

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAMICHAEL DEATRICK,  
Plaintiff,

v.

SECURITAS SECURITY SERVICES USA,  
INC.,  
Defendant.

Case No. 13-cv-05016-JST

**ORDER GRANTING MOTION FOR  
CONDITIONAL CERTIFICATION OF  
COLLECTIVE ACTION AND  
APPROVING ISSUANCE OF NOTICE**

Re: ECF No. 45

Plaintiff Michael Deatrck moves to conditionally certify a collective action pursuant to the Fair Labor Standards Act (“FLSA”). Defendant Securitas Services USA, Inc. (“Securitas”) opposes the motion. After considering the moving papers, the arguments of the parties at the hearing held on September 18, 2014, and good cause appearing, the Court will grant the motion and approve issuance of notice to potential class members.

**I. BACKGROUND****A. The Parties and Claims**

Plaintiff Michael Deatrck is a former employee of Defendant Securitas, a national provider of security services. ECF No. 42. Deatrck alleges that Securitas failed to pay him and other security guards the full overtime compensation they were owed because Securitas does not take into account in its overtime calculations the payments that security guards receive in connection with Securitas’s “Vacation Pay Plan” (“the Plan”). *Id.* Deatrck alleges that Securitas improperly treated these payments as vacation payments under the FLSA, even though such payments were, in practice, retention or productivity bonuses. *Id.*

Deatrck filed the present action on October 28, 2013, seeking to represent a nationwide collective of security guards employed by Securitas under the FLSA as well as current and former

1 California employees in a traditional class action. ECF No. 1. In the currently operative Second  
2 Amended Complaint, ECF No. 42, Deatrick asserts a claim under the FLSA for failure to pay  
3 overtime wages against Securitas on his own behalf and on behalf of a putative class of Securitas  
4 employees who were subject to the Plan. Additionally, Deatrick asserts the following claims  
5 under California law on his own behalf and on behalf of two putative classes of Securitas  
6 employees who were employed by Securitas in California: (1) a claim for failure to pay overtime  
7 wages in violation of California Labor Code sections 510 and 1198; (2) a claim for inaccurate  
8 wage statements in violation of California Labor Code sections 226 and 1174; (3) a claim for  
9 waiting time penalties under California Labor Code section 203 for failure to pay the wages owed  
10 upon termination; (4) a claim under California's Unfair Competition Law; and (5) a claim under  
11 California's Private Attorneys General Act.

12 **B. Facts**

13 Securitas employs around 70,000 to 72,000 security guards throughout the United States.  
14 ECF No. 45-5. Approximately 60,000 are employed full-time. Id. While employed by Securitas  
15 as a security guard, Plaintiff received "vacation pay" through the Securitas USA Vacation Pay  
16 Plan, which applies to "Contract Services Employees" in California, Colorado, Illinois, Maine,  
17 Massachusetts and Nebraska. ECF Nos. 45-6, 45-4. The "Contract Service Employee" category  
18 encompasses security guards with a variety of titles. ECF Nos. 42, 43. Under the Plan, eligible  
19 Contract Services Employees do not receive pay while on vacation. ECF Nos. 45-4, 31-2 Ex. T,  
20 U, V. Instead, annual payments are calculated using a non-discretionary formula based on (1) the  
21 employee's years of service; (2) the number of hours worked in the immediately preceding year;  
22 and (3) the employee's most frequent rate of pay during that year. ECF Nos. 45-4, 31-2 Ex. T, U,  
23 V. A Contract Services Employee must work a minimum of 1560 hours in the preceding year to  
24 receive a payment. ECF No. 45-4. The annual payment is forfeited if a Contract Services  
25 Employee leaves Securitas for any reason before his employment anniversary. ECF Nos. 45-4,  
26 31-2 Ex. T, U, V. These terms may vary depending on the existence of a client contract or  
27 collective bargaining agreement. ECF No. 45-4.

28 In its order denying Defendant's motion for summary judgment, the Court concluded that

“based on their substance, the payments at issue are non-discretionary bonuses, which must be factored into the regular rate calculation.” ECF No. 38. In its pleadings, Securitas has stated that it does not include this “vacation pay” in the regular rates of its employees when calculating overtime pay. ECF No. 43.

In states other than California, Colorado, Illinois, Maine, Massachusetts and Nebraska, Contract Services Employees receive payments under a Vacation Pay Policy (“the Policy”) that, although it is funded differently, operates in the same way as the Plan. ECF Nos. 45-3, 45-4, 45-5.

### C. Jurisdiction

The Court has jurisdiction over this FLSA collective action under 28 U.S.C. § 1331.

## II. LEGAL STANDARD

The Fair Labor Standards Act provides that actions against employers for violation of its overtime requirements may be brought “in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b). “Under [the] FLSA, a potential plaintiff does not benefit from (and is not bound by) a judgment unless he or she affirmatively opts in to the lawsuit. This rule is in contrast to a typical Rule 23 class action, where a potential plaintiff must opt out to be excluded from the class.” Busk v. Integrity Staffing Solutions, Inc., 713 F.3d 525, 528 (9th Cir. 2013) (internal citations and quotation marks omitted).

Collective actions allow aggrieved employees “the advantage of lower individual costs to vindicate rights by the pooling of resources.” Hoffman-LaRoche Inc. v. Sperling, 493 U.S. 165, 170 (1989) (discussing collective action provision, 29 U.S.C. § 216(b), in the context of Age Discrimination in Employment Act claims). The judicial system also benefits from “the efficient resolution in one proceeding of common issues of law and fact arising from the same” unlawful activity. Id. These benefits “depend on employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate.” Id. See also McElmurry v. U.S. Bank N.A., 495 F.3d 1136, 1139 (9th Cir. 2007). Courts have authority to manage this process to ensure that employees receive notice in an “orderly, sensible” manner. Hoffmann-LaRoche v. Sperling, 493 U.S. 165, 170 (1989).

Certification requires a showing that the potential class members are “similarly situated.” Lewis v. Wells Fargo & Co., 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009) (citation omitted). A majority of courts, including district courts in this circuit, follow a two-step process for determining whether a class is “similarly situated.” See Harris v. Vector Marketing Corp., 753 F. Supp. 2d 996, 1003 (2010); Lewis, 669 F. Supp. 2d at 1127.

At the first step, alternatively called “the notice stage” and “conditional certification,” the court considers whether the plaintiff has submitted sufficient evidence to justify the conditional certification of the class and the sending of notice of the action to potential class members. Lewis, 669 F. Supp. 2d at 1127. In making this determination, “the court requires little more than substantial allegations, supported by declarations or discovery, that the putative class members were together the victims of a single decision, policy, or plan.” Id. (internal quotation marks omitted). “Because the court generally has a limited amount of evidence before it, the initial determination is usually made under a fairly lenient standard and typically results in conditional class certification.” Leuthold v. Destination Am., Inc., 224 F.R.D. 462, 467 (N.D. Cal. 2004); see also Lewis, 669 F. Supp. 2d at 1127.

Only after notice is sent and discovery has closed do district courts move to the second step, in which the court reevaluates the collective action under a stricter standard, usually prompted by a motion for decertification by the defendant. Lewis, 669 F. Supp. 2d at 1127. At this point, the court considers several factors, “including the disparate factual and employment settings of the individual plaintiffs; the various defenses available to the defendant which appear to be individual to each plaintiff; fairness and procedural considerations; and whether the plaintiffs made any required filings before instituting suit.” Id.

