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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN OROZCO and JUAN OROZCO-
BRISENO, on behalf of themselves
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

ILLINOIS TOOL WORKS INC., a
corporation, and DOES 1 through 50
Inclusive,

Defendant.

No. 2:14-cv-02113-MCE-EFB

MEMORANDUM AND ORDER

In this action Plaintiffs challenge the sufficiency of the wage statements Defendant provided to certain of its employees and Defendant’s meal break policies at one of its California plants. On February 17, 2017, this Court certified Plaintiffs’ two proposed classes based on these two claims. ECF No. 99. Plaintiffs have now moved for approval of their proposed form of class notice. ECF No. 100.¹

The parties have agreed on the form of class notice in all respects except the use of opt-out postcards. Plaintiffs “object[] to the use of a postcard,” and if postcards are to be included, they request the following two sentences be included on those cards:

¹ Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs in accordance with Local Rule 230(g).

1 I understand that if I send in this postcard I will not receive
2 any money from this case. I understand that by opting out I
3 will have to file a claim with the Labor Commissioner or hire
my own attorney at my own expense to file a lawsuit on my
behalf in order to prosecute my claims.

4 Pls.' Reply, ECF No. 103, at 2.

5 Plaintiffs' original proposed class notice included reference to an opt-out
6 postcard,² but Plaintiffs now oppose their use. Pls.' Reply, at 2. Plaintiffs explain this
7 change as follows: "While the initial motion contemplated using a postcard, Plaintiff[s]
8 further researched the issue and found opinions by California District Courts holding that
9 postcards can cause class members to be confused and encourage them to unwittingly
10 opt out of class actions." *Id.* While it is true that use of opt-out postcards can be
11 confusing, see, e.g., Stafford v. Brink's, Inc., 2016 WL 6583046, at * 2 (C.D. Cal. Mar. 8,
12 2016) ("[T]he Court is concerned that the opt-out postcard may be confused for the
13 settlement claim forms that Defendant previously mailed"), Plaintiffs have provided
14 no explanation for why they would be confusing here. Indeed, Plaintiffs explain their
15 change of heart as motivated not by any specific concern of confusion, but only by their
16 discovery of cases saying that postcards can be confusing. The cases Plaintiffs cite,
17 however, do not stand for any general proposition that opt-out postcards are per se
18 confusing. Indeed the Federal Judicial Center's Manual for Complex Litigation states
19 that "[a] simple and clear form for opting out is often included" with notices of class
20 actions. Manual for Complex Litigation (Fourth) § 21.311, at 289 (2004).

21 The Court finds that, here, opt-out postcards will likely lessen confusion, not
22 create it. The agreed-upon class notice provides two separate forms for the two
23 separate certified classes. See Def.'s Opp'n, at 1–3. However, 23 of the 185 class
24 members belong to both classes. Given this overlap between the two classes, greater
25 clarity will result from including opt-out postcards that identify the relevant class an
26 individual is opting out of. The opt-out postcards Defendant provides clearly articulate

27 ² Plaintiffs' Motion included a proposed form of class notice, which had been sent to Defendant's
28 counsel a week prior without objection. Mot. for Approval of Notice of Class Action, at 3. The parties
subsequently corresponded and agreed to several modifications. Def.'s Opp'n, ECF No. 102, at 2–3.

1 which class the individual wants to not be a part of: “By this postcard, I am electing not
2 to participate in the above-referenced Class Action, and to opt out of the Meal Period
3 Class.” or “By this postcard, I am electing not to participate in the above-referenced
4 Class Action, and to opt out of the Wage Statement Class.”

5 Finally, the Court turns to the proposed language that Plaintiffs request be
6 included on any opt-out postcard. Notice provided to class members should “contain an
7 adequate description of the proceedings written in objective, neutral terms, that, insofar
8 as possible, may be understood by the average absentee class member.” Retiree
9 Support Grp. v. Contra Costa County, No. 12-cv-00944-JST, 2016 WL 4080294, at *6
10 (N.D. Cal. July 29, 2016) (quoting In re Nissan Motor Corp. Antitrust Litig., 552 F.2d
11 1088, 1104 (5th Cir. 1977)). Plaintiffs’ proposed language is not objective or neutral, but
12 misleading and likely to unduly influence class members’ decisions of whether to opt-out
13 of the class. The language heavily implies that class members are guaranteed some
14 amount of money (“I will not receive any money”) and that class members will be
15 required to take some affirmative action if they opt out (“I will have to file a claim with the
16 Labor Commissioner or hire my own attorney at my own expense”). Thus, the Court
17 rejects Plaintiffs’ proposed language.

18 Accordingly, (1) the Court approves the class notice provided by Defendant, Hill
19 Decl., ECF No. 102-1, Exs. 1–2, which reflects both the parties’ agreement and the use
20 of opt-out postcards without Plaintiffs’ proposed language; (2) Defendant shall disclose
21 all class members’ contact information to Class Counsel; and (3) the Class Notice shall
22 be mailed within thirty (30) days

23 IT IS SO ORDERED.

24 Dated: April 28, 2017

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26 
27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE