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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Deoncea O’Neal, et al.,

10 Plaintiffs,

11 v.

12 America’s Best Tire LLC, et al.,

13 Defendants.
14

No. CV-16-00056-PHX-DGC

ORDER

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16 This case involves a dispute as to whether Defendants, a group of tire stores and
17 their individual owners, violated the Fair Labor Standards Act (“FLSA”) by failing to pay
18 their tire porters, crew members, and tire technicians the statutory premium for overtime
19 work. One group of Defendants moves for summary judgment, arguing that the case
20 against them is moot because they have tendered back wages and liquidated damages to
21 the named Plaintiffs. Doc. 19. Plaintiffs separately move for conditional certification of
22 the matter as a collective action. Doc. 25. Each motion has been fully briefed (Docs. 26,
23 28, 29, 30, 32) and the Court heard oral arguments on May 26, 2016. For the reasons that
24 follow, the Court will deny the motion for summary judgment and grant the motion for
25 conditional certification.
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1 **I. Background.**

2 **A. The Parties.**

3 Defendants are (1) approximately 25 limited liability companies, at least some of
4 which own and operate tire stores under the name America's Best Tires (the "ABT
5 companies" or "ABT"); (2) Andrew Dees, an individual who owned all of the ABT
6 companies until September 2013 and continued to own 10 companies until April 2016;
7 and (3) Travis M. Dees, Andrew's cousin, who purchased 14 ABT companies from
8 Andrew in September 2013 and has owned them since.¹ See Docs. 1, ¶¶ 18-45; 28-1,
9 ¶¶ 2-3; 29-1, ¶¶ 1, 10. Plaintiffs allege that all of the corporate defendants are part of a
10 single "enterprise," as that term is defined at 29 U.S.C. § 203(r). See Doc. 1, ¶ 46.
11 Defendants dispute this, arguing that Andrew's companies² and Travis's companies³ are
12 separate enterprises that share no corporate policies. See Doc. 29. Andrew, his wife, and
13 his companies ("AD Defendants") are represented by different counsel than Travis and
14 his companies ("TD Defendants").

15 Plaintiff Deoncea O'Neal worked for ABT from approximately May 2012 to
16 approximately December 2014. Doc. 1, ¶ 8. Plaintiff Ryan White worked for ABT from
17 approximately April 2012 to approximately February 2014. ¶ 11. O'Neal and White
18 ("Named Plaintiffs") were responsible for cashiering, installing tires, washing and
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20 ¹ Both Andrew's wife and Travis's wife are also named as Defendants, although
21 Travis appears to be single. Doc. 28-1, ¶ 1. The number of ABT companies that will
22 participate in this case is unclear, as two companies – America's Best Tire 101, LLC and
23 AZ Best Automotive, LLC – have not been served.

24 ² Andrew's companies are: (1) AZ Best Automotive, LLC; (2) AZ Best Tire 4097,
25 LLC; (3) Arizona Best Tire Services, LLC; (4) AZ Best Tire 3902, LLC; (5) AZ Best
26 Tire, LLC; (6) AZ Best Tire 7048, LLC; (7) AZ Best Tire 8334, LLC; (8) Arizona Best
27 Mobile Tire Services, LLC; (9) AZ Best Tire & Auto 1335, LLC; and (10) AZ Best Tire
28 5201, LLC. Doc. 29 at 2.

29 ³ Travis's companies are: (1) America's Best Tire Employment Services, LLC;
30 (2) America's Best Tire, LLC; (3) America's Best Tire 203, LLC; (4) America's Best
31 Tire Buckeye, LLC; (5) America's Best Tire Glendale, LLC; (6) America's Best Tire
32 Grand, LLC; (7) America's Best Tire Mesa, LLC; (8) America's Best Tire Peoria, LLC;
33 (9) America's Best Tire Van Buren, LLC; (10) America's Best Transportation Services,
34 LLC; (11) America's Best Wholesale Tire, LLC; (12) America's Best Wholesale Tire
35 LV, LCC; (13) America's Best Wholesale Tire Tucson, LLC; and (14) Camelback
36 Automotive Repair, LLC. Doc. 28 at 1.

