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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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11 JARROD TOMASSI, AARON KING, on ) NO. CV 08-1851 DSF (SSx)  
12 behalf of themselves and all )  
13 others similarly situated, )  
14 Plaintiffs, ) MEMORANDUM DECISION AND ORDER  
15 v. ) GRANTING IN PART AND DENYING IN  
16 CITY OF LOS ANGELES, a ) PART PLAINTIFFS' MOTION TO COMPEL  
17 Municipal Corporation, )  
18 Defendant. )

19 INTRODUCTION

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21 On September 30, 2008, Plaintiffs Jarrod Tomassi and Aaron King  
22 ("Plaintiffs") filed a "Motion Under Rule 37 to Compel Names, Addresses  
23 and Other Contact Information for The Putative Class Members" (the  
24 "Motion" or the "Motion to Compel"), seeking to compel a further  
25 response from Defendant City of Los Angeles ("Defendant") to  
26 Interrogatory Number One. The parties submitted a Joint Stipulation  
27 (the "Jt. Stip.") reflecting their respective positions regarding the  
28 Motion. On October 7, 2008, each party filed a Supplemental Memorandum

1 in support of their positions. On October 21, 2008, the Court held a  
2 hearing on the Motion. For the reasons stated below, the Motion is  
3 GRANTED in part and DENIED in part.

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5 **DISCUSSION**

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7 **A. Plaintiffs' Contentions**

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9 Plaintiffs bring this action on behalf of themselves and all others  
10 similarly situated against Defendant under the Fair Labor Standards Act  
11 ("FLSA"), 29 U.S.C. § 216(b), for Defendant's alleged failure to pay  
12 wages to its employees for all hours worked. (Jt. Stip. at 1).  
13 Plaintiff Tomassi was a Firefighter II (i.e., probationary or rookie  
14 member) with Los Angeles Fire Department ("LAFD") until he was  
15 terminated on November 8, 2007. Plaintiff King has been a Firefighter  
16 II with the LAFD since February 2004. On August 25, 2008, the Court  
17 issued an order providing 60 days to Plaintiffs to file a joinder of  
18 four additional Plaintiffs, following a hearing on Plaintiffs'  
19 Conditional Certification Motion.

20  
21 According to Plaintiffs, it is a tradition and practice in the LAFD  
22 that probationary employees are required to work substantial "off the  
23 clock" hours, which are neither recorded nor paid for by the LAFD. (Jt.  
24 Stip. at 2). Plaintiffs seek to represent a class consisting of all  
25 probationary firefighters who have worked for the City of Los Angeles  
26 from March 19, 2005 to the present. (Motion for Cond. Cert., etc. at  
27 ii).

1 Plaintiffs served discovery which they assert is relevant to their  
2 class certification motion. In particular, Special Interrogatory Number  
3 One asked Defendant to "IDENTIFY each and every person who has been  
4 employed by YOU as a Firefighter II at any time from March 19, 2005 to  
5 the present." (Jt. Stip. at 1). "IDENTIFY" was defined to include "the  
6 person's full name, present or last known address and telephone number,  
7 and any alternate contact information." (Id.). Plaintiffs seek to  
8 compel a response to this interrogatory. Plaintiffs are requesting the  
9 names, addresses, telephone numbers and other contact information for  
10 each and every person who has been employed by the City as a Firefighter  
11 II at any time from March 19, 2005 to the present. (Id.). Defendant  
12 objected to this interrogatory on multiple grounds.

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14 **B. Defendant's Contentions**

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16 Defendant argues that the requested discovery is not essential to  
17 class certification and is merely a "fishing expedition" to allow  
18 Plaintiffs' counsel to identify potential new clients. (Jt. Stip. at  
19 10). Defendant further asserts that the disclosure of this information  
20 would violate the privacy rights of putative class members. (Id.).  
21

22 **C. Procedural History**

23  
24 Plaintiffs filed their complaint on March 19, 2008. Defendant  
25 filed its Answer on April 10, 2008. On June 19, 2008, Plaintiffs filed  
26 a "Motion for Conditional Collective Certification and To Facilitate  
27 Notice Pursuant to FLSA, 29 U.S.C. § 216(b)." In the Motion for  
28 Conditional Collective Certification, etc., Plaintiff sought an order

1 for the production of the names, addresses, alternate addresses and  
2 telephone numbers of all probationary firefighters. (See Motion for  
3 Cond. Cert., etc., at ii).  
4

