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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jessica Caballero,  
  
Plaintiff,  
  
vs.  
  
Healthtech Resources, Inc.,  
  
Defendant.

No. CV-17-02321-PHX-SPL

**ORDER**

Before the Court is Plaintiff’s Motion for Conditional Collective Action Certification and Court-Supervised Notice. (Doc. 55.) Defendant filed a Response (Doc. 56), to which Plaintiff filed a Reply. (Doc. 61.) Also pending before the Court is the Parties’ Joint Motion to Extend Time to Complete the In-Person Settlement Conference. (Doc. 65.)

**I. Plaintiff’s Motion for Conditional Collective Action Certification and Court-Supervised Notice**

**A. Conditional Certification**

Section 207 of the Fair Labor Standards Act (“FLSA”) provides that employees be compensated at a rate of not less than one and one-half times the regular rate for any hours worked in excess of forty hours per week. 29 U.S.C. § 207(a)(1). Employers who fail to comply with the FLSA’s overtime compensation provision “shall be liable to the employee or employees affected in the amount of their . . . unpaid overtime compensation . . . and in an additional equal amount as liquidated damages.” 29 U.S.C. § 216(b). An

1 employee may bring an action to recover unpaid overtime on behalf of herself and other  
2 “similarly situated” employees. *Id.* Neither the FLSA nor the United States Court of  
3 Appeals for the Ninth Circuit has defined “similarly situated.” *Guanzon v. Vixxo Corp.*,  
4 No. CV-17-01157-PHX-GMS, 2018 WL 274422, at \*2 (D. Ariz. Jan. 3, 2018). Typically,  
5 district courts within the Ninth Circuit follow a two-step approach to determine whether a  
6 collective action is appropriate. *Colson v. Avnet, Inc.*, 687 F.Supp.2d 914, 925 (D. Ariz.  
7 Jan. 27, 2010). At the first stage, courts look only to see whether a plaintiff has presented  
8 “substantial allegations that the putative class members were together the victims of a  
9 single decision, policy, or plan.” *Id.* (internal citations omitted). This standard is “fairly  
10 lenient” and typically results in conditional certification. *Brown v. Pegasus Research*  
11 *Grp. LLC*, No. CV-16-03875-PHX-GMS, 2017 WL 2444105, at \*1 (D. Ariz. June 6,  
12 2017). At the second stage, after the notification period ends and upon close of discovery,  
13 a defendant may move to decertify at which time “the court makes a more informed  
14 decision as to whether the claimants who have consented to sue are indeed ‘similarly  
15 situated.’” *Alonzo v. Akal Sec.*, No. CV-17-00836-PHX-JJT, 2017 WL 5598227, at \*2 (D.  
16 Ariz. Nov. 21, 2017) (citing *Wynn v. Nat’l Broad. Co.*, 234 F.Supp.2d 1067, 1082 (C.D.  
17 Cal. Jan. 24, 2002)).

18 Plaintiff requests conditional certification for “[a]ll individuals who worked for  
19 [Defendant], providing support and training to [Defendant’s] clients in connection with  
20 the implementation of new electronic recordkeeping systems in Pennsylvania between  
21 February 20, 2014 and the present.” (Doc. 55 at 2.) In support, Plaintiff has submitted her  
22 own declaration (doc. 55-3) and the declarations of potential plaintiffs Lissa Bryan (doc.  
23 55-4) and Charles Bloom (doc. 55-5). Plaintiff has also provided model Notice and Opt-  
24 In Consent forms for distribution should the Court grant conditional certification. (Docs.  
25 55-1, 55-2.) In response, Defendant does not oppose conditional certification, but rather  
26 takes issue with certain provisions of Plaintiff’s model Notice and Opt-In Consent forms.  
27 (Doc. 56.)  
28

1 Plaintiff has satisfied the fairly lenient standard for conditional certification.  
2 Plaintiff's First Amended Complaint (Doc. 22) and the declarations submitted in support  
3 of the present motion sufficiently allege that Plaintiff and the putative class members  
4 "were together the victims of a single decision, policy, or plan." *Colson*, 687 F.Supp.2d at  
5 925. As Plaintiff suggests, the record before the Court provides sufficient support that  
6 members of the proposed collective are similarly situated because:

7 individuals who provide training and support services for  
8 [Defendant's] clients in connection with the implementation  
9 of new electronic recordkeeping systems and are classified as  
10 exempt employees perform the same basic tasks, follow the  
11 same schedule, have the same compensation structure, and  
12 are subject to the same rules and policies set out by  
13 [Defendant] in their day-to-day work; these individuals are  
14 paid a set hourly rate, only for hours actually worked, and, as  
15 a result, are not paid an overtime premium for hours worked  
16 in excess of 40 a week [sic] in violation of the FLSA.

17 (Doc. 55 at 8.) Accordingly, the Court will grant conditional certification at this time.

#### 18 **B. Court-Supervised Notice**

19 In her Motion for Conditional Collective Action Certification and Court-  
20 Supervised Notice, Plaintiff seeks court approval of the model Notice and Opt-In Consent  
21 Forms. (Docs. 55-1, 55-2.) The Court will address each of Defendant's specific  
22 objections (Doc. 56) in turn.

23 First, Plaintiff requests the Court order Defendant to produce "the name, last  
24 known address, all known e-mail addresses, all known telephone number(s), dates  
25 worked, date of birth, and last four digits of their Social Security Number for each  
26 [collective member] within five business days of the [Court's] Order." (Doc. 55 at 15.)  
27 Defendant objects to the provision of all information other than the names, last known  
28 physical addresses, and the dates worked by the collective members because of privacy  
concerns. (Doc. 56 at 2.) In her Reply, Plaintiff tailored the information to be provided by  
Defendant to "a list of the names, dates of employment and last known telephone  
numbers, addresses and e-mail addresses of members of the FLSA Collective." (Doc. 61

1 at 3.) Remaining at issue then is Plaintiff's request for the e-mail addresses and telephone  
2 numbers. Because e-mail is an increasingly utilized form of communication, Defendant  
3 shall provide Plaintiff with the e-mail addresses of members of the FLSA collective.  
4 *Guanzon*, 2018 WL 274422, at \*3. The Court finds the production of phone numbers  
5 similarly appropriate and orders Defendant to provide Plaintiff with all known telephone  
6 numbers of the FLSA collective members. Plaintiff's request that the Court order  
7 Defendant to provide the Social Security numbers of collective members in the event  
8 Notice is returned undeliverable (Doc. 61 at 4) is denied. *See e.g., Russell v. Swick*  
9 *Mining Servs. USA Inc.*, No. CV-16-02887-PHX-JJT, 2017 WL 1365081, at \*5 (D. Ariz.  
10 Apr. 14, 2017).

11 Second, Defendant opposes Plaintiff's proposal that all collective members be  
12 given ninety days from receipt of Notice to opt-in to the present suit because doing so  
13 "will open the door to issues of when collective members 'received' their Notices." (Doc.  
14 56 at 3.) The Court agrees with Defendant that Plaintiff's proposal of allowing collective  
15 members ninety days from the date of receipt may unwittingly raise issues of timeliness.  
16 For this reason, the Court orders that collective members will have ninety days from the  
17 date upon which Plaintiff's counsel mails the Notice and Opt-In Consent Forms to opt-in  
18 to the present suit. Likewise, Defendant objects to Plaintiff's proposal that "[a]ll Opt-In  
19 Consent Forms will be deemed to have been filed with the Court the date that they are  
20 stamped as received by Plaintiff's counsel or the Notice Administrator, and Plaintiff's  
21 counsel will file them electronically on the docket on a weekly basis." (Doc. 56 at 3.)  
22 Again, to avoid the possibility of creating timeliness issues, Opt-In Consent Forms will  
23 be deemed filed with the Court only on the actual date which Plaintiff files them with the  
24 Court.

25 Third, Defendant objects to Plaintiff's proposal that collective members may  
26 execute their Opt-In Consent Forms using an electronic signature. (Doc. 56 at 3.)  
27 According to Defendant, opposition of this procedure "assure[s], to the greatest extent  
28 possible, that all Consent Forms are in fact executed knowingly by the proper persons."