1 painting tires, stacking tires in the yard, organizing tires, cleaning the shop, doing yard
2 work, and generally helping customers. ¶¶ 9. Named Plaintiffs each worked at four
3 different ABT locations during their employment – in Mesa, Phoenix, Peoria, and
4 Glendale. Docs. 25-1, ¶ 24; 25-2, ¶ 23. Named Plaintiffs aver that ABT’s payment
5 practice was the same at each location, and that they were never paid overtime premiums
6 while employed by ABT. Docs. 25-1, ¶¶ 24, 27, 30; 25-2, ¶¶ 23, 26, 29.

7 **B. The FLSA.**

8 The FLSA provides, with exceptions not relevant here, that “no employer shall
9 employ any of his employees . . . for a workweek longer than forty hours unless such
10 employee receives compensation for his employment in excess of the hours above
11 specified at a rate not less than one and one-half times the regular rate at which he is
12 employed.” 29 U.S.C. § 207(a)(1). Employers who violate this provision “shall be liable
13 to the employee or employees affected in the amount of . . . their unpaid overtime
14 compensation, as the case may be, and in an additional equal amount as liquidated
15 damages.” § 216(b).

16 An action for unpaid overtime compensation “may be maintained . . . by any one
17 or more employees for and in behalf of himself or themselves and other employees
18 similarly situated.” § 216(b). “No employee shall be a party plaintiff to any such action
19 unless he gives his consent in writing to become such a party and such consent is filed in
20 the court in which such action is brought.” *Id.*

21 **C. Prior Litigation.**

22 This is not the first FLSA action against ABT. In *Bush v. America’s Best Tires,*
23 *LLC*, No. 2:15-cv-01261-SRB (D. Ariz.), two former tire porters sued ABT for unpaid
24 overtime premiums allegedly owing for work performed between 2012 and 2015. *Bush*,
25 Doc. 1. America’s Best Tires Mesa, LLC tendered an offer of judgment to the plaintiffs,
26 who accepted. *Bush*, Doc. 15. Defendants neither admitted nor denied liability in their
27 offer. *Id.*

1 **II. Summary Judgment.**

2 TD Defendants admit, for purposes of their summary judgment motion, that they
3 violated the FLSA by failing to pay Plaintiffs a premium for overtime hours worked at
4 ABT. Doc. 19 at 2. TD Defendants further admit that they are liable for unpaid overtime
5 compensation and liquidated damages. *Id.* at 4. They contend that they have paid
6 Plaintiffs an amount equal to this liability, and argue that this payment moots Plaintiffs’
7 claims. *Id.*

8 Plaintiffs respond that they have not accepted the payment offered by TD
9 Defendants. Doc. 26 at 4 n.2. Plaintiffs’ attorney provides a declaration stating that
10 “Plaintiffs to this day have not accepted, cashed, nor deposited” the checks tendered by
11 TD Defendants. Doc. 26-1, ¶ 13. TD Defendants provide no evidence to the contrary.

12 TD Defendants cite *Unan v. Lyon*, No. 2:14-cv-13470, 2016 U.S. Dist. LEXIS
13 2702, at *15-17 (E.D. Mich. Jan. 11, 2016), for the proposition that tender of payment is
14 sufficient to establish payment, “whether the checks were cashed or not.” Doc. 30 at 7.
15 *Unan* does not remotely support this proposition. The defendants in *Unan* unilaterally
16 enrolled the plaintiffs in the Medicaid program they were suing to enter, and argued that
17 this mooted the plaintiffs’ claim. *Id.* at *16. The court rejected this argument, holding
18 that “Defendant may not evade litigation simply by providing full Medicaid benefits to
19 the named Plaintiffs” where “Plaintiffs did not have an opportunity to accept or reject a
20 tender.” *Id.* at *18. Thus, *Unan* actually supports Plaintiffs’ position that a defendant
21 cannot moot a plaintiff’s claim by unilaterally providing a remedy.⁴

22 At oral argument, TD Defendants also pointed to *M.M. v. Lafayette School*
23 *District*, Nos. 12-15769, 12-15770, 2014 U.S. App. LEXIS 18979 (9th Cir. Oct. 1, 2014).

