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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 FRAY MARCELINO LOPEZ  
12 RODRIGUEZ, et al.,

No. 2:08-cv-01971-MCE-KJM

13 Plaintiffs,

14 v.

MEMORANDUM AND ORDER

15 SGLC, INC., et al.,

16 Defendants.  
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18 Presently before the Court is Plaintiffs' Motion for  
19 Conditional Certification of Fair Labor Standards Act ("FLSA"),  
20 29 U.S.C. § 201 et seq., Collective Action, for Court-Authorized  
21 Notice, and for Disclosure of the Names and Addresses of  
22 Potential Opt-In Plaintiffs. Defendants filed a Statement of  
23 Non-Opposition. For the following reasons, Plaintiffs' Motion is  
24 granted.<sup>1</sup>

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<sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court ordered this matter submitted on the briefing. E.D.  
Cal. Local Rule 78-230(h).

1 **BACKGROUND**

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3 Plaintiffs are farm workers admitted to the United States  
4 from Mexico pursuant to 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and who  
5 were employed by Defendants under temporary "H-2A" visas.

6 Plaintiffs allege that Defendants violated the FLSA by failing to  
7 properly compensate Plaintiffs and by improperly shifting travel  
8 and other immigration-related costs to Plaintiffs.

9 Plaintiffs now seek Certification of an FLSA Collective  
10 Action through which the named Plaintiffs would represent "[a]ll  
11 workers employed by Defendants at any time between June 10, 2008,  
12 to December 31, 2008, either under the terms of an H-2A Job order  
13 or who performed tasks listed under the H-2A job order including  
14 picking and pruning work." Motion for Conditional Certification,  
15 1:13-16.

16 According to Plaintiffs, "Defendants' other employees worked  
17 under nearly identical employment contracts and clearance orders  
18 with identical pay provisions at the same farm locations, shared  
19 the same job titles and job descriptions, were paid through the  
20 same payroll system, and suffered the same illegal underpayment  
21 of wages as a result of Defendants' systematic FLSA violations."  
22 Id., 1:17-20.

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1        "The first step under the two-tiered approach considers  
2 whether the proposed class should be given notice of the action.  
3 This decision is based on the pleadings and affidavits submitted  
4 by the parties. The court makes this determination under a  
5 fairly lenient standard due to the limited amount of evidence  
6 before it...In the second step, the party opposing the  
7 certification may move to decertify the class once discovery is  
8 complete and the case is ready to be tried." Id., citing  
9 Leuthold v. Destination America, Inc., 224 F.R.D. 462, 467 (N.D.  
10 Cal. 2004).

11        "Courts have held that conditional certification requires  
12 only that 'plaintiffs make substantial allegations that the  
13 putative class members were subject to a single illegal policy,  
14 plan or decision.'" Id., quoting Leuthold at 468. Plaintiffs  
15 allege Defendants violated the FLSA by failing to pay Plaintiffs  
16 for all hours worked and shifting travel and immigration-related  
17 costs to Plaintiffs such that Plaintiffs' first week's wages fell  
18 well below the federal minimum wage. Additionally, Plaintiffs  
19 produced evidence that other workers desire to opt in. The Court  
20 finds that the farm laborers employed under the terms of the same  
21 employment contracts are similarly situated with respect to their  
22 pay provision and job requirements. Accordingly, this Court  
23 finds that with a substantial number of workers employed in  
24 nearly identical positions, alleging nearly identical types of  
25 wage violations, conditional certification of collective action  
26 is appropriate.

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## 2. Notice of Collective Action

"The FLSA requires the court to provide potential plaintiffs 'accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate.'" Id., quoting Hoffmann-La Roche II, 493 U.S. 165, 170 (1989). Additionally, "[i]n exercising the discretionary authority to oversee the notice-giving process, courts must be scrupulous to respect judicial neutrality. To that end, trial courts must take care to avoid even the appearance of judicial endorsement of the merits of the action." Hoffmann-La Roche II at 174.

The Court finds that Plaintiffs' proposed notice meets this standard with one exception. Accordingly, the proposed notice is approved on the condition that the section entitled "No Opinion Expressed as to Merits of Lawsuit" is moved to the first page of the notice immediately following the "Introduction" section. See Adams at 541.

## CONCLUSION

Plaintiffs' Motion for Conditional Certification of a FLSA Collective Action, for Court-Authorized Notice, and for Disclosure of the Names and Addresses of Potential Opt-in Plaintiffs is GRANTED.

1. The Court preliminarily certifies a FLSA collective action for:

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1 All workers employed by Defendants at any  
2 time between June 10, 2008 to December 31,  
3 2008, either under the terms of an H-2A Job  
4 Order or who performed tasks listed under the  
H-2A job order including picking and pruning  
work;

5 2. Directs that Defendants produce to Plaintiffs the names  
6 and addresses of all potential class members within two weeks of  
7 the date of this Court's order;

8 3. Approves an opt-in period of three months which shall  
9 commence after the complete production of all potential class  
10 members' names and addresses during which to distribute notice;

11 4. Approves the mailing and posting of the proposed notice,  
12 for distribution to potential class members which shall include  
13 notice of the Opt-in period as established in this Order; and

14 5. Directs that, for the three-month opt-in period,  
15 Defendants post a copy of the notice in Spanish and English in each  
16 trailer, house, camp, barrack or apartment used to house workers  
17 currently working at Defendants' farm labor contracting operations  
18 (including but not limited to the following locations: 51375 S.  
19 Netherlands Road, Clarksburg, CA 95612, 11275 Hwy 160, Courtland,  
20 CA 95615 and 14877 Racetrack Road, Walnut Grove, CA 95610).

21 IT IS SO ORDERED.

22 Dated: February 5, 2009

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25 MORRISON C. ENGLAND, JR.  
26 UNITED STATES DISTRICT JUDGE  
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