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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MERCEDES ALVAREZ, et al.,
Plaintiffs,
v.
FARMERS INSURANCE EXCHANGE,
Defendant.

Case No. [14-cv-00574-WHO](#)

**ORDER GRANTING MOTION FOR
CONDITIONAL CERTIFICATION OF
FLSA COLLECTIVE ACTION;
APPROVING FORM OF PROPOSED
NOTICE; DENYING REQUEST FOR
EQUITABLE TOLLING**

Re: Dkt. No. 42

INTRODUCTION

Plaintiffs seek conditional certification of a collective action alleging violations of the Fair Labor Standards Act (“FLSA”) against defendant Farmers Insurance Exchange. The plaintiffs’ motion for conditional certification is GRANTED because the proposed collective action covers employees which, for purposes of the lenient standard applied at this stage, are “similarly situated” to the named plaintiffs.

BACKGROUND

Plaintiffs Mercedes Alvarez, Matt Ohlson, Cedric Martin, Alfonzo Edwards, Brandi Lopez, Brian Leigh, Jeffrey Holloway, and Krysta Ramos are former¹ Personal Lines Claims Adjusters² for Farmers. They allege that Farmers has a *de facto* policy of imposing work demands

¹ Plaintiff Brandi Lopez worked as a Personal Lines Claims Adjuster for Farmers since 2008. Lopez Supp. Decl. ¶ 3. She was the only plaintiff still employed by Farmers when the complaint was filed. She was fired from Farmers on August 14, 2014, during the pendency of this motion. *Id.* ¶ 14.

² Farmers refers to the employees at issue as claims representatives, rather than Personal Lines Claims Adjusters. I assume that, for purposes of this motion, the difference is purely semantic. I refer to them as claims adjusters in accordance with the moving papers.

1 that require more than forty hours of work per week while discouraging or preventing the
2 requesting and reporting of overtime. Specifically, they assert that Farmers assigns the Personal
3 Lines Claims Adjusters a level of work which would require significant overtime to complete, but
4 Farmers discourages or prevents the Personal Lines Claims Adjusters from requesting or reporting
5 overtime hours in excess of the forty hour week (eight hours per day) for which the Personal Lines
6 Claims Adjusters are scheduled. *See* Second Amended Complaint (“SAC”) ¶¶ 23-35 [Dkt. No.
7 32]. The plaintiffs allege that Personal Lines Claims Adjusters that do not complete their assigned
8 work or request overtime risk losing their jobs. *Id.* As a consequence, in order to maintain their
9 jobs, Personal Lines Claims Adjusters are forced to work overtime without being paid. *Id.*

10 Plaintiffs have filed suit against Farmers for violations of the FLSA.³ Plaintiffs now seek
11 conditional certification of a collective action of all current and former Personal Lines Claims
12 Adjusters employed by Farmers in California since June 5, 2011.⁴ Mot. at 1. Plaintiffs also seek
13 equitable tolling of the statute of limitations for all potential plaintiffs.

14 LEGAL STANDARD

15 Under FLSA, an employee may bring a collective action on behalf of other “similarly
16 situated” employees. 29 U.S.C. § 216(b). Courts in this Circuit have adopted a two-stage
17 approach for determining whether a class is “similarly situated.” *See, e.g., Adedapoidle-Tyehimba*
18 *v. Crunch, LLC*, 13-cv-00225-WHO, 2013 WL 4082137, *6 (N.D. Cal. Aug. 9, 2013); *Harris v.*
19 *Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 837 (N.D. Cal. 2010); *Lewis v. Wells Fargo & Co.*, 669
20 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009).

21
22 ³ Plaintiffs also allege causes of action for violations of the California Labor Code and the
23 California Unfair Competition Law. *See* Compl. ¶¶ 55-123. The plaintiffs state that they intend to
24 move to certify a Rule 23 class action as to those claims. Mot. at 1 n.1.

25 ⁴ Plaintiffs apparently pick June 5, 2011 because they first requested that Farmers provide the
26 potential plaintiffs’ contact information to the plaintiffs 30 days before June 5, 2014 and FLSA
27 has a three-year statute of limitations for willful violations. *See* 29 U.S.C. § 255(a) (“a cause of
28 action arising out of a willful violation may be commenced within three years after the cause of
action accrued”). As stated below, Farmers had no obligation to provide the contact information
for the collective action was conditionally certified. As a consequence, the notice will be provided
to Personal Lines Claims Adjusters employed by Farmers in California since three years from the
date of this order.