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25 ⁴ Although it is unclear from the briefing, TD Defendants may be relying on the
26 following parenthetical in *Unan*: “*Cf. Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct.
27 1523, 1529 (2013) (holding, in the context of a collective action seeking damages under
28 the FLSA, that a tender of all damages alleged mooted a plaintiff’s claim . . .).” This
parenthetical mischaracterizes the Supreme Court’s holding and is thus of no aid to TD
Defendants. *See Symczyk*, 133 S. Ct. 1523, 1528-29 (“while the Courts of Appeals
disagree whether an unaccepted offer that fully satisfies a plaintiff’s claim is sufficient to
render the claim moot, we do not reach this question, or resolve the split, because the
issue is not properly before us.”).

1 In that case, the parents of a child with learning disabilities claimed that their child's
2 school district had violated the Individuals with Disabilities Education Act by failing to
3 conduct an independent educational evaluation for the child. *Id.* at *4. The parents paid
4 for their own evaluation, and sought to recover the cost from the District. *Id.* *13. The
5 court dismissed the claim as moot based on evidence that the district had already
6 reimbursed the plaintiffs for the full cost of the evaluation. *Id.* at *33. *Lafayette* thus
7 stands for the proposition that payment of a claim in full moots the claim. But since there
8 is no indication that the plaintiffs in *Lafayette* refused the district's reimbursement, this
9 case does not support TD Defendant's position that tender of a check is sufficient to
10 establish payment, even when the tender is not accepted.

11 TD Defendants cite no other authority for the proposition that payment can occur
12 without the payee's acceptance. That proposition is contrary to the ordinary meaning of
13 the term "payment." *See, e.g.,* Black's Law Dictionary (2014 ed.) (defining "payment"
14 as "[p]erformance of an obligation by the delivery of money or some other valuable thing
15 *accepted* in partial or full discharge of the obligation") (emphasis added). The Court
16 therefore concludes that Plaintiffs have not been paid.

17 Plaintiffs have received and rejected an offer of judgment. This did not moot their
18 claims. As the Supreme Court recently explained:

19 Under basic principles of contract law, [a defendant's] settlement bid and
20 Rule 68 offer of judgment, once rejected, had no continuing efficacy.
21 Absent [plaintiff's] acceptance, [defendant's] settlement offer remained
22 only a proposal, binding neither [defendant] nor [plaintiff]. Having rejected
[defendant's] settlement bid, and given [defendant's] continuing denial of
liability, [plaintiff] gained no entitlement to the relief [defendant]
previously offered.

23 *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 670-71 (2016). On the basis of this
24 reasoning, the Supreme Court held that "an unaccepted settlement offer or offer of
25 judgment does not moot a plaintiff's case." *Id.* at 672. The Ninth Circuit has reached a
26 similar conclusion, holding that "a claim becomes moot when a plaintiff *actually receives*
27 complete relief on that claim, not merely when that relief is offered or tendered." *Chen v.*
28 *Allstate Ins. Co.*, No. 13-16816, 2016 WL 1425869, at *1 (9th Cir. Apr. 12, 2016)

1 (emphasis in original).

