272 F.R.D. 489, 497 (N.D. Cal. 2008)(plaintiffs have the burden under Rule 23 "to provide a viable method of demonstrating class-wide injury based on common proof."). Plaintiffs propose the following methodology:

> Following certification of the action, and prior to trial, class counsel will work with appropriate experts in the fields of statistical analysis and economics to determine an appropriate methodology for determining the average number of hours worked by the class members, most probably broken down to a daily average, which would then be utilized by the economist expert to extrapolate total damages for the entire class. Whether done by sample depositions, surveys, or some other methodology, the goal would be to offer proof on a class wide basis such that the global exposure of the defendant would be fairly

arrived at, with the issue of distribution left to the class counsel and its experts.

Decl. John D. Sloan, Jr., ¶ 2. Given the conflicting testimony on whether Plaintiffs were compensated when they worked beyond their scheduled times, this methodology for obtaining common proof is not sufficiently specific to convince the court that individual issues do not predominate.

iv. Rounding

Prior to January 1, 2011, Farmers rounded time on timecards to the nearest 15-minute increment: if any employee worked seven minutes past the end of her shift, she would not be paid for that time as it was not a "pay impacting" occurrence. (Mot. at 10.) Plaintiffs claim that this practice deprived them of their pay because "Defendants never took any steps to determine if the rounding rule fairly compensated employees," despite their own policy requiring quarterly audits to "check for any violations of state or federal regulations including labor law" (Mot. at 10 n.36. (citing Exh. 17 FAR001040-001308).) Plaintiffs do not present evidence of a detrimental effect on employees because "Defendants have not yet produced time keeping records for a representative sample of the CSRs and Plaintiffs are still engaged in discovering the analytical data necessary to determine if this policy resulted in systematic under compensation of CSRs." (Id.)

Defendants assert that rounding is lawful and that their practice of rounding was neutral. They claim that Plaintiffs have not demonstrated that this rounding practice resulted in off-the-clock work. Plaintiffs respond that whether the system worked to the detriment of employees is a merits question, and that

Defendants do not dispute that they used a system of rounding, and do not know whether they audited the rounding system. (Reply at 13.)

Plaintiffs' only evidence on this point is the lack of audits of the rounding system undertaken by Defendants, despite their own auditing policies. Since rounding is a lawful practice, Defendants' lack of auditing of the rounding system on its own is not a sufficient factual basis on which to establish a policy of not properly compensating employees. The court finds that Plaintiffs have not presented sufficient evidence on this issue to establish unlawful rounding as a common issue suitable for class treatment.

v. Conclusion on Commonality

The court finds that Plaintiffs have established common questions of law and fact with respect to their pre-shift work, but not with respect to other off-the-clock work or to Farmers' rounding policy.

5. Typicality

Rule 23(a) also requires Plaintiffs to demonstrate that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020.

Defendants argue that Plaintiffs' claim that they worked off the clock is not typical. They point to deposition testimony from putative class members stating that they were not required to work off the clock. The court has already discussed this issue with

respect to commonality and found that Plaintiffs have established a common question of fact as to whether there was a policy of off-the-clock work.

The typicality inquiry centers on the question of whether the representative parties have typical claims and defenses. With respect to that question, Defendants' main objections are, first, that the named Plaintiffs did not work at all of the facilities from which the putative classes are drawn and, second, that two of the named Plaintiffs, Deborah Mills and Rita Dunken, are not adequate. For the reasons explained below, the court finds that Plaintiffs have met the typicality requirements.

i. Facilities

Defendants point out that the named Plaintiffs did not work at all the branch facilities from which the putative class will be drawn, and argue that they are not typical because they do not have knowledge of the policies of the other Farmers branches. The court finds that Plaintiffs have presented sufficient evidence that the policies at issue were in effect at all Farmers call centers. The various locations, designated as Help Points or ServicePoints, appear to be governed by Farmers-wide policies and to use the same hardware and software systems regardless of the location. Branch offices of the same company are likely to have the same policies, and Defendants have presented no indication that they used different software or had different hardware, for instance. A named Plaintiff can therefore be typical of the class she seeks to represent even if she works at a different branch of the same company. See, e.g., In re Wells Fargo Home Mortg. Overtime Pay Litig., 527 F. Supp. 2d 1053, 1063-64 (N.D. Cal. 2007) (holding

that named plaintiffs were typical of class members working at other locations "to the extent that they are subject to the uniform compensation and employment policies that Wells Fargo applies to all HMCs" and to the extent that "the absent class members shared the same job title and were subject to the same policies at issue.").