1 (Doc. 56 at 3.) The Court finds this argument unavailing and will authorize Plaintiff to  
2 utilize electronic signatures as a means of allowing collective members to execute their  
3 Opt-In Consent Forms.

4 Fourth, Defendant takes issue with several particular provisions included in  
5 Plaintiff's model Notice form. Defendant seeks to limit the collective to those IT  
6 Consultants who worked in Pennsylvania. (Doc. 56 at 4.) As requested, Plaintiff will be  
7 granted leave to amend to correct the typographical error and limit the scope of the  
8 proposed collective to those IT Consultants who worked in Pennsylvania. (Doc. 61 at 3.)  
9 Defendant also raises concerns about the model Notice's failure to include language  
10 regarding attorneys' fees and costs for Plaintiff's counsel. (Doc. 56 at 5.) Again, per  
11 Plaintiff's request, leave will be granted so that Plaintiff may amend the Notice to include  
12 the following proposed language:

13 The attorneys for the Plaintiff are being paid on a contingency  
14 fee basis, which means that if there is no recovery, there will  
15 be no attorneys' fees. You are not under any obligation to pay  
16 any attorneys' fees. If there is a recovery, Plaintiff's attorneys  
17 may receive a part of any settlement obtained or money  
judgment entered in favor of all members of the Collective,  
subject to the Court's approval.

18 (Doc. 61 at 3.) Finally, Defendant contests the Notice's failure to include language  
19 informing collective members of their potential liability for costs if Defendant prevails.  
20 (Doc. 56 at 5.) The Court finds that the inclusion of such language could deter collective  
21 members from opting-in to the present suit. *Coyle v. Flower Foods Inc.*, No. CV-15-  
22 01372-PHX-DLR, 2016 WL 4529872, at \*7 (D. Ariz. Aug. 30, 2016). As such, Plaintiff  
23 will not be required to include language in the Notice regarding Defendant's costs.

### 24 **III. Joint Motion to Extend Time to Complete In-Person Settlement Conference**

25 The Parties have filed a joint motion requesting the Court to extend the deadline  
26 for good faith settlement talks. (Doc. 65.) The Court finds the extension warranted and  
27 will allow the parties to have sixty days from the conclusion of the opt-in period to  
28 complete settlement talks.

1 **IV. Conclusion**

2 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Conditional Collective  
3 Action Certification and Court-Supervised Notice (Doc. 55) is **granted in part** and  
4 **denied in part** as follows:

5 1. The Court conditionally certifies this matter as a collective action under 29  
6 U.S.C. § 216(b) with respect to:

7 All individuals who worked for Healthtech Resources, Inc.  
8 ("Healthtech"), providing support and training to Healthtech's  
9 clients in connection with the implementation of new  
10 electronic recordkeeping systems in Pennsylvania and was  
classified as an exempt employee between February 20, 2014  
and the present.

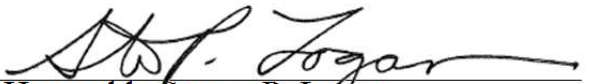
11 2. Defendant shall provide Plaintiff's counsel with the names, dates of  
12 employment, and the last known mailing address, e-mail address, and telephone number  
13 of all potential collective members no later than **February 28, 2018**.

14 3. Plaintiff shall modify the Notice form (Doc. 55-1) to limit the scope of the  
15 proposed collective to those IT Consultants who worked in Pennsylvania during the last  
16 three years and to include Plaintiff's proposed language regarding attorneys' fees  
17 consistent with this Order.

18 4. Members of the collective action who wish to opt-in to the present action  
19 must do so within **ninety (90) days** from the date upon which Plaintiff's counsel mails  
20 the Notice and Opt-In Consent Forms.

21 **IT IS FURTHER ORDERED** that the Parties' Joint Motion to Extend Time to  
22 Complete In-Person Settlement Conference (Doc. 65) is **granted**.

23 Dated this 20th day of February, 2018.

24   
25 Honorable Steven P. Logan  
26 United States District Judge  
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