### **III. DISCUSSION**

#### **A. Conditional Certification**

Plaintiff asks the Court to conditionally certify the putative FLSA collective action at the notice stage; order Defendant to produce a class list to Plaintiff’s counsel; direct dissemination of notice of the pendency of this action; and establish a 90-day period for affected persons to opt in to the FLSA collective action. ECF No. 45. Plaintiff argues that he has satisfied the lenient standard

1 applicable at this stage by submitting detailed allegations in his Second Amended Complaint and  
2 by demonstrating through Securitas documents and testimony that potential class members exist  
3 who are “similarly situated” to him. ECF No. 45. He argues that the putative class members,  
4 whether they were subject to the Plan or the Policy, were “victims of a single decision, policy or  
5 plan” — Securitas’s practice of paying security guards a non-discretionary bonus, improperly  
6 labeled as “vacation pay,” and failing to include that bonus in the regular rate for calculation of  
7 overtime pay. ECF No. 45.

8 In his motion, Plaintiff proposed the following class definition:

9 All persons throughout the United States, including its territories  
10 and possessions, who are or were employed by Securitas Security  
11 Services USA, Inc., and received lump-sum vacation pay at any time  
12 since October 28, 2010.

13 ECF No. 45.

14 Defendant Securitas “does not necessarily contest that conditionally certifying a more  
15 narrowly defined class . . . may be appropriate under the lenient standards governing conditional  
16 certification of a collective action,” but opposes Plaintiff’s motion on two principal grounds. ECF  
17 No. 46. First, Securitas argues that Plaintiff’s proposed class is overbroad because it includes  
18 (1) employees who are not “Contract Services Employees” and therefore have different vacation  
19 benefits and payout terms and (2) employees who receive vacation benefits under a client contract  
20 or collective bargaining agreement. ECF No. 46. Second, Securitas argues that employees who  
21 have signed a bilateral dispute resolution agreement (“DRA”) requiring both parties to resolve  
22 employment-related disputes through arbitration, are not similarly situated to Deatrck, who opted  
23 out of the agreement. ECF No. 46.

24 Turning to Securitas’s first argument, Deatrck acknowledges on reply that the term “lump-  
25 sum vacation pay” could be interpreted to encompass cash-ins of accrued benefits by  
26 administrative employees or others who are entitled to paid vacation, and that such employees  
27 should not be part of a collective action. ECF No. 48. Plaintiff therefore proposes the following  
28 revised definition:

All persons throughout the United States, including its territories  
and possessions, who are or were employed by Securitas Security  
Services USA, Inc., who worked under policies: (1) that did not

1 provide pay during vacation; (2) that paid lump-sum vacation pay on  
2 the anniversary of employment; and (3) that required employees to  
3 be employed on their anniversaries of employment to receive  
vacation pay. Counsel for Securitas, any Judge to whom this case is  
assigned, as well as their respective staffs and immediate families  
would be specifically excluded from the class.

4 ECF No. 48. Plaintiff does not agree that employees covered by collective bargaining agreements  
5 should be uniformly excluded from the class, but points out that if a client contract or collective  
6 bargaining agreement provides for benefits different from those at issue in this case, employees  
7 receiving those benefits would not be part of the revised proposed class. ECF No. 48. With  
8 respect to Securitas's second argument, concerning the inclusion of potential class members who  
9 have signed dispute resolution agreements, Deatrick contends that arbitration agreements are  
10 irrelevant to conditional certification; at this stage, the only question is whether the proposed  
11 plaintiffs are similarly situated "with respect to their allegations that the law has been violated."  
12 Young v. Cooper Cameron Corp., 229 F.R.D. 50 (S.D.N.Y. 2005). ECF No. 48.

13 Here, Plaintiff has met his burden to show that conditional certification is appropriate  
14 under the lenient standard applicable at this first stage by presenting substantial allegations and  
15 evidence in the form of Securitas documents and testimony that the putative class members, as  
16 described in Plaintiff's revised class definition, were subject to the same "vacation pay" policies.  
17 The Court concludes that Defendant's arguments concerning the dispute resolution agreement  
18 have little to no bearing at this point in the litigation because they relate to whether "disparate  
19 factual and employment settings" exist with respect to the putative class members and to "the  
20 various defenses available to the defendant with respect to each plaintiff." Lewis, 669 F. Supp. 2d  
21 at 1127. These inquiries are reserved for the second stage of the certification process. Id. The  
22 Court will consider these arguments if and when Defendant moves to decertify. See Leuthold, 224  
23 F.R.D. at 467; Lewis, 669 F. Supp. 2d at 1128.

