

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 DANIEL COYNE, et al.,

4 Plaintiffs

5 v.

6 LAS VEGAS METROPOLITAN POLICE
7 DEPARTMENT,

8 Defendant

Case No.: 2:22-cv-00475-APG-VCF

**Order Granting Preliminary Certification
and Circulation of Notice**

[ECF No. 59]

9 Plaintiffs Daniel Coyne, David Denton, and Sean Bollig filed this lawsuit in state court
10 under the Fair Labor Standards Act (FLSA) and Nevada law on behalf of themselves and other
11 similarly situated peace officers employed by defendant Las Vegas Metropolitan Police
12 Department (LVMPD). The plaintiffs allege that LVMPD has failed to pay overtime for pre-
13 and post-shift activities for scheduled overtime shifts, such as reporting to designated facilities to
14 collect specialized equipment, inspecting and refueling department vehicles, and returning
15 equipment and vehicles. LVMPD removed the case to this court.

16 I previously dismissed the plaintiffs' requests for punitive damages and declaratory relief
17 under the FLSA, and I remanded the state law claims. The only remaining claim before me is a
18 putative FLSA collective action for failure to pay overtime. The plaintiffs now move for
19 preliminary certification and circulation of notice of the pendency of that action. ECF No. 59.
20 Because their claim meets the lenient first-step requirements for preliminary certification, I grant
21 the motion. However, the plaintiffs must revise the proposed notice as set forth in this order.

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1 **I. PRELIMINARY CERTIFICATION**

2 **A. Standards**

3 The FLSA requires employers to compensate their employees for working overtime. 29
4 U.S.C. § 207(a). The statute also permits workers to collectively litigate a claimed FLSA
5 violation if they (1) are “similarly situated,” and (2) affirmatively opt into joint litigation in
6 writing. *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1100 (9th Cir. 2018) (quoting 29
7 U.S.C. § 216(b)). A FLSA collective action is therefore “fundamentally different” from a Rule
8 23 class action because Rule 23 class members are automatically bound by the judgment unless
9 they opt out of the class, while each plaintiff in a FLSA collective action must expressly opt in.
10 *Genesis Healthcare Corp. v Symczyk*, 569 U.S. 66, 74 (2013); *McElmurry v. U.S. Bank Nat.*
11 *Ass’n*, 495 F.3d 1136, 1139 (9th Cir. 2007). To manage collective actions in an orderly fashion,
12 I have discretion to facilitate notice to the putative opt-in plaintiffs. *McElmurry*, 495 F.3d at
13 1139. This is referred to as “preliminary,” “provisional,” or “conditional” certification, and it is
14 the first step in the two-step FLSA certification process endorsed by the Ninth Circuit. *Campbell*,
15 903 F.3d at 1101.

16 Preliminary certification is “conditioned on a preliminary determination that the
17 collective as defined in the complaint satisfies the ‘similarly situated’ requirement of section
18 216(b).” *Id.* at 1109. It is not class certification by the traditional understanding of the term, as it
19 “does not produce a class with an independent legal status or join additional parties to the
20 action.” *Id.* at 1101 (simplified). “‘The sole consequence’ of a successful motion for
21 preliminary certification is ‘the sending of court-approved written notice’ to workers who may
22 wish to join the litigation as individuals.” *Id.* (quoting *Genesis Healthcare*, 569 U.S. at 75).
23 Later (generally “at or after the close of relevant discovery”) the defendant can instigate the

1 second step of the certification process by moving for “decertification.” *Id.* at 1109. If the
2 motion for decertification is granted, the opt-in plaintiffs are “dismissed without prejudice to the
3 merits of their individual claims, and the original plaintiff[s] [are] left to proceed alone.” *Id.* at
4 1110.