ii. Typicality of Mills and Dunken

a. Deborah Mills

Defendants assert that Mills is not typical of the putative class because she was employed only for four months and only as a trainee. The court finds that Defendants have not indicated any differences between a trainee position and a regular position that would suggest that her injury is not typical of a class member. Like other class members, she would have been subject to a policy of requiring off-the-clock work and would have suffered the same injury as a result. Her typicality does not appear to be impaired by her trainee status or her relatively brief period of employment.

b. Rita Dunken

Defendants assert that Dunken is not an adequate class representative because she worked as a claims associate, and thus answering calls was not her primary job responsibility. (Decl. Swopes ¶¶ ("Rita Dunken . . . [was a] claims associate[] who, among other job responsibilities, handled incoming calls to the branch claims office in Tigard. Most of these calls were from customers who simply wanted to be transferred to the claims representative who was handling their claim. They would also receive calls from insurance agents with questions about claims made by policyholders that they serviced. In addition to answering such telephone calls,

Ms. Dunken . . . had other tasks, such as handling incoming mail, assisting with mailings, following up on uncashed checks, and assisting with duties at the reception desk. There were at most ten claims associates reporting to me at any given time, and only some of them would handle incoming calls as part of their main job duties.").)

Plaintiffs have presented evidence that Dunken was one of the claims associates whose primary job duty was answering calls. (Exh. 8, Dunken Performance Management Form ("Your main job is to answer the calls for the call center is to provide excellent customer service on each and every call you take. You continue to make sure you assist with their concerns and treat them as number one. . . . Due to your main responsibility as answering calls daily for Oregon and Washington, you are now limited to new job responsibilities . . .).) Defendants have not presented any evidence to suggest, for instance, that Dunken used different computer software or was otherwise subject to procedures different from the employees she is seeking to represent, beyond some variation in her job responsibilities. However, because the primary component of her job does appear to be the primary component of the job of putative class members - answering phone calls - the court finds that Dunken is typical of the class.

6. Adequacy

Finally, Rule 23(a) requires Plaintiff to demonstrate that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with

other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020.

Defendants argue that Plaintiffs are not adequate because they seek to represent class members at facilities where they never worked and they submitted declarations that contradicted their deposition testimony and were subsequently retracted. Defendants do not explain how either of these points renders the Plaintiffs or their counsel inadequate by creating conflicts of interest with other plaintiffs or by calling into question their commitment to prosecuting the action. The court finds that Plaintiffs have met the adequacy requirement of Rule 23(a).

7. Predominance

Under Rule 23(b)(3), a plaintiff seeking to certify a class must show that questions of law or fact common to the members of the class "predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Defendants emphasize the fact that this action contains claims asserted under the laws of five different states and argue that the application of the laws of multiple states make the class unmanageable. They cite In re Charles Schwab Corp. Securities Litigation, 264 F.R.D. 531, 537 (N.D. Cal. 2009) for the proposition that "[w]here the laws of various states will govern the class claims, the differing state laws inject significant manageability concerns and can prevent certification of the nationwide class." The court notes, first, that Plaintiffs here

are not seeking to certify a nationwide class, but instead five subclasses, each comprising Plaintiffs of one state. Additionally, as discussed above, the fundamental question of this case - whether Defendants had a policy of requiring pre-shift work - does not depend on the various state laws that would be used to determine the amount of Defendants' liability if they were found so liable. Those laws will be relevant in the damages stage and do not mean that individualized questions will predominate in the primary litigation stages.

The court therefore finds that the requirements of Rule 23(b) have been met.

III. CONDITIONAL CERTIFICATION

A. Legal Standard

Section 206 of Title 29 of the Unites States Code requires that employers pay minimum wages to non-exempt employees. 29 U.S.C. § 206(a). Section 207 requires that employers pay non-exempt employees overtime. 29 U.S.C. § 207(a). Pursuant to § 216(b), an action to recover for failure to make overtime payments or to pay minimum wages "may be maintained against any employer . . . by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." 29 U.S.C. § 216(b). Only employees who give their consent in writing – or "opt in" – will be represented parties. Id. This form of representative action is commonly referred to as a "collective action." "Because non-parties to a collective action are not subject to claim preclusion, giving notice to potential plaintiffs of a collective action has less to do with the due process rights of the potential plaintiffs and more to do with the named plaintiffs' interest in vigorously

pursuing the litigation and the district court's interest in 'managing collective actions in an orderly fashion.'" McElmurry v. U.S. Bank Nat'l Ass'n, 495 F.3d 1136, 1139 (9th Cir. 2007). District courts have considerable discretion in managing FLSA collective actions, including in determining how and when notice is provided to potential opt-in class members, see Hoffman-La Roche Inc. v. Sperling, 493 U.S. 165, 171-73 (1989), and whether certification of a § 216(b) collective action is appropriate, Leuthold v. Destination America, Inc., 224 F.R.D. 462, 466 (N.D. Cal. 2004).

B. Discussion

Plaintiffs seek conditional certification of the following class for notice purposes:

> All current and former customer facing call center employees of Defendants, Farmers Services L.L.C., Farmers Insurance Exchange, and 21st Century Insurance Company, that held or hold the position of "Customer Service Representative," "Customer Service Associate," "Customer Service Advocate," or similar positions between the relevant statutory period, three years preceding the filing of the original complaint and the time additional class members opt-in to the collective action.
>
> Excluded from the class are those class members whose overtime claims were settled in the March 14, 2011 Farmers-Department of Labor Settlement Agreement for Farmers Services and Farmers Insurance Exchange's employees at the Overland Park ServicePoint for the time period between January 1, 2009 to January 1, 2010; the

> Olathe HelpPoint for the time period between January 1, 2009 to May 10, 2010; the Austin, Texas ServicePoint for the time period between January 1, 2009 to February 1, 2010; the Grand Rapids HelpPoints call center for the time period between January 1, 2009 to May 10,2010, and for the Grand Rapids ServicePoint for the time between January 1, 2009 to February 1, 2010. Further excluded are those whose employment with the Defendants began after January 1, 2011.

(Mot. for Cond'l Cert. at 3.)

1. Standard

The parties first dispute the standard that should apply to certification of a collective action here. Section 216(b) provides that a collective action may be maintained where the claimants are "similarly situated." The statute does not define the term "similarly situated," and as far as the Court can tell, both the Supreme Court and the Ninth Circuit have yet to interpret the phrase. Although courts have taken a few different approaches to certification of a collective action, see generally 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Fed. Prac. & Proc. § 1807, most courts interpreting § 216(b), including those in the Ninth Circuit and in California, have adopted a two-step approach. See, e.g., Wynn v. Nat'l Broad. Co., Inc., 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002); Leuthold, 224 F.R.D. at 466-67; see also Newberg on Class Actions § 24:3 (4th ed. 2008) ("Most courts have interpreted § 216(b) as requiring an analysis of whether plaintiffs are 'similarly situated' at two stages in the litigation: when

notice to prospective class members is initially sought and then following discovery."); 7B Wright, Miller & Kane § 1087.

At the first stage, the court considers whether to certify a collective action and permit notice to be distributed to putative class members. See Thiessen v. General Electric Capital Corp., 267 F.3d 1095, 1102 (10th Cir. 2001). Courts making a notice-stage determination tend to require "nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan." Id. (internal quotation marks omitted). A plaintiff "need not show that his position is or was identical to the putative class members' positions; a class may be certified under the FLSA if the named plaintiff can show that his position was or is similar to those of the absent members." Freeman v. Wal-Mart Stores, Inc., 256 F. Supp. 2d 941, 945 (W.D. Ark. 2003). "While the standard for conditional approval at the stage of the litigation is lenient, it does require some evidentiary support. The lack of any evidence of similarity or even other potential class members precludes class certification." Bishop v. Petro-Chemical Transport, LLC, 582 F. Supp. 2d 1290, 1296 (E.D. Cal. 2008)(emphasis in original); see Bernard v. Household Intern., Inc., 231 F. Supp. 2d 433, 435 (E.D. Va. 2005) ("Mere allegations will not suffice; some factual evidence is necessary."); Freeman, 256 F. Supp. 2d at 945; Grayson v. K Mart Corp., 79 F.3d 1086, 1097 (11th Cir. 1996) (plaintiffs may meet their burden "by making substantial allegations of class-wide [violations], that is, detailed allegations supported by affidavits which successfully engaged defendants' affidavits to the contrary" (internal quotation marks omitted)). Plaintiffs will be

deemed similarly situated "when there is a demonstrated similarity among the individual situations [–] some factual nexus which binds the named plaintiffs and the potential class members together as victims of a particular alleged" policy or practice. Bonilla v. Las Vegas Cigar Co., 61 F. Supp. 2d 1129, 1138-39 n.6 (D. Nev. 1999) (internal quotation marks omitted).

The second stage often occurs at the conclusion of discovery. At that stage, courts use a stricter standard of "similarly situated" by reviewing several factors, including (1) disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to the defendant which appear to be individual to each plaintiff; and (3) fairness and procedural considerations. Leuthold, 224 F.R.D. at 467. Where significant discovery has been completed at the time of class certification, "some courts have skipped the first-step analysis and proceeded directly to the second step." See Lockhart v. County of Los Angeles, No. CV 07-1680 ABC (PJWx), 2008 WL 2757080 at *4 (C.D. Cal. 2008) (collecting cases); Pfohl v. Farmers Ins. Group, CV 03-3080 DT (Rcx), 2004 WL 554834 at *2-3 (C.D. Cal. 2004).

2.Application

The court has already found that Plaintiffs' state law claims regarding pre-shift work meet the requirements of Rule 23. As the underlying factual and legal questions are identical with respect to their FLSA claims, the court finds that even under the more stringent second stage standard, Plaintiffs have met their burden with respect to the pre-shift work. As discussed in the analysis of commonality, there are common questions of fact and law as to Defendants' policy of requiring pre-shift work which extend across

the subclasses. Also as discussed above, Plaintiffs have demonstrated that individualized issues do not predominate, and that Defendants do not have defenses that are individual to each plaintiff. Finally, the court finds that a collective action is fair and procedurally efficient in this case. Thus, Plaintiffs have met the requirements for certification of a collective action with respect to the pre-shift work.

Also as discussed above, Plaintiffs have not established that there was a "single decision, policy, or plan" regarding off-the clock work except with respect to pre-shift log-in and boot-up procedures. The collective action, like the Rule 23 action, is conditionally certified only with respect to the pre-shift work.

3. Statute of Limitations

Although Plaintiffs' claims are suitable for treatment as a collective action, there is a question as to whether the putative class has claims that are not barred by the statute of limitations for FLSA claims. The statute of limitations under the FLSA is two years after the cause of action accrued, or three years for willful violations. 29 U.S.C. § 255. In a collective action, the action is considered to have commenced on the date when the complaint was filed for named plaintiffs, or, for those people joining the action, on the date on which the person files written consent with the court. 29 U.S.C. § 256.

Here, the original complaint was filed on March 22, 2011. Thus, the statute of limitations for the named plaintiffs extends to March 22, 2008, for willful violations.[3] As a result, with no

[3]The court assumes without deciding that Plaintiffs are (continued...)

tolling, the statute of limitations for FLSA claims regarding willful violations is three years from the filing of the original complaint (March 22, 2011) for the named plaintiffs, and three years from the opting in of the other plaintiffs. The named Plaintiffs who did not work at one of the facilities covered by the DOL settlement can make claims accrued starting in March 2008 (if the violations were willful) or March 2009 (if they were not willful).

For parties who have yet to opt in, the statute of limitations typically is dated three years prior to the date of opting in. If employees were to opt in on April 1, 2013, they would be eligible only to make claims dating April 1, 2010, or later. In this case, Plaintiffs concede that no potential class members who worked at ServicePoints after February 1, 2010, or at Help Points after May 10, 2010, are likely to have claims, due to the change in timekeeping and payroll policies. (See Plaintiff's Supp. Briefing at 8; Exhs. 1-3, FLSA Narratives.) Without tolling, then, no employees would appear to have live claims.

a. Equitable Tolling

"Equitable tolling is extended sparingly and only where claimants exercise diligence in preserving their legal rights." Adams v. Inter-Con Sec. Sys., Inc., 242 F.R.D. 530, 542 (N.D. Cal. 2007) (citing Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)). Equitable tolling is appropriate "where the claimant has actively pursued his judicial remedies by filing a defective

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[3](...continued)
alleging willful violations. The statute of limitations for non-willful violations is two years. This determination will be made at the merits phase.

pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." Irwin, 498 U.S. at 96. See also Stoll v. Runyon, 165 F.3d 1238, 1242 (9th Cir. 1999)("Equitable tolling applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time.") "[T]he inquiry should focus on fairness to both parties." Adams, 242 F.R.D. at 543.

Here, Plaintiffs argue that the statute of limitations should be tolled for opt-ins to the date of filing of the original Complaint because Defendants "used a motion to dismiss and the discovery process to run out the clock on the putative class members' claims." (Plaintiffs' Supp. Brief. at 2.) They also assert that Defendants withheld the class list and other documents, including documents regarding the DOL investigation and all copies of HR manuals. (Plaintiffs' Reply to Defendants' Supplemental Briefing at 5 n.3, 7.)

There is mixed authority as to when equitable tolling should be used when defendants withhold a class list. District courts may permit discovery of the names and address of potential class members at the conditional certification stage. Hoffman-La Roche Inc., 493 U.S. at 170. Courts appear to agree that disclosure of the class list is not required until an action has been conditionally certified. "Under 29 U.S.C. § 216(b), defendant is only required to provide potential plaintiffs' contact information after conditional certification of the collective class." Adams, 242 F.R.D. at 543 (citing Hoffman-La Roche Inc. v. Sperling, 493

U.S. at 170). However, some courts have found it appropriate to allow pre-certification discovery of the class list to allow putative class members to opt in earlier. "Encouraging early certification furthers the FLSA's broad remedial goal because the FLSA's limitations period continues to run until the potential class member opts in, giving rise to a need to identify and provide notice to potential class members promptly." Whitehorn v. Wolfgang's Steakhouse, Inc., No. 09Civ.1148(LBS), 2010 WL 2362981 at *2 (S.D.N.Y. 2010)(internal quotation marks and citations omitted).

Other courts have found it appropriate to grant equitable tolling when a class list is not produced upon request. In such cases, "[a]pplying equitable tolling . . . counters the advantage defendants would otherwise gain by withholding potential plaintiffs' contact information until the last possible moment. Faultless potential plaintiffs should not be deprived of their legal rights on the basis of a defendant's delay, calculated or otherwise." Adams, 242 F.R.D. at 543. This court agrees. Although the statute does not require production of the class list prior to conditional certification, without equitable tolling defendants have the incentive to delay proceedings and to run the clock as long as possible. It is therefore more equitable to toll the statute of limitations to 30 days after the first request for the production of the class list, the time when Plaintiffs could reasonably have expected to receive the list.

Here, Plaintiffs claim that "Defendants refused to produce a class list from the outset," referring to the Joint 26f Report, Dkt. No. 48 (Feb. 16, 2012), which said that "Defendants contend

that the Court should not authorize discovery of putative class members' names and contact information unless it conditionally certifies a class." Plaintiffs do not indicate any other attempts to obtain the names of the potential members of the collective class, presumably based on the authority apparently provided to Plaintiffs indicating that a class list would not be provided until a class obtained conditional certification.[4] (Transcript of hearing on April 1, 2013, 7-8.)

