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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 THOMAS ZABOROWSKI, *et. al*, on behalf of  
9 themselves and a putative class,

No. C 12-05109 SI

10 Plaintiffs,

**ORDER RE FLSA COLLECTIVE  
ACTION NOTICE DOCUMENTS**

11 v.

12 MHN GOVERNMENT SERVICES, INC. and  
13 MANAGED HEALTH NETWORK, INC.,

14 Defendants.  
\_\_\_\_\_ /

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16 On May 1, 2013, the Court granted defendants' motion to stay the case pending its appeal of the  
17 Arbitration Order, to become effective once the conditionally certified FLSA class receives its  
18 notification and invitation to opt into the case. The Court ordered the parties to jointly file a proposed  
19 notice. Although it appears there was a significant attempt to reach an agreement on the notices, the  
20 parties were unable to agree on all aspects of the notice, and requested that the Court resolve these  
21 differences. The Court will address each issue in turn.

22  
23 **1. Notice Procedure**

24 The parties agreed that the notification costs will be borne by plaintiffs, the notices will be  
25 distributed by mail and email, and the notification period will be 75 days. The parties disagreed about  
26 whether the contact information of the putative class, the Military and Family Life Consultants  
27 ("MFLCs"), should be produced to plaintiffs or a third party.

28 The Court has already ordered that defendants produce the contact information to plaintiffs. *See*

1 Docket No. 80 at 6. In case there is any confusion, the Court again ORDERS defendants to produce to  
2 plaintiffs in Microsoft Excel or comparable format the names, all known addresses, all known e-mail  
3 addresses, and all known telephone numbers of all known MFLCs, **by no later than June 21, 2013.**

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5 **2. Heading and Caption**

6 Defendants' proposed notice uses a caption similar to a court document. Plaintiffs' simpler  
7 caption merely states the name of the court. The Court prefers defendants' proposed caption, which  
8 makes the notice look more like an official court document, and less like an advertisement.

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10 **3. Footer**

11 Defendants' proposed notice includes a footer that states, "NOTICE OF CONDITIONAL  
12 CERTIFICATION CASE NO. 12-CV-05109-SI." Plaintiffs' proposed notice includes a footer that  
13 states, "For more information, visit [www.MFLC-OT.com](http://www.MFLC-OT.com) or call toll free XXX-XXX-XXXX." The  
14 Court finds that both of these footers provide useful information to the MFL Consultants. Therefore,  
15 the footer shall include both parties' proposed footers, with defendants' footer above plaintiffs' footer.

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17 **4. Description of Defendants' Position**

18 In § 3 of the notice, defendants' proposed explanation of their position is: "MHNGS denies the  
19 Plaintiffs' allegations and contends that MFLCs were properly classified as independent contractors and  
20 are not entitled to overtime pay under the FLSA, *and that, even if they were not properly classified as*  
21 *independent contractors, they were exempt from overtime.*" Plaintiffs argue that the emphasized clause  
22 should be redacted, because it is redundant. The Court finds that the additional language is not  
23 redundant or duplicative; it adds extra information, and therefore should be included.

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25 **5. Joining the Lawsuit**

26 Plaintiffs' proposed explanation of joining the lawsuit includes the following explanation: "If  
27 you have provided services as an MFLC independent contractor to MHNGS *at any time* from October  
28 2, 2009 to the present, you may join this lawsuit. *You can join by mailing, faxing, or emailing the*

1 enclosed green “Consent to Join” form to the Plaintiffs’ attorneys before the deadline.” Defendants  
2 object to the emphasized words, arguing that they are duplicative and unnecessary. The Court finds that  
3 plaintiffs’ proposed language provides useful information to the MFLCs, and therefore should be  
4 included.

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6 **6. Evidence Preservation**

7 The parties disagree on how to communicate to the MFLCs regarding evidence preservation.  
8 Defendants’ proposed notice goes into great depth on the topic, and plaintiffs argue that this section  
9 could be overwhelming or intimidating to lay persons. However, defendants argue that plaintiffs’  
10 proposed notice does not provide enough information to the MFLCs on this important topic. The Court  
11 finds that the following explanation sufficiently addresses these competing concerns: “If you join this  
12 lawsuit, you may be required to respond to written questions, produce documents you have related to  
13 the case, sit for a deposition and/or testify in court – in which case Plaintiffs’ counsel will assist you.  
14 You should preserve evidence relevant to this lawsuit.” No additional explanation is necessary.

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16 **7. Information Regarding Defendants’ Counsel**

17 Plaintiffs argue that inclusion of MHN’s counsel’s information will be confusing and redundant.  
18 The Court disagrees, and finds that it will provide useful information to the MFLCs as they decide  
19 whether or not to opt in to the lawsuit.

20 Plaintiffs argue that the MFLCs should be warned of the risks of contacting defendants’ counsel.  
21 The Court agrees. However, plaintiffs’ proposed language should be modified as follows: “You are  
22 free to provide information and evidence to either side in the lawsuit – to the Plaintiffs’ counsel  
23 representing MFLCs or to MHN and its counsel. Be aware that MHN’s counsel solely represents MHN  
24 – they do not represent your interests.”

25  
26 **8. Information Regarding the Status of the Lawsuit**

27 The parties’ notices differ in the information they provide to the MFLCs regarding the status of  
28 the case. The Court finds that plaintiffs’ version is preferable, because it is more concise and more

1 accurate.

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3 **9. Consent to Join Form**

4 Defendants object to the bottom portion of plaintiffs' Consent to Join Form, which provides  
5 instructions on when and how to submit the form. The Court finds that this information will be helpful  
6 to the MFLCs, and should be included. Therefore, it approves plaintiffs' version of the Consent to Join  
7 Form.

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9 **10. Privileged Attorney-Client Communication Notice**

10 Plaintiffs' version of the Privileged Attorney-Client Communication Notice includes a section  
11 at the bottom entitled "Additional Information," which has a bulleted list of information. The Court  
12 finds that this information is duplicative and redundant with the information provided in the notice. The  
13 Court finds that the entire "Additional Information" section should be removed, but it otherwise  
14 approves of plaintiffs' version of the Privileged Attorney-Client Communication Notice.

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16 Plaintiffs are ORDERED to disseminate the notices to the MFLCs in accordance with this order  
17 **by no later than July 12, 2013.**

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19 **IT IS SO ORDERED.**

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21 Dated: June 14, 2013

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SUSAN ILLSTON  
United States District Judge