1 At the first stage, the court must determine whether the proposed class should be notified
2 of the action. *Harris*, 716 F. Supp. 2d at 837. This determination is made under a “fairly lenient
3 standard” which typically results in conditional class certification. *See, e.g., Daniels v.*
4 *Aeropostale W., Inc.*, 12-cv-05755 WHA, 2013 WL 1758891, at *2 (N.D. Cal. Apr. 24, 2013)
5 (“Due to the limited amount of evidence, courts make this determination under a fairly lenient
6 standard which typically results in conditional class certification.”). The plaintiff must make
7 substantial allegations that the putative class members were subject to an illegal policy, plan, or
8 decision, by showing that there is some factual basis beyond the “mere averments” in the
9 complaint for the class allegations. *Id.* “The question is essentially whether there are potentially
10 similarly-situated class members who would benefit from receiving notice at this stage of the
11 pendency of this action as to all defendants.” *Wellens v. Daiichi Sankyo, Inc.*, 13-cv-00581-WHO,
12 2014 WL 2126877, at *2 (N.D. Cal. May 22, 2014) (internal citation omitted). Given the lenient
13 standard at the notice stage, courts have held that the plaintiff bears a “very light burden” in
14 substantiating the allegations. *Prentice v. Fund for Pub. Interest Research, Inc.*, 06-cv-7776 SC,
15 2007 WL 2729187, at *2 (N.D. Cal. Sept. 18, 2007) (“Given that a motion for conditional
16 certification usually comes before much, if any, discovery, and is made in anticipation of a later
17 more searching review, a movant bears a very light burden in substantiating its allegations at this
18 stage.”); *see also Harris*, 716 F. Supp. 2d at 838 (“A plaintiff need not submit a large number of
19 declarations or affidavits to make the requisite factual showing. A handful of declarations may
20 suffice The fact that a defendant submits competing declarations will not as a general rule
21 preclude conditional certification.”).

22 At the second stage, after the conclusion of discovery and usually in response to a motion
23 for decertification by the defendant, the court applies a stricter standard for “similarly situated.”
24 During this stage, the court reviews several factors, including the disparate factual and
25 employment settings of the individual plaintiffs; the various defenses available to the defendant
26 which appear to be individual to each plaintiff; fairness and procedural considerations; and
27 whether the plaintiffs made any required filings before instituting suit. *See Lewis*, 669 F. Supp. 2d
28 at 1127.

1 **DISCUSSION**

2 **I. CONDITIONAL CERTIFICATION**

3 Farmers argues that conditional certification should be denied because (i) plaintiffs have
4 not met their burden of identifying a common policy or plan in violation of the FLSA and (ii) the
5 plaintiffs cannot show that they and the putative plaintiffs are similarly situated.

6 **A. The plaintiffs have adequately identified a common policy in violation of FLSA**

7 Farmers argues that establishing work standards and requiring preapproval for overtime is
8 not unlawful. That may be true, but the plaintiffs allege that Farmers has a *de facto* policy of not
9 paying Personal Lines Claims Adjusters for all overtime worked. The plaintiffs bear a “very light
10 burden” in substantiating this allegation at this conditional certification stage. *See, e.g., Prentice,*
11 *2007 WL 2729187, at *2.*

12 The plaintiffs have met this burden. They submitted declarations from nine Personal Lines
13 Claims Adjusters in California who state that they could not meet their work requirements during
14 their 40 hour work week (eight hours a day); that they thought they would be fired if they did not
15 complete their work requirements; that they were discouraged from reporting or requesting
16 overtime; and that, as a result, they frequently worked overtime without compensation. *See*
17 *Bryght Decl. ¶¶ 9-16; Edwards Decl. ¶¶ 4-17; Holloway Decl. ¶¶ 4-16; Leigh Decl. ¶¶ 4-17;*
18 *Martin Decl. ¶¶ 4-18; Ohlson Decl. ¶¶ 4-18; Ramos Decl. ¶¶ 4-17; Lopez Decl. ¶¶ 4-18; Alvarez*
19 *Decl. ¶¶ 4-18.* Whether the plaintiffs can *prove* that Farmers in fact had a policy that violates
20 FLSA remains to be seen, but that is not a question at this stage. *See, e.g., Wellens, 2014 WL*
21 *2126877, at *4* (“The question here is not whether plaintiffs have proven their case that there is a
22 widespread and discriminatory pay differential between men and women, but whether there is a
23 reasonable basis to conclude that there are “potentially” similarly-situated class members who
24 would “benefit” from notice.”).