2 Plaintiffs have not accepted the checks tendered by Defendants. As a result, the
3 parties remain adverse and retain the same stake in the litigation they had at the outset.
4 *Id.* at 670-71. TD Defendants’ motion for summary judgment will be denied.⁵

5 **III. Class Certification.**

6 Pursuant to 29 U.S.C. § 216(b), Plaintiffs move to conditionally certify this matter
7 as a collective action. Doc. 25. The proposed class includes:

8 all of Defendants’ current and former tire porters, crew members, and/or
9 tire technicians – employees who worked for Defendants, and who were
10 compensated on an hourly basis, and who were not paid one-and-one-half
11 times their regular rate of pay for all time worked in excess of 40 hours in a
12 given workweek, at any time starting three years before this lawsuit was
13 filed up to the present.

14 *Id.* at 4-5.

15 Certification of a collective action under the FLSA is appropriate where the named
16 plaintiffs and members of the proposed class are “similarly situated.” 29 U.S.C.
17 § 216(b). “Neither the FLSA, nor the Ninth Circuit, nor the Supreme Court has defined
18 the term ‘similarly situated.’” *Talavera v. Sun-Maid Growers of Cal.*, No. 1:15-CV-
19 00842-DAD-SAB, 2016 WL 1073253, at *2 (E.D. Cal. Mar. 18, 2016) (citation and some
20 quotation marks omitted). Courts generally follow an ad hoc, two-step approach for
21 determining whether certification is appropriate. *Id.* At the first step, the question is
22 whether to conditionally certify the proposed class to allow the named plaintiffs to notify
23 potential class members of their right to opt-into the lawsuit. *Id.* At this step, “the court
24 requires little more than substantial allegations, supported by declarations or discovery,
25 that ‘the putative class members were together the victims of a single decision, policy, or
26 plan.’” *Id.* (citing *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1102 (10th Cir.

26 ⁵ At oral argument, TD Defendants expressed concern that Plaintiffs might carry
27 on the case for the sole purpose of increasing the attorney fee award. The Court is
28 sympathetic to TD Defendants’ concern, but sees no indication at this time that Plaintiffs
are unreasonably extending the litigation for the purpose of increasing their fee award. If
it appears at a later date that Plaintiffs have unreasonably extended the litigation for this
purpose, the Court will reduce their fee award accordingly.

1 2001)); *see also Colson v. Avnet, Inc.*, 687 F. Supp. 2d 914, 925 (D. Ariz. 2010) (at
2 conditional certification stage, “Plaintiffs’ burden is light,” and can be carried by
3 identifying some “factual or legal nexus [that] binds together the various claims of the
4 class members”). If a class is conditionally certified, the second step is to permit the
5 defendant to move for decertification after discovery is completed. *Talavera*, 2016 WL
6 1073253, at *2. “If the court finds that the plaintiffs are not similarly situated at that step,
7 the court may decertify the class and dismiss opt-in plaintiffs without prejudice.” *Id.*
8 (citations and quotation marks omitted).

9 TD Defendants argue that conditional certification is not appropriate because
10 Plaintiffs have not established that ABT had a company-wide practice of withholding
11 overtime compensation for its tire porters. Doc. 28 at 1. The Court does not agree. As
12 noted above, Plaintiffs must provide only “substantial allegations, supported by
13 declarations or discovery, that ‘the putative class members were together the victims of a
14 single decision, policy, or plan.’” *Talavera*, 2016 WL 1073253, at *2. Plaintiffs have
15 each provided a declaration stating that (1) they observed ABT distributing paychecks at
16 four different ABT locations; (2) they observed ABT providing tire porters with two
17 envelopes, one containing a check for regular hours and one containing cash for overtime
18 hours; (3) they compared cash payments with other porters; (4) their cash payments never
19 included overtime premiums; and (5) they believe that ABT had a practice of withholding
20 overtime premiums from its tire porters. Docs. 25-1, ¶¶ 24, 27; 25-2, ¶¶ 23, 26. From
21 this evidence, the Court can reasonably infer that “the putative class members were
22 together the victims of a single decision, policy, or plan.” *Thiessen*, 267 F.3d at 1102.