24 For the foregoing reasons, the Court GRANTS Plaintiff's motion and hereby conditionally  
25 certifies a FLSA collective action defined as:

26 All persons throughout the United States, including its territories  
27 and possessions, who are or were employed by Securitas Security  
28 Services USA, Inc., who worked under policies: (1) that did not  
provide pay during vacation; (2) that paid lump-sum vacation pay on  
the anniversary of employment; and (3) that required employees to  
be employed on their anniversaries of employment to receive

vacation pay. Counsel for Securitas, any Judge to whom this case is assigned, as well as their respective staffs and immediate families would be specifically excluded from the class.

**B. Notice and Consent Forms**

Plaintiff requests that the Court approve the notice and consent forms attached Exhibits 1 and 2 to the Proposed Order filed with his motion. See ECF Nos. 45-9, 45-10. Defendant's proposed changes to the notice and consent forms appear at the conclusion of its motion. ECF No. 46.

The Court has concluded that conditional certification is appropriate. Accordingly, Plaintiff may issue notice to the proposed class. See Kress v. PricewaterhouseCoopers, LLP, 263 F.R.D. 623, 628 (E.D. Cal. 2009) ("If the court finds initial certification appropriate, it may order notice to be delivered to potential plaintiffs.").

At the hearing on this motion, the Court stated its intent to grant Plaintiff's motion for conditional certification, but stated several concerns with Plaintiff's proposed notice and consent forms. Following the hearing, Plaintiff and Defendant also submitted post-hearing briefing on the appropriate form of notice. The Court has reviewed the parties' competing proposals, and concludes that Plaintiff's is the more appropriate. Accordingly, the Court APPROVES Plaintiff's proposed Form of Notice, which is attached hereto as Exhibit 1.

Following the hearing, Plaintiff and Defendant also submitted an agreed-upon Consent to Join form, Bulletin Board/Workplace Notice, and Reminder Postcard. These items, which are attached to this Order as Exhibits 2, 3 and 4, respectively, are also APPROVED.

**C. Notice Plan**

To facilitate notice, Plaintiff requests that the Court order Defendant to produce the names, all known addresses, all known telephone numbers, and Social Security numbers of all security officers who have received lump-sum vacation pay at any time since October 28, 2010 pursuant to either the Plan or the Policy at issue. ECF Nos. 45, 45-8. Plaintiff further requests that the Court establish a 90-day period for affected persons to opt-in to the FLSA collective action. ECF Nos. 45, 45-8. Plaintiff proposes a notice plan involving initial notification by mail, the issuance of reminder postcards, the use of telephone numbers to facilitate tracing potential class members if mailings are returned as undeliverable, notice via internet and social media, and workplace posting

1 in lieu of or in addition to internet and social media posting. ECF Nos. 45, 48. Plaintiff has  
2 agreed that that the Court need not order Defendant to produce email addresses because Defendant  
3 has represented to the Court that Securitas does not collect or retain employee email addresses.  
4 ECF Nos. 46, 48.

5 Defendant opposes the use of all forms of notice beyond regular mail as approved by the  
6 Supreme Court in Hoffmann-La Roche, 493 U.S. at 170, arguing that the proposed notice plan is  
7 overbroad. ECF No. 46. Defendant argues that information beyond employees' names and  
8 mailing addresses should be withheld to protect employees' privacy and to prevent improper  
9 solicitation by telephone. ECF No. 46. Defendant points out that Plaintiff has articulated no need  
10 for employees' social security numbers. ECF No. 46. Defendant further objects to (1) the use of  
11 reminder postcards; (2) Internet and social media posting, which could be misleading or  
12 confusing; and (3) disclosure of private information to Plaintiff, rather than the third party  
13 administrator responsible for implementing the notice plan.

