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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HENRY SEGUIN,  
Plaintiff,  
v.  
COUNTY OF TULARE,  
Defendant.

No. 1:16-cv-01262-DAD-SAB

ORDER GRANTING STIPULATION FOR  
CONDITIONAL CERTIFICATION AND  
APPROVAL OF FACILITATED CLASS  
NOTICE

(Doc. No. 24)

Plaintiff Henry Seguin is an employee of defendant County of Tulare (“County”). (Doc. No. 1 ¶ 3.) In accordance with County policy, plaintiff and those similarly situated received monetary compensation in lieu of some or all of certain County-sponsored health benefits. (*See id.* ¶¶ 24–25.) Plaintiffs allege that, for the three years prior to the commencement of this action, the County failed to include these in-lieu payments in its calculation of plaintiffs’ regular rate of pay, resulting in an underpayment of overtime compensation. (*Id.* ¶¶ 19, 21, 26.) Plaintiffs further allege that defendant’s failure to fully compensate them and others similarly situated constitutes a violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”). *See Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) (holding that cash payments in lieu of health benefits “must be included in the regular rate of pay and thus in the calculation of the overtime rate” under the FLSA).

1 Now before the court is the parties' stipulation for conditional certification of a collective  
2 action and for approval of class notice pursuant to the Fair Labor Standards Act. (Doc. No. 24.)  
3 Therein, the parties agree that this FLSA collective action should be conditionally certified on  
4 behalf of "all current and former non-exempt employees of the Defendant who were paid  
5 overtime pursuant to the FLSA and received cash in lieu of health benefits payments within the  
6 same pay period, at any time since August 25, 2013." (See Doc. No. 24-1 ¶ 2.) In addition, the  
7 parties submit a proposed notice to potential plaintiffs outlining the nature of the collective action  
8 and steps by which similarly situated individuals may take to participate in this lawsuit. (See  
9 Doc. No. 24-2.)

10 Pursuant to the FLSA, an employee may file a civil action, on behalf of himself and other  
11 employees similarly situated, against an employer that fails to adhere to federal minimum wage  
12 and overtime law. 29 U.S.C. § 216(b); see also *Genesis Healthcare Corp. v. Symczyk*, 569 U.S.  
13 \_\_\_, \_\_\_, 133 S. Ct. 1523, 1527 (2013). Unlike a class action brought under Rule 23 of the  
14 Federal Rules of Civil Procedure, similarly situated employees can join an FLSA collective action  
15 only if they opt-in by giving written consent to be joined. 29 U.S.C. § 216(b).

16 The FLSA does not define the term "similarly situated," and this court has identified no  
17 binding Ninth Circuit or Supreme Court authority interpreting that term. However, district courts  
18 in this circuit have used a two-step approach to decide whether potential FLSA plaintiffs are  
19 similarly situated. See, e.g., *Kellgren v. Petco Animal Supplies, Inc.*, No. 13CV644 L KSC, 2015  
20 WL 5167144, at \*2 (S.D. Cal. Sept. 3, 2015); *Syed v. M-I, L.L.C.*, No. 1:12-cv-01718-AWI-MJS,  
21 2014 WL 6685966, at \*2 (E.D. Cal. Nov. 26, 2014); *Troy v. Kehe Food Distributors, Inc.*, 276  
22 F.R.D. 642, 649 (W.D. Wash. 2011); *Lewis v. Wells Fargo Co.*, 669 F. Supp. 2d 1124, 1127  
23 (N.D. Cal. 2009); *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 467–68 (N.D. Cal. 2004);  
24 *Wynn v. National Broad. Co.*, 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002). In the first step,  
25 district courts may conditionally certify the proposed class based on consideration of the parties'  
26 pleadings and affidavits. *Leuthold*, 224 F.R.D. at 467. This determination is made under a  
27 "lenient standard"—requiring a preliminary determination that notice is appropriate and that "the  
28 putative class members were together the victims of a single decision, policy, or plan." *Lewis*,

1 669 F. Supp. 2d at 1127 (citing *Thiessen v. General Elec. Capital Corp.*, 267 F.3d 1095, 1102  
2 (10th Cir. 2001)). “The sole consequence of conditional certification is the sending of court-  
3 approved written notice to employees.” *Genesis Healthcare*, 133 S. Ct. at 1530 (citing  
4 *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171–72 (1989)). District courts have the  
5 authority to facilitate notice to potential plaintiffs and may set a deadline for plaintiffs to opt in.  
6 *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000) (citing  
7 *Hoffmann-La Roche*, 493 U.S. at 169). In the second step, after class members have opted in and  
8 discovery has taken place, the party opposing class certification may seek to decertify the class.  
9 *Leuthold*, 224 F.R.D. at 467.

10 Based on the parties’ pleadings and stipulation, the court is satisfied that conditional  
11 certification of the collective action is warranted. In addition, the court finds that good cause  
12 exists to approve the proposed notice of collective action, and that the parties have proposed a  
13 reasonable deadline for potential plaintiffs to opt in to the case.

14 Accordingly,

- 15 1. The parties’ stipulation for conditional certification of a collective action and for  
16 approval of facilitated class notice (Doc. No. 24) is granted;
- 17 2. The court conditionally certifies this FLSA collective action for a class comprising all  
18 current and former non-exempt employees of the Defendant who were paid overtime  
19 pursuant to the FLSA and received cash in lieu of health benefits payments within the  
20 same pay period, at any time since August 25, 2013;
- 21 3. The court approves the proposed class notice (Doc. No. 24-2); and
- 22 4. The parties are ordered to prepare and distribute the class notice to potential plaintiffs  
23 in a manner consistent with the parties’ stipulation.

24 IT IS SO ORDERED.

25 Dated: May 17, 2017

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UNITED STATES DISTRICT JUDGE