25 **B. The plaintiffs have adequately shown that they and the potential collective action**
26 **plaintiffs are similarly situated**

27 Farmers argues that the plaintiffs cannot show that they and other Personal Lines Claims
28 Adjusters are similarly situated because the plaintiffs’ experiences are “highly individualized” and

1 there is no evidence that other Personal Lines Claims Adjusters in other offices, other positions,
2 reporting to other supervisors, faced the same conditions. *See* Opp. at 21-22. Farmers contends
3 that “performance expectations” differ between Farmers offices and individual Personal Lines
4 Claims Adjusters based on several factors, including the type of claims assigned to the adjusters,
5 the complexity of such claims, the volume of such claims, the adjuster’s individual experience and
6 past performance, and individual management preferences. Farmers also argues that the plaintiffs’
7 proposed action is too broad because Farmers employs three kinds of Personal Lines Claims
8 Adjusters in California—Auto Physical Damage claims adjusters, Property claims adjusters, and
9 Liability claims adjusters—and none of the named plaintiffs was a Property claims adjuster.⁵

10 Given the “fairly lenient standard” that applies in this Circuit to determine whether the
11 potential plaintiffs should be notified of the action, I am not convinced.⁶ *Harris*, 716 F. Supp. 2d
12 at 837. Different performance expectations for Personal Lines Claims Adjusters in different
13 positions, different offices, or with different supervisors do not necessarily mean that Personal
14 Lines Claims Adjusters are not similarly situated for purposes of conditional certification. At this
15 stage, it is sufficient that plaintiffs “make substantial allegations that the putative class members
16 were subject to a single illegal policy, plan or decision.” *Id.* They have done so.

17 As noted above, the plaintiffs have submitted declarations of nine current and former
18 Personal Lines Claims Adjusters in California stating that they could not meet their work
19 requirements during their 40 hour work week; that they thought they would be fired if they did not
20 complete their work requirements; that they were discouraged from reporting or requesting
21 overtime; and that, as a result, they frequently worked overtime without compensation, which their
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23
24 ⁵ Farmers contends that Property claims adjusters “adjust a much broader variety of claims in the
25 field, ranging from fire damage, storm damage, flood or water damage, and theft.” Opp. at 6.
26 Farmers also contends that property damage assignments are typically made farther in advance
27 than Auto Physical Damage assignments, and therefore Property claims adjusters “can often see
28 their assignments further into the future and have flexibility to plan and adjust their schedules.”
Id.

⁶ In contrast, the cases cited by Farmers are largely from outside of this Circuit and apply a more
stringent test. *See* Opp. at 14-15.

1 supervisors knew or should have been aware of. *See* Bryght Decl. ¶¶ 9-16; Edwards Decl. ¶¶ 4-
2 17; Holloway Decl. ¶¶ 4-16; Leigh Decl. ¶¶ 4-17; Martin Decl. ¶¶ 4-18; Ohlson Decl. ¶¶ 4-18;
3 Ramos Decl. ¶¶ 4-17; Lopez Decl. ¶¶ 4-18; Alvarez Decl. ¶¶ 4-18. The nine named plaintiffs
4 worked in five offices: Martinez/Concord, Daly City, Manteca, Union City, and Orange County.
5 *See* Bryght Decl. ¶ 3; Edwards Decl. ¶ 3; Holloway Decl. ¶ 3; Leigh Decl. ¶ 3; Martin Decl. ¶ 3;
6 Ohlson Decl. ¶ 3; Ramos Decl. ¶ 3; Lopez Decl. ¶ 3; Alvarez Decl. ¶ 3. The declarations
7 adequately demonstrate “some factual nexus which binds the named plaintiffs and the potential
8 class members together as victims of a particular alleged policy or practice.” *Harris*, 716 F. Supp.
9 2d at 837 (internal brackets and citation omitted). The purported differences in Personal Lines
10 Claims Adjusters’ work environments are not sufficient to defeat conditional certification at this
11 first stage. “Whether the ‘disparate factual and employment settings of the individual plaintiffs’
12 means that this case cannot proceed collectively, or would need to be prosecuted with subclasses
13 for each of the job titles or geographic locations, is a matter to be determined at the *second* stage
14 of the certification process.” *Wellens*, 2014 WL 2126877, at *5 (emphasis in original) (citing
15 *Harris*, 716 F. Supp. 2d at 837.

16 Farmers may be right that the potential plaintiffs’ “highly individualized” circumstances
17 mean that this case should not proceed as a collective action, or should proceed as a narrower
18 collective action. But that issue will be addressed at the second stage of the certification process,
19 when Farmers will have the chance to establish the disparate factual and employment settings of
20 the individual plaintiffs; the various defenses available to Farmers which are individual to each
21 plaintiff; and fairness and procedural considerations. *See, e.g., Lewis*, 669 F. Supp. 2d at 1127.