14 Courts routinely require defendants to produce the contact information of putative class  
15 members. See, e.g., Hoffmann-LaRoche, 493 U.S. at 170 (holding that district courts have the  
16 authority to compel the production of contact information of employees for purposes of facilitating  
17 notice in FLSA collective actions). The Court therefore rejects Defendant Securitas's suggestion  
18 that disclosure of this information to Plaintiff violates employees' privacy rights. The Court is  
19 persuaded that notice by mail, including the issuance of reminder postcards and telephone  
20 numbers to facilitate tracing potential class members if mailings are returned as undeliverable, is  
21 the most appropriate method to effectuate notice in this case.

22 The Court will order Securitas to produce a list of potential class members, including the  
23 full name, last known address, and telephone number of each.

#### 24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court orders as follows:

26 1. Plaintiff's motion for conditional certification of the FLSA collective action is  
27 GRANTED. The class defined as:

28 All persons throughout the United States, including its territories  
and possessions, who are or were employed by Securitas Security



Services USA, Inc., who worked under policies: (1) that did not provide pay during vacation; (2) that paid lump-sum vacation pay on the anniversary of employment; and (3) that required employees to be employed on their anniversaries of employment to receive vacation pay. Counsel for Securitas, any Judge to whom this case is assigned, as well as their respective staffs and immediate families would be specifically excluded from the class.

is hereby conditionally certified, 29 U.S.C. § 216(b).

2. The Court finds that notice should be sent to all potential collective action plaintiffs, as described above.

3. The Court orders Securitas to produce to Plaintiff in Microsoft Excel or a comparable format ("the Class List"), within 14 days of the date of this Order, the names, all known addresses, and all known telephone numbers of all security officers known as of the date of this Order who have received lump-sum vacation pay at any time since October 28, 2010, pursuant to (a) the Securitas USA Vacation Pay Plan, as amended and restated effective January 1, 2007 (the "Plan") and/or (b) the Vacation Pay Policy, Security Officers and Other Employees Performing Services Under Client Contracts.

4. The Court approves Plaintiff's revised Form of Notice, and the parties' jointly proposed Consent to Join form, Bulletin Board/Workplace Notice, and Reminder Postcard.

5. Within ten days of receipt by Plaintiff of the Class List described in paragraph 3, and after first verifying and updating the addresses through the National Change of Address database, Plaintiff shall mail copies of the Notices and Consent to Join forms to all individuals on the Class List.

6. For any mailed Class Notices that are returned by the U.S. Postal Services as undeliverable as addressed, Plaintiff will perform an address trace process in order to obtain a more current mailing address. For any records where the address trace produces a potentially more current mailing address, Plaintiff will print and mail a Notice and Consent to the new address.

7. Prior to the response deadline, Plaintiff shall send a reminder postcard to all individuals that have not filed a Consent to Join form.

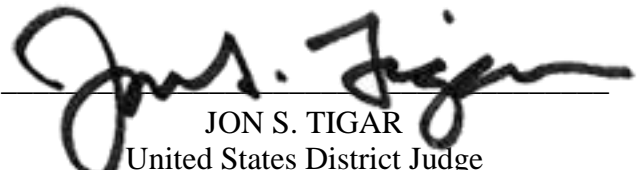
8. Plaintiff shall establish a website repository containing printer-friendly versions of the Class Notices and Consent to Join forms, any other documents the parties wish to make

1 available, and contact information for the notice administrator and Plaintiff's counsel. A Consent  
2 to Join form may be completed online, so long as the online form provides a means by which the  
3 individual signifies his or her assent to the statements listed on the form comparable to signature,  
4 such as by checking a box on a web page.

5 9. Individuals shall be permitted to file Consent to Join forms postmarked or  
6 completed online within 90 days after the date of first mailing set forth in paragraph 5, above.

7 **IT IS SO ORDERED.**

8 Dated: October 20, 2014

9   
10 JON S. TIGAR  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28