5 In both certification steps, the key inquiry is whether the putative opt-in plaintiffs are
6 “similarly situated” to the named plaintiffs. 29 U.S.C. § 216(b). “Party plaintiffs are similarly
7 situated, and may proceed in a collective, to the extent they share a similar issue of law or fact
8 material to the disposition of their FLSA claims.” *Campbell*, 903 F.3d at 1117. “If the party
9 plaintiffs’ factual or legal similarities *are* material to the resolution of their case, dissimilarities
10 in other respects should not defeat collective treatment.” *Id.* at 1114 (emphasis in original). The
11 burden on the plaintiffs in the first step is light, and is “loosely akin to a plausibility standard,
12 commensurate with the stage of the proceedings.” *Id.* at 1109. My “analysis is typically focused
13 on a review of the pleadings but may sometimes be supplemented by declarations or limited
14 other evidence.” *Id.* By contrast, after an employer moves for decertification, I “take a more
15 exacting look at the plaintiffs’ allegations and the record.” *Id.* This second step is similar to a
16 summary judgment motion and “the plaintiff bears a heavier burden.” *Id.* at 1117-18 (quotation
17 omitted).

18 **B. Analysis**

19 The plaintiffs argue preliminary certification is appropriate because there are common
20 issues of law and fact material to the disposition of their FLSA claims. ECF No. 59 at 13. They
21 seek to certify a collective of Las Vegas Police Protective Association (PPA) members who have
22 worked “one or more ‘Scheduled Overtime Shifts’ since February 1, 2019, that required the
23 officer to perform uncompensated pre-shift and/or post-shift work consisting of transporting

1 equipment between the shift site and another designated location.” *Id.* (footnote omitted). The
2 plaintiffs argue there are common issues of fact regarding whether the putative plaintiffs were
3 required to collect and return specialized equipment before and after their shifts without
4 receiving overtime compensation, and common issues of law regarding whether this is
5 compensable “work” within the FLSA’s definition. *Id.*

6 LVMPD responds that preliminary certification is inappropriate because the plaintiffs are
7 not similarly situated to the proposed notice recipients. It argues that “significant discovery” has
8 been completed, and therefore the plaintiffs must meet the more demanding, second-step burden
9 in the FLSA conditional certification process. ECF No. 94 at 12-13. But regardless of which
10 step applies, LVMPD argues officers’ pre- and post-shift activities are too individualized for
11 them to be similarly situated, and that officers are not subject to a common policy or practice
12 requiring off-the-clock overtime work. *Id.* at 2.

13 1. Step-One Analysis Applies

14 First-step analysis is appropriate at this stage of the proceedings. The parties have
15 conducted limited discovery on the issue of conditional certification. ECF Nos. 67; 86. LVMPD
16 argues that the parties took five depositions, served multiple sets of discovery, and that over
17 1,000 pages of documents have been produced. ECF No. 94 at 12. But that discovery was
18 limited to the issue of conditional certification, and no merits-based discovery has been
19 completed. ECF Nos. 67; 98 at 5. “Skipping to the second stage not only requires the court to
20 evaluate an incomplete (although potentially substantial) factual record—it interferes with the
21 future completion of that record.” *Dualan v. Jacob Transp. Servs., LLC*, 172 F. Supp. 3d 1138,
22 1145 (D. Nev. 2016) (quotation omitted). By skipping to step two on an undeveloped record, I
23 risk missing facts crucial to the certification decision and depriving some plaintiffs of a

1 meaningful opportunity to participate. *See Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462,
2 467-68 (N.D. Cal. 2004). I therefore apply the more lenient first-step certification analysis,
3 without prejudice to LVMPD moving for decertification at the close of discovery.

4 2. “Similarly Situated”

5 Under the lenient first-step standard, the plaintiffs have sufficiently alleged that they are
6 similarly situated to the putative collective for preliminary certification. The complaint alleges
7 that officers working special events must collect and return body worn cameras (BWCs) and
8 other specialized equipment before and after their shifts; officers working jail shifts must collect
9 and return BWCs before and after their shifts, as well as undergo pre-shift security screenings;
10 and officers working prison medical shifts must collect and return BWCs and sometimes
11 department vehicles; all without overtime compensation. ECF No. 1 at 12-17. Those claims are
12 supported by declarations from Officers Coyne, Denton, and Bollig, who all stated they were
13 required to collect and return equipment for their overtime shifts but were not paid for that time.
14 ECF Nos. 60-3 at 7; 60-4 at 5-6; 60-5 at 6-7. The same officers also testified during their
15 depositions about times they were required to collect equipment before their overtime shifts. *See,*
16 *e.g.*, ECF Nos. 94-2 at 11; 94-3 at 6; 94-4 at 5. And those experiences are corroborated by
17 verified interrogatory responses from other opt-in plaintiffs. ECF Nos. 98-4 at 5; 98-5 at 5; 98-6
18 at 5. At this early stage, this sufficiently alleges that LVMPD has a practice of requiring
19 potential opt-in plaintiffs to obtain and return specialized equipment for overtime shifts without
20 pay.