5 On July 28, 2008, Defendant filed an Opposition to the Motion for  
6 Conditional Collective Certification and, on August 11, 2008, Plaintiffs  
7 filed a Reply. On August 25, 2008, following a hearing on Plaintiffs'  
8 Motion for Conditional Collective Certification, the Court issued an  
9 order allowing Plaintiff sixty days to file a joinder for four  
10 additional plaintiffs. The Court also instructed the parties to agree  
11 on the appropriate form of notice. (See Order dated 8/25/08).  
12

13 During the hearing on Plaintiffs' Motion for Conditional Collective  
14 Certification, the Court made several observations. First, the Court  
15 admonished the parties that they were required to comply with the  
16 requirements of Rule 7.3, i.e., to hold a meet and confer prior to the  
17 filing of a motion, and make an effort to resolve matters that could be  
18 resolved through a meet and confer. The Court specifically noted that  
19 the "form of the notice" should be the subject of a meet and confer.  
20 (Motion to Compel, Exh. A at 5-6).  
21

22 Plaintiffs' counsel asserted that she needed responses from  
23 discovery requests to supplement her Motion for Conditional  
24 Certification. (Motion to Compel, Exh. A at 11). Specifically, she  
25 stated that she needed the "names of the rookies." (Id. at 11-12).  
26 Defense counsel informed the Court that Defendant had objected to the  
27 discovery on the grounds that it was overbroad, seeking more information  
28 than necessary, and because the discovery invaded the privacy rights of

1 the firefighters. (Id. at 14). Following further discussion, the Court  
2 stated that there was "a rather strong case for a collective action  
3 conditional certification." (Id. at 18). She also directed the parties  
4 to "sit down and talk about what an appropriate notice should look  
5 like." (Id.).

6  
7 Plaintiffs filed their Motion to Compel, seeking names and  
8 addresses of potential class members, on September 30, 2008. In the  
9 Motion, Plaintiff's counsel noted that she proposed, as a compromise,  
10 that Defendant produce half of the putative class members' names and  
11 contact information. (Jt. Stip. at 9). Defense counsel declined this  
12 proposed resolution. (Id.). On October 21, 2008, the Court held a  
13 hearing on the Motion.

14  
15 **D. Plaintiffs Are Entitled to the Names and Addresses**  
16 **of Potential Class Members**  
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18 It is well settled that district courts have the discretion under  
19 Section 216(b) of the FLSA to direct a defendant employer to disclose  
20 the names and addresses of potential class members. Hoffman-LaRoche v.  
21 Sperling, 493 U.S. 165, 170, 110 S. Ct. 482, 107 L. Ed. 2d 480  
22 (1989) (approving district court's order permitting discovery of names  
23 and addresses of certain employees); Patton v. Thomson Corp., 364 F.  
24 Supp. 2d 263, 266-67 (E.D.N.Y. 2005) (ordering employer to disclose  
25 names, addresses, social security numbers and employment dates of  
26 putative class members in FLSA action). Courts in actions under the  
27 FLSA may facilitate the issuance of a notice informing potential "opt-  
28

1 in" plaintiffs of the collective action. Hoffman-LaRoche, 493 U.S. at  
2 170. Such notice is facilitated by the disclosure of contact  
3 information.

4  
5 Defendant argues that the requested discovery would invade putative  
6 class members' privacy rights. (Id.). This argument has been squarely  
7 rejected by numerous courts who have balanced the infringement of  
8 potential class members privacy against the representative plaintiff's  
9 need for the information.

10  
11 Preliminarily, the Court notes that although the right to privacy  
12 is not a federally recognized privilege, many federal courts have  
13 considered it in discovery disputes. See DeMasi v. Weiss, 669 F.2d 114,  
14 120 (3rd Cir. 1982); Soto v. City of Concord, 162 F.R.D. 603, 616 (N.D.  
15 Cal. 1995). The right to privacy is not absolute. In determining  
16 whether privacy is subject to invasion, the court must balance the  
17 asserted right to privacy against the relevance and necessity of the  
18 information sought by the plaintiff. See Johnson v. Thompson, 971 F.2d  
19 1487, 1497 (10th Cir. 1992) (citing Lukaszewicz v. Ortho Pharmaceutical  
20 Corp., 90 F.R.D. 708, 709 (E.D. Wis. 1981)); Ragge v. MCA/Universal, 165  
21 F.R.D. 601, 604-05 (C.D. Cal. 1995) (requiring a balance of a party's  
22 right to privacy against the importance of the information to the case).