Defendants assert that they would be prejudiced by equitable tolling because it would "increase their potential liability beyond what they would normally face under the FLSA." (Defendants' Supplemental Briefing in Opposition to Plaintiffs' Motions for Certification at 8.) In the court's view, tolling preserves putative collective action members' rights under the FLSA. The effect of this is to make Defendants potentially liable for a time period longer than the period if there were no tolling. However, in the court's view, the result is not an extraordinary expansion of Defendants' liability under the FLSA but instead the restoration of Plaintiffs' ability to recover for alleged violations of the FLSA.

b. DOL Tolling Agreement

Plaintiffs also assert that all putative collective action members should be able to avail themselves of the DOL Tolling Agreement. Defendants contend that only the DOL may assert the Tolling Agreement. The court finds that the Agreement may be

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[4] Plaintiffs reported that the case Defendants cited was Mitchell v. Acosta Sales, LLC, CV 11-1796-GAF (Opx), Aug. 29, 2011.

invoked by both the DOL and employees, but only by those employees who worked at facilities investigated by the DOL.

The Agreement specifically refers to the ability of the affected employees to file suit. “The Secretary or affected employees may ultimately bring legal proceedings under the Act.” (Id. at FIE001163 (emphasis added).) The Agreement also explicitly states that it may be invoked “in all legal proceedings that may be brought pursuant to Sections 16(b), 16(c), and/or 17 of the Act.” (Id. at FIE001164.) However, there is no evidence that employees at facilities not investigated by the DOL were contemplated as beneficiaries by either party at the time of the agreement. Extending the settlement agreement to employees not contemplated by the parties as beneficiaries of the settlement would render the settlement agreement overly open-ended and vague and would violate principles of contract interpretation. "To sue as a third-party beneficiary of a contract, the third party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party. The intended beneficiary need not be specifically or individually identified in the contract, but must fall within a class clearly intended by the parties to benefit from the contract." Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d 1206, 1211 (9th Cir. 1999) (citation omitted). Here, there is no indication in the language of the settlement agreement that it was intended to apply to Farmers facilities other than those named.

C. Conclusion on Conditional Certification

For these reasons, the court finds that the FLSA class is suitable for conditional certification. The statute of limitations

shall be tolled to 30 days after the date when Plaintiffs first requested the class list, which appears to have been when they served their discovery on January 25, 2012. (Plaintiffs' Reply to Defendants' Supplemental Briefing, 5 n.3, 9.) The statute of limitations shall start from February 24, 2012.

IV. Conclusion

For the reasons stated above, the court GRANTS certification of the class as here defined:

> All persons who are, or have been, employed by Farmers Services, LLC., and/or Farmers Insurance Exchange in the State of [state name] as call center employees who performed the job duties of a "Customer Service Representative" or a similar customer-facing job position with the central duty of taking inbound telephone calls from policyholders and agents, during the time period between [start date as determined by state statute of limitations] and [February 1, 2010, at ServicePoint contact centers and May 10, 2010, at HelpPoint contact centers].

For the reasons stated above, the court also conditionally certifies for notice purposes the collective action as here defined:

> All current and former customer facing call center employees of Defendants, Farmers Services L.L.C., Farmers Insurance Exchange, and 21st Century Insurance Company, that held or hold the position of "Customer Service Representative," "Customer Service Associate," "Customer Service Advocate," or similar positions between the

relevant statutory period, three years preceding February 24, 2012, and the time additional class members opt in to the collective action.

Excluded from the class are those class members whose overtime claims were settled in the March 14, 2011 Farmers-Department of Labor Settlement Agreement for Farmers Services and Farmers Insurance Exchange's employees at the Overland Park ServicePoint for the time period between January 1, 2009 to January 1, 2010; the Olathe HelpPoint for the time period between January 1, 2009 to May 10, 2010; the Austin, Texas ServicePoint for the time period between January 1, 2009 to February 1, 2010; the Grand Rapids HelpPoints call center for the time period between January 1, 2009 to May 10,2010, and for the Grand Rapids ServicePoint for the time between January 1, 2009 to February 1, 2010. Further excluded are those whose employment with the Defendants began after February 1, 2010, at ServicePoint contact centers and May 10, 2010, at HelpPoint contact centers.

IT IS SO ORDERED.

Dated:July 17, 2013

DEAN D. PREGERSON
United States District Judge