21 LVMPD argues that the plaintiffs are not similarly situated to the putative collective
22 because each overtime shift’s requirements are so unique that individual questions will
23 predominate over “class” questions. ECF No. 94 at 14-15. But unlike in the Rule 23 context,

1 preliminary certification of a FLSA collective does not require predominance. *Campbell*, 903
2 F.3d at 1115. Rather, it only requires putative plaintiffs to “share a similar issue of law or fact
3 material to the disposition of their FLSA claims.” *Id.* at 1117. Differences among members of
4 the collective may eventually lead to decertification or to the creation of subclasses within the
5 collective depending on the results of discovery. *See Canava v. Rail Delivery Serv. Inc.*, No.
6 5:19-CV-00401-SB-KK, 2021 WL 4907227, at *4 (C.D. Cal. Aug. 8, 2021). But that is a
7 determination to be made after the full picture is in front of me, and at this stage the plaintiffs
8 have sufficiently alleged similar issues of law and fact.

9 LVMPD also disputes the plaintiffs’ characterization of the facts. For example, although
10 the plaintiffs claim they were not paid for time spent returning BWCs after special events,
11 LVMPD states that in those circumstances “the officer [would] be compensated for the
12 additional time.” ECF No. 94 at 4. But “at this procedural stage, the court does not resolve
13 factual disputes, decide substantive issues going to the ultimate merits, or make credibility
14 determinations.” *Dualan*, 172 F. Supp. 3d at 1144 (simplified). The officers testified they were
15 required to pick up and return equipment for their overtime shifts without receiving
16 compensation, and that is sufficient for now. To the extent LVMPD disputes the plaintiffs’
17 factual contentions, it may move for decertification in the future and argue based upon a more
18 fulsome record.

19 The named plaintiffs have adequately alleged that they and the putative plaintiffs were
20 subject to an LVMPD practice of requiring off-the-clock overtime work to collect and return
21 specialized equipment in violation of the FLSA. ECF No. 59 at 5-10. This nexus exists
22 regardless of whether the plaintiffs worked special events, jails, or prison medical shifts. While
23 LVMPD argues that the named plaintiffs are not similarly situated to the putative plaintiffs

1 because each scheduled overtime shift is unique, that argument requires further factual
2 development and is thus more appropriate for the second step of the certification process. I
3 therefore grant the plaintiffs’ motion to preliminarily certify a collective action under the FLSA.

4 **II. FORM AND CONTENT OF THE NOTICE**

5 In their motion for circulation, the plaintiffs provided a proposed notice and a proposed
6 consent to join the action. ECF Nos. 60-1; 60-2. LVMPD does not address the form or content
7 of either in their opposition. Nevertheless, some changes are needed.

8 **A. Length of Opt-in Period**

9 The plaintiffs request a 90-day notice period to reach out to potential collective members.
10 ECF No. 59 at 14. LVMPD does not object. A 90-day period is routinely granted in this circuit.
11 *See Dualan*, 172 F. Supp. 3d at 1151 (citing *Benedict v. Hewlett-Packard Co.*, No. 13-CV-
12 00119-LHK, 2014 WL 587135, at *13, *15 (N.D. Cal. Feb. 13, 2014) (collecting cases)). Given
13 the relatively large number of estimated putative plaintiffs, I grant the plaintiffs’ request for a 90-
14 day opt-in period.

15 **B. Manner of Service**

16 The plaintiffs propose (1) notifying potential collective members by mail and email, and
17 (2) sending a reminder by mail and email 45 days into the notice period if no response is
18 received. ECF No. 59 at 14. LVMPD does not object. The manner of service that the plaintiffs
19 propose is not atypical in this circuit. *See, e.g., Loera v. County of Alameda*, No. 23-cv-00792-
20 LB, 2023 WL 4551080, at *6 (N.D. Cal. July 13, 2023); *Pardini v. Mi Casa Su Casa LLC*, No.
21 CV-22-00796-PHX-MTL, 2023 WL 2534158, at *2 (D. Ariz. Mar. 15, 2023). Mail is the
22 “preferred method for class certification notice,” and email is “an efficient and inexpensive
23 method for providing notice.” *Gonzalez v. Diamond Resorts Int’l Mktg., Inc.*, No. 2:18-cv-