22 **C. Proposed notice**

23 At the oral argument on September 3, 2014, I ordered the parties to meet and confer
24 regarding the form and content of the proposed notice.⁷ The parties have done so and have
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26 ⁷ As I stated at the hearing, whether Farmers acted willfully, in which case the statute of
27 limitations is three years instead of two, will be determined at a later stage. At this point,
28 plaintiffs’ allegation of willfulness is sufficient to warrant notice to persons employed as Personal
Lines Claims Adjusters over the last three years.

1 submitted an agreed form of notice. *See* Dkt. No. 54. The notice proposed by the parties is
2 acceptable and is APPROVED, subject to the modifications contemplated by the parties, including
3 providing the relevant job codes and the notice administrator’s contact information.

4 Plaintiffs request that the notice be mailed to the potential plaintiffs as well as included in
5 their pay envelopes and posted in a prominent location in all California offices in which potential
6 plaintiffs work. At oral argument, counsel for Farmers represented that a third party automates the
7 processing and mailing of Farmers’s employees’ pay envelopes. Inserting FLSA notices into the
8 potential plaintiffs’ pay envelopes is therefore not a straightforward proposition. In addition, a
9 significant number of potential plaintiffs likely no longer work for Farmers and would therefore
10 not receive the notice in pay envelopes or see the notice posted in a Farmers office.⁸ Providing the
11 notice in potential plaintiffs’ pay envelopes or posting the notice in Farmers’s offices is not
12 warranted. Mailed notice is sufficient. Farmers shall provide the plaintiffs contact information,
13 including the names, last known addresses, telephone numbers, job titles, and last known email
14 addresses, for all Personal Lines Claims Adjusters employed by Farmers in California from
15 September 19, 2011 through the present.

16 **II. EQUITABLE TOLLING**

17 The statute of limitations for filing a claim under the FLSA is two years; three years if the
18 violation is “willful.” 29 U.S.C. § 255(a). For purposes of calculating the timeliness of a claim,
19 claims for individual claimants who are not named plaintiffs are considered commenced when the
20 claimant files a written consent to become a party plaintiff. 29 U.S.C. § 256(b).

21 Plaintiffs seek equitable tolling of the FLSA claims from June 5, 2014, which is 30 days
22 after the plaintiffs requested contact information for all potential action members from Farmers,
23 and Farmers has not produced the contact information. Mot. at 20; Rukin Decl. ¶ 8. The plaintiffs
24 contend that they are entitled to equitable tolling because they “have diligently pursued their
25 entitlement to this information and are without fault for the delay.” Mot. at 20. But Farmers’s
26 refusal to provide the contact information does not warrant equitable tolling, as a defendant in a
27

28 ⁸ None of the named plaintiffs presently works for Farmers.

1 FLSA suit is not required to provide contact information for potential plaintiffs until after the court
2 certifies a collective action. *See, e.g., Gilbert v. Citigroup, Inc.*, 08-cv-0385 SC, 2009 WL 424320
3 (N.D. Cal. Feb. 18, 2009) (“Defendants’ refusal to provide contact information prior to
4 certification does not count as wrongful conduct”); *Prentice*, 2007 WL 2729187, at *3 (“If refusal
5 to disclose contact information is sufficient basis to grant equitable tolling, either the FLSA statute
6 of limitations is meaningless or the Courts are reading a disclosure requirement into the FLSA
7 where the statute does not contain such a requirement. Neither outcome is appropriate.”).
8 Plaintiffs request for equitable tolling is DENIED.

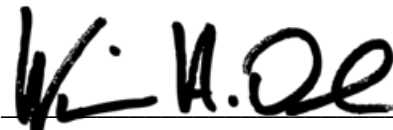
9 **CONCLUSION**

10 Plaintiffs’ motion for conditional certification is GRANTED. Dkt. No. 42. Farmers shall
11 provide the plaintiffs contact information, including the names, last known addresses, telephone
12 numbers, job titles, and last known email addresses, for all Personal Lines Claims Adjusters
13 employed by Farmers in California from September 19, 2011 through the present. The proposed
14 notice, filed as Exhibit A to Docket Number 54, is APPROVED.

15 Plaintiffs’ request for equitable tolling is DENIED.

16 **IT IS SO ORDERED.**

17 Dated: September 19, 2014

18 

19 WILLIAM H. ORRICK
United States District Judge