23 In arguing that Plaintiffs have not produced sufficient evidence of a company-
24 wide practice, TD Defendants rely heavily on *Colson v. Avnet*. In *Colson*, the plaintiff
25 sought to certify a nationwide class including all Sales and Marketing Representatives
26 (“SMRs”) employed by Avnet, the defendant employer. 687 F. Supp. 2d at 917. The
27 plaintiff provided a declaration detailing FLSA violations she experienced while working
28 as an SMR in Avnet’s Oregon office. *Id.* at 929. The court found this declaration

1 insufficient to support nationwide certification because it focused only on one of Avnet's
2 40 locations. *Id.* at 927. The court was not persuaded by the portion of the declaration
3 dealing with SMRs elsewhere in the nation because it was "based on nothing more than
4 [the plaintiff's] opinions, which [were] vague and appear[ed] to be based on unspecified
5 hearsay from unidentified sources." *Id.* at 928.

6 *Colson* is easily distinguishable. Unlike Avnet, a large corporation with 40 offices
7 nationwide, ABT is a small corporation owned and managed by one or two individuals,
8 with no offices outside Arizona. Unlike *Colson*, where the plaintiff's allegations were
9 based on her experience in a single office, Named Plaintiffs' allegations are based on
10 their experiences at four ABT locations. Finally and most importantly, the key portions
11 of Named Plaintiffs' declarations are based on their personal observations, which was not
12 the case in *Colson*. *See* Docs. 25-1, ¶ 24; 25-2, ¶ 23. Thus, *Colson* does not alter the
13 Court's conclusion that Plaintiffs are entitled to conditional certification.

14 TD Defendants make two additional arguments. First, TD Defendants argue that
15 Named Plaintiffs are not similarly situated to other class members because they have
16 been paid all of the damages they are owed. Doc. 28 at 5. The Court has already
17 concluded that Named Plaintiffs have not been paid. Second, TD Defendants point to
18 Travis Dee's declaration, which states that he has taken steps to identify and compensate
19 each tire porters who was denied overtime premiums. Doc. 28-1, ¶ 6. Based on this
20 declaration, TD Defendants argue that the potential class members' claims are likely
21 moot. Doc. 28 at 5. But the declaration does not specify what steps Travis took to
22 identify and compensate the individuals who were denied overtime premiums or how
23 many individuals have been identified and compensated. Nor do TD Defendants provide
24 other evidence that these individuals have been compensated. The Court is therefore
25 unable to conclude that TD Defendants have compensated all potential class members.

26 AD Defendants argue that conditional certification is inappropriate because they
27 have not owned any tire companies since September 2013. Doc. 29 at 6. They present
28 evidence that: (1) Andrew sold all of his tire stores to Travis in September 2013; (2) all of

1 Andrew's remaining companies ceased operation by September 2013; and (3) Andrew
2 and Travis did not coordinate payment practices before or after the sale. Doc. 29-1,
3 ¶¶ 10, 14, 15. But Plaintiff O'Neal has presented evidence that he was hired by Andrew
4 Dees in May of 2012, that he saw Andrew at various stores directing employees, that he
5 worked with Andrew at one of the stores in June of 2014, and that he saw Andrew at all
6 four of the stores where he worked. Doc. 25-1, ¶¶ 5, 7, 10. O'Neal worked at three
7 stores that were owned by Andrew (*compare id.*, ¶ 32 with Doc. 29 at 5), and asserts that
8 he worked overtime – and was not paid a premium for it – every week of his employment
9 (Doc. 25-1, ¶ 30). Plaintiff White provides similar evidence. Doc. 25-2, ¶ 7. Plaintiffs
10 also note that the purchase agreement between Andrew and Travis Dees called for
11 Andrew to remain on the payroll and to have continuing management responsibilities,
12 such as the ability to veto store sales and changes in marketing strategies. *See* Doc. 29-1
13 at 51-56. All of this evidence creates a factual dispute as to whether Andrew in fact was
14 involved in the management of ABT during times when Named Plaintiffs worked there.
15 Because Plaintiffs are seeking only conditional certification, this is not the time to resolve
16 factual disputes. *Colson*, 687 F. Supp. 2d at 926 (“[I]n making a determination in
17 whether to conditionally certify a proposed class for notification purposes only, courts do
18 not review the underlying merits of the action. It is not the Court’s role to resolve factual
19 disputes . . . or . . . decide substantive issues going to the ultimate merits . . . at the
20 preliminary certification stage of an FLSA collective action.”) (citations omitted).

21 AD Defendants also argue that conditional certification is inappropriate as to them
22 because: (1) 29 U.S.C. § 255(a) establishes a two-year statute of limitations for claims
23 based on non-willful violations of the FLSA; (2) Plaintiffs’ have not alleged that AD
24 Defendants willfully violated the FLSA; and (3) AD Defendants have not owned any tire
25 companies since September 2013. Doc. 29 at 13. This argument goes to the merits of the
26 claims against AD Defendants, not to the factual question of whether Plaintiffs are
27 similarly situated to individuals who worked for AD Defendants prior to September
28 2013. “[C]ourts do not review the underlying merits of the action” in ruling on a motion

1 for conditional certification under the FLSA. *Colson*, 687 F. Supp. 2d at 926 (collecting
2 cases). AD Defendants can reurge these arguments at the summary judgment stage.

3 **IV. Information Disclosure and Form of Notice.**

4 Plaintiffs ask the Court to enter an order (1) requiring Defendants to produce,
5 within 10 days, the contact information, driver's license numbers, social security
6 numbers, and dates of employment of all tire porters who worked for Defendants between
7 January 11, 2013 and January 11, 2016; (2) authorizing Plaintiffs to mail the proposed
8 Notice and Consent form (Doc. 25-4) to all potential class members via regular mail and
9 email; (3) authorizing Plaintiffs to hire a third party administrator to send the notices;
10 (4) allowing potential class members to execute their consent forms electronically; and
11 (5) authorizing Plaintiffs to resend the notice to class members who have not responded
12 to the first notice within thirty days. Doc. 25 at 17.

13 With respect to Plaintiffs' first request, Defendants object that providing potential
14 class members' social security numbers, driver's license numbers, and phone numbers
15 would violate their employee's privacy. Docs. 28 at 7; 29 at 14. They also object that 10
16 days is too little time to gather the requested information, and request 30 days for this
17 purpose. *Id.* In the Court's experience, allowing plaintiffs to access the last four digits of
18 potential class members' social security number properly balances the class members'
19 privacy interests with the public policy interest in facilitating contact with as many class
20 members as possible. The Court will therefore order Defendants to produce the last four
21 digits of potential class members' social security numbers. The Court will also order
22 Defendants to produce the driver's license numbers of potential class members, which
23 will allow Plaintiffs to conduct a Department of Motor Vehicles search to locate
24 individuals who may have moved since their employment with ABT. The Court will not
25 order Defendants to produce employee phone numbers, which do not appear necessary to
26 locate potential class members.

27 TD Defendants also ask for various modifications to the proposed Notice and
28 Consent form. Specifically, TD Defendants ask for (1) removal of the Notice's header,

1 which reads “United States District Court for the District of Arizona”; (2) modification of
2 a sentence which states that “you were not paid”; (3) inclusion of a statement advising
3 potential class members that “By joining this case, you may be required to respond to
4 written discovery, appear for a deposition and/or testify at trial”; and (4) inclusion of a
5 disclaimer stating that “The Court has not made any determination on the merits and the
6 authorization to distribute this notice does not mean that the Plaintiffs have prevailed or
7 will prevail on this matter.” Doc. 28 at 8. Plaintiffs do not object to any of these
8 proposed modifications in their reply, and the Court concludes that these modifications,
9 which largely track those ordered in *Kesley v. Entertainment U.S.A., Inc.*, 67 F. Supp. 3d
10 1061, 1074 (D. Ariz. 2014), are reasonable. The Court will therefore require Plaintiffs to
11 remove the Notice’s header, replace the words “you were not paid” with the words “you
12 may not have been paid,” and include the advisement and disclaimers referred to above.