1 00979-APG-CWH, 2019 WL 3430770, at *6 (D. Nev. July 29, 2019) (quotation omitted). I
2 therefore approve this proposed manner of service.¹

3 **C. Length of Limitations Period**

4 The FLSA has a two-year limitations period on recovering unpaid wages, but that period
5 is extended to three years for an employer's "willful" violation. *Flores v. City of San Gabriel*,
6 824 F.3d 890, 895 (9th Cir. 2016) (citing 29 U.S.C. § 255(a)). The plaintiffs' proposed notice
7 refers to both the two-year and three-year periods for potential claims. ECF No. 60-1 at 4.
8 LVMPD does not object, and I previously found the plaintiffs adequately alleged willfulness at
9 the pleading stage. ECF No. 39 at 4. To avoid dissuading putative plaintiffs from opting into the
10 collective action, it is appropriate for the notice to refer to both limitation periods. However,
11 there is some ambiguity in the proposed notice's section entitled "STATUTE OF
12 LIMITATIONS ON POTENTIAL CLAIMS." ECF No. 60-1 at 4. The first sentence currently
13 reads, "The **minimum** period of time that you can collect unpaid wages under the FLSA is two
14 (2) years from when you worked the overtime hours but were not paid." *Id.* (emphasis added).
15 To avoid confusion, this sentence should read "You can collect unpaid wages under the FLSA
16 for up to two (2) years from when you worked the overtime hours but were not paid." The
17 plaintiffs must correct this language before circulation. The rest of that section is proper.

18 **D. Voluntariness**

19 Portions of the proposed notice are not sufficiently clear that opt-in plaintiffs may join the
20 action as pro se parties or with separate counsel. *See* ECF No. 60-1 at 3. Therefore, the
21 following language should be added at the end of the section entitled "YOUR RIGHT TO
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23 ¹ The plaintiffs have not requested an order requiring LVMPD to provide contact information for
the putative collective members, so I make no ruling on that issue.

1 PARTICIPATE IN THIS LAWSUIT”: “You may also choose to participate in this lawsuit by
2 hiring separate counsel and having them file notice with the court by the above-referenced date,
3 or by filing a pro se notice with the court by the above-referenced date.”

4 **E. Description of Attorney’s Fees**

5 The plaintiffs’ proposed notice provides that opt-in plaintiffs who choose to return the
6 consent to join must enter into an agreement with plaintiffs’ counsel concerning attorney’s fees
7 and costs, which will be paid on a contingency fee basis. ECF No. 60-1 at 4, 5. But the notice
8 does not identify the percentage of plaintiffs’ counsel’s contingency fee or how that fee will be
9 calculated. *See Dualan*, 172 F. Supp. 3d at 1151. Accordingly, the section entitled “YOUR
10 LEGAL REPRESENTATION IF YOU JOIN” must be edited to include the following:

11 “Plaintiffs’ counsel’s fee agreement is __ % of the recovery, which will be calculated by ____.”
12 Plaintiffs’ counsel should insert the appropriate information based on their retainer agreement.

13 **III. CONCLUSION**

14 **I ORDER** that the plaintiffs’ motion for conditional certification of an FLSA collective
15 action and related relief (**ECF No. 59**) is **GRANTED in part** consistent with this order.

16 I FURTHER ORDER that:

- 17 • I conditionally certify the collective defined as “Las Vegas Police Protective Association
18 (PPA) members who have worked one or more Scheduled Overtime Shifts since
19 February 1, 2019, that required the officer to perform uncompensated pre-shift and/or
20 post-shift work consisting of transporting equipment between the shift site and another
21 designated location”;
- 22 • The plaintiffs must revise the proposed notice consistent with this order;
- 23

- 1 • The plaintiffs must serve the revised notice and proposed consent to join forms by first-
2 class mail and email;
- 3 • The potential plaintiffs shall have 90 days from the date of mailing of the notice and
4 consent-to-sue forms to submit their opt-in forms.

5 DATED this 15th day of August, 2023.

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9 ANDREW P. GORDON
10 UNITED STATES DISTRICT JUDGE
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