23  
24 In Gulf Oil Co. v. Bernard, 452 U.S. 89, 101 S. Ct. 2193, 68 L. Ed.  
25 2d 693 (1981), the Supreme Court established a rule of deference to  
26 class counsel in Rule 23 class actions to permit communications with  
27 potential class members for the purpose of notification and gathering  
28 information, even prior to class certification. The Court affirmed the

1 Fifth Circuit's decision invalidating the district court's order banning  
2 communications between class counsel and any actual or potential class  
3 members. Although the Court recognized the legitimacy of the concern  
4 regarding client solicitation, it found that the need of class counsel  
5 to communicate with potential plaintiffs outweighed such concerns. Id.  
6 at 101-02. Several subsequent decisions have found that the need of  
7 class counsel to communicate with potential class members outweighs the  
8 right to privacy that may protect certain information.

9  
10 The California Supreme Court recently addressed the privacy issue  
11 in Pioneer Electronics, Inc. v. The Superior Court, 40 Cal. 4th 360, 53  
12 Cal. Rptr. 3d 513 (2007). In Pioneer, the court explained that the  
13 right of privacy protects the individual's reasonable expectation of  
14 privacy against a serious invasion. 40 Cal. 4th at 370 (emphasis in  
15 original) (citations omitted). When the disclosure of information does  
16 not involve particularly sensitive information, no serious invasion of  
17 privacy occurs. Id. at 372. The disclosure of mere contact  
18 information, such as names and addresses, does not unduly interfere with  
19 one's right to privacy. Id. The Pioneer court found that contact  
20 information was discoverable for the purpose of permitting the lead  
21 plaintiff to prosecute the case. Id.; see also Lee v. Dynamex, Inc.,  
22 166 Cal. App. 4th 1325, 1338, 83 Cal. Rptr. 3d 241 (2008) (reversing  
23 trial court's denial of motion to compel disclosure of names and  
24 addresses of potential class members and finding no undue privacy  
25 invasion); Putnam v. Eli Lilly and Co., 508 F. Supp. 2d 812, 814 (C.D.  
26 Cal. 2007) (finding that the relevancy of potential plaintiffs' contact  
27 information outweighs their privacy interests).

1           Although Defendants argue that this discovery is nothing more than  
2 a "fishing expedition," i.e., the current Plaintiffs are simply  
3 "fishing" for clients, (Jt. Stip. at 7), this Court disagrees. The  
4 Court, after balancing the various concerns presented by the Motion to  
5 Compel, concludes that Plaintiffs' need for names and addresses of  
6 potential class members outweighs the asserted privacy rights. As  
7 demonstrated in the cases cited above, the need for disclosure of names  
8 and addresses of potential class members to enable a representative  
9 plaintiff to prosecute his case is well-established. The requested  
10 discovery is permissible. Defendant's concern for the privacy rights  
11 of potential class members can be addressed through a protective order.  
12 Any concerns that Defendant has regarding the nature or manner of  
13 contact with potential class members should be addressed in a meet and  
14 confer regarding Plaintiffs' notice. The Court, during the hearing on  
15 Plaintiffs' Motion for Conditional Collective Certification, was  
16 extremely clear in its direction to counsel that the terms of the notice  
17 should be resolved through the meet and confer process.

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19                                   **CONCLUSION**  
20

21           Plaintiffs are entitled to the names and addresses of potential  
22 class members. To the extent the Motion to Compel seeks names and  
23 addresses of potential class members, the Motion to Compel is **GRANTED**.  
24 However, the Motion is **DENIED** to the extent it sought any additional  
25 information regarding these individuals such as their telephone numbers  
26 or "alternate contact information" such as email addresses.<sup>1</sup> The

27 \_\_\_\_\_  
28           <sup>1</sup> In Best Buy v. Superior Court, 137 Cal. App. 4th 772, 778, 40  
Cal. Rptr. 3d 575 (2006), the court recognized that contact by mail was



1 parties are ORDERED to submit an appropriate stipulated protective order  
2 by **October 27, 2008**. The order must describe with particularity the  
3 information to be maintained as confidential. The parties must include  
4 a "good cause statement," i.e., the parties must describe the specific  
5 harm that would result from the disclosure of this information.  
6 Defendant shall serve a supplemental response to Interrogatory Number  
7 One, disclosing the names and addresses that are responsive to that  
8 request, no later than **November 4, 2008**.

9  
10 IT IS SO ORDERED.

11  
12 DATED: October 24, 2008

SUZANNE H. SEGAL

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14 SUZANNE H. SEGAL  
15 UNITED STATES MAGISTRATE JUDGE  
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26 \_\_\_\_\_  
27 preferable to contact with potential class members either in person or  
28 by telephone. Best Buy, 137 Cal. App. 4th at 175. In order to minimize  
any potential privacy issues, the Court denies Plaintiffs' request for  
telephone numbers or alternate contact information.