13 TD Defendants object that hiring a third party administrator would unnecessarily
14 increase costs. Doc. 28 at 7-8. They argue that hiring such an administrator is
15 unnecessary given the relatively small size of the class, which they anticipate will include
16 fewer than 100 individuals. *Id.* In the Court’s experience, however, hiring a third party
17 administrator often results in cost reductions. Therefore, the Court will not prohibit
18 Plaintiffs from hiring a third-party administrator.

19 Defendants do not object to allowing potential class members to execute the
20 consent forms electronically. The Court will therefore allow this method of execution.

21 Defendants object that Plaintiffs should not be permitted to resend their notice,
22 since they will already be sending it via email and regular mail. Docs. 28 at 8; 29 at 14.
23 Plaintiffs argue that “reminder notices” are important because they reduce the likelihood
24 that interested class members will simply overlook the notice. Doc. 25 at 15. As
25 Plaintiffs note, other courts have permitted reminder notices in similar cases. *See, e.g.,*
26 *Gee v. Suntrust Mortg., Inc.*, No. C-10-1509-RS, 2011 WL 722111, at *4 (N.D. Cal. Feb.
27 18, 2011) (“Plaintiffs’ counsel shall send by First Class mail the notice and consent form
28 to each member of the prospective class within two weeks of receipt of the contact

1 information from SunTrust. Plaintiffs’ counsel may mail a reminder notice forty-five
2 days after issuance of the first notice.”); *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d
3 835, 847 (N.D. Cal. 2010) (“Vector contends that sending the postcard reminder notice
4 after the class notice is harassing. The Court does not agree. Particularly since the FLSA
5 requires an opt-in procedure, the sending of a postcard is appropriate.”). The Court
6 agrees with Plaintiffs, and will allow them to send reminder notices to individuals who
7 have not responded within 30 days of the date the original notice is sent.

8 **IT IS ORDERED:**

9 1. TD Defendants’ motion for summary judgment (Doc. 19) is **denied**.

10 2. Plaintiffs’ motion for conditional certification (Doc. 25) is **granted**. The
11 Court conditionally certifies this matter as a collective action under 29 U.S.C. § 216(b)
12 with respect to all current and former tire porters, crew members, and tire technicians
13 who worked for Defendants at any time from January 11, 2013 to the present (the
14 “potential class members”).

15 3. Defendants shall produce, within 30 days of this order, the mailing
16 addresses, email addresses, driver’s license numbers, and partially redacted social
17 security numbers of all potential class members.

18 4. Plaintiffs are authorized to provide notice to all potential class members.
19 Notice shall be given in the form attached to Plaintiffs’ motion as modified below.
20 Plaintiffs are authorized to make an initial and a follow-up mailing to these members of
21 the conditional class. Individuals receiving notice will be required to opt-in to the class
22 on or before August 5, 2016. All expenses of the notice shall be borne by Plaintiffs.

23 5. Plaintiffs shall modify the Notice and Consent Form by (1) removing the
24 header which reads “United States District Court for the District of Arizona”;
25 (2) replacing the words “you were not paid” with the words “you may not have been
26 paid”; (3) adding the following statement: “By joining this case, you may be required to
27 respond to written discovery, appear for a deposition and/or testify at trial”; and
28 (4) adding the following statement: “The Court has not made any determination on the

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merits and the authorization to distribute this notice does not mean that the Plaintiffs have prevailed or will prevail on this matter.”

Dated this 2nd day of June, 2016.



David G. Campbell
United States District Judge