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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AARON SENNE, et al.,  
Plaintiffs,

v.

KANSAS CITY ROYALS BASEBALL  
CORP., et al.,  
Defendants.

Case No. 14-cv-00608-JCS

**ORDER GRANTING MOTION FOR  
CONDITIONAL CERTIFICATION  
PURSUANT TO THE FAIR LABOR  
STANDARDS ACT**

Re: Dkt. No. 414

**I. INTRODUCTION**

Plaintiffs in this wage and hour case are former minor league baseball players who assert claims under state law and the federal Fair Labor Standards Act (“FLSA”) against the Office of the Commissioner of Baseball, doing business as Major League Baseball (“MLB”), its member franchises,<sup>1</sup> and former Commissioner Allan H. “Bud” Selig. Presently before the Court is Plaintiffs’ Motion for Notice to the Class and Conditional Certification Pursuant to the Fair Labor Standards Act (“the Motion”). A hearing on the Motion was held on Friday, October 2, 2015 at 9:30 a.m. For the reasons stated below, the Motion is GRANTED.<sup>2</sup>

**II. BACKGROUND**

**A. Procedural Background**

This action was filed on February 7, 2014. Docket No. 1. After Defendants filed motions to dismiss for lack of personal jurisdiction and to transfer the action to Florida (“the Jurisdiction

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<sup>1</sup> Although Plaintiffs sued all thirty member franchises, the Court dismissed eight of the franchises without prejudice for lack of personal jurisdiction. *See* Docket No. 379. Hereinafter, the Court refers to the franchises that remain in this action as “the Franchise Defendants.”

<sup>2</sup> The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

1 and Venue Motions”), the Court granted Plaintiffs’ request for leave to conduct jurisdictional and  
2 venue discovery. Docket No. 144. Subsequently, the parties entered into a stipulation (“the  
3 Stipulation”) agreeing to toll the statute of limitations under the FLSA applicable to all current or  
4 former similarly-situated minor leaguers from July 11, 2014 until 45 days after the Court’s  
5 resolution of the Jurisdiction and Venue Motions. Docket No. 230. In return for Defendants’  
6 agreement to toll the FLSA limitations period, Plaintiffs agreed that they would not bring a motion  
7 for conditional certification under the FLSA or request the contact information for similarly-  
8 situated minor leaguers before the Court’s resolution of the Jurisdiction and Venue Motions. *Id.*  
9 The Stipulation was signed and entered as an Order of the Court on October 1, 2014. Docket No.  
10 231.

11 On May 20, 2015, the undersigned ruled on the Jurisdiction and Venue Motions. On June  
12 26, 2015, Plaintiffs filed the instant motion.

13 **B. The Major League Rules and the Uniform Players Contract**

14 The Major League Rules (“MLR” or “MLB Rules”) give MLB and the Major League  
15 franchises extensive control over minor league baseball, establishing rules for, *inter alia*, the “farm  
16 system” under which minor league players are selected and advance, the minor league playing  
17 schedule, and travel. *See* MLR 4 (first-year player draft), 32(b) (minor league playing schedule),  
18 57 (travel standards). Under the MLB Rules, the Major League franchises “have the sole right to  
19 select and employ, and the sole obligation to compensate and provide benefits for, the managers,  
20 coaches, instructors and trainers” for the minor league clubs. MLR 56(g)(4). The Major League  
21 franchises also are obligated to pay the salaries and benefits of the minor league players. MLR  
22 56(g)(5)(A).

23 In addition, the MLB Rules provide that “[t]o preserve morale among Minor League  
24 players and to produce the similarity of conditions necessary for keen competition,” all minor  
25 league players must sign the Minor League Uniform Player Contract (“UPC”). MLR 3(b)(2); *see*  
26 *also* MLR 3(d) (“The player’s refusal to sign a formal contract shall disqualify the player from  
27 playing with the contracting Club or entering the service of any Major or Minor League Club  
28 unless the player is released or assigned”). Under MLR 56(g)(1), the minor league players “shall

1 be under contract exclusively to the Major League Club” and the Minor League Club “shall  
2 respect, be bound by, abide by and not interfere with all contracts between the Major League Club  
3 and the players that it has provided to the Minor League Club.”<sup>3</sup> MLR 56(g)(1). No Club may  
4 enter into a contract with a minor league player that differs from the UPC without the written  
5 approval of the Commissioner. MLR 3(b)(2).

6 The term of the UPC for a minor league player who has not previously entered into a  
7 contract with an MLB club is seven years. MLR 3(b)(2). Where the minor league player has  
8 previously entered into a contract with an MLB club, the UPC may be for a shorter period. *Id.*  
9 Under the MLR, all first-year minor league players earn the same wages.<sup>4</sup> MLR 3(c)(2). The  
10 UPC with a first-year minor league player may include no special covenants except the ones  
11 specifically permitted under MLR 3(c)(4), which include certain bonus payments and payments  
12 under MLB’s College Scholarship Plan. MLR 3(c)(4). After the first year, “[t]he [minor league  
13 player] and Club shall attempt annually to negotiate an applicable monthly salary rate for the next  
14 subsequent championship playing season” covered by the UPC. MLR Attachment 3, UPC ¶  
15 VII.A. If they “do not reach agreement, then the Player’s monthly salary rate for the next  
16 championship playing season shall be set by the Club, but shall not be less than eighty percent  
17 (80%) of the monthly salary rate” paid in the previous season.<sup>5</sup> *Id.*

18 Under the UPC, minor league players are paid only during the championship season. In  
19 particular, the UPC states, in part, as follows:

20 The monthly payments under this Minor League Uniform Player  
21 Contract will be made in two (2) semi-monthly installments on the  
22 15th day and last day of the month after the beginning of Club's  
23 championship playing season. The obligation to make such  
payments to Player shall start with the beginning of Club's  
championship playing season or such later date as Player reports for

24 <sup>3</sup> The Franchise Defendants are Major League Clubs.

25 <sup>4</sup> Plaintiffs present evidence that all first-year minor leaguers earn approximately \$1,100/month  
26 during the championship season. *Id.* at 7 (citing Declaration of Bobby Pouya in Support of  
27 Plaintiffs’ Motion for Notice to the Class and Conditional Certification Pursuant to the Fair Labor  
Standards Act (“Pouya Motion Decl.”), Ex. B (2013 Miami Marlins Minor League Player Guide);  
Player Declarations at 3-4).

28 <sup>5</sup> Plaintiffs allege that in reality, no negotiations occur and that instead, “Defendants unilaterally  
determine non-first-year wages in annual, non-negotiable addenda to the UPC.” *Id.* at 7 (citing  
SCAC ¶ 179).

1 championship season play. The obligation to make such payments  
2 shall end with the termination of Club’s championship playing  
3 season and any official play-off series in which Club shall  
participate, or upon the termination of this Minor League Uniform  
Player Contract, whichever shall occur first.

4 MLR Attachment 3, UPC ¶ VII.B.

5 Despite the fact that “salary payments are to be made only during the actual championship  
6 playing season,” the UPC obligates minor league players to “perform professional services on a  
7 calendar year basis.” *Id.* Specifically, minor league players agree that their “duties and  
8 obligations . . . continue in full force and effect throughout the calendar year, including Club’s  
9 championship playing season, Club’s training season, Club’s exhibition games, Club’s  
10 instructional, post-season training or winter league games, any official play-off series, any other  
11 official post-season series in which Club shall be required to participate, any other game or games  
12 in the receipts of which Player may be entitled to a share, and any remaining portions of the  
13 calendar year.” *Id.*, UPC ¶ VI.B. The UPC also provides that minor league players may be  
14 required to participate in exhibition games and “maintain [their] playing condition and weight  
15 during the off-season and to report for practice and conditioning at such times and places as the  
16 Club may determine.” *Id.*, ¶ VI.D. Conversely, the UPC prohibits minor league players from  
17 playing baseball “other than for the Club, without the written consent of the Club.” *Id.*, UPC ¶  
18 XVI.A.

19 **C. The Motion**

20 In the Motion, Plaintiffs ask the Court to certify the following proposed Minor League  
21 Collective under the FLSA:

22 All minor leaguer baseball players employed by MLB or any MLB  
23 franchise under the Minor League Uniform Player Contract who  
24 worked or works [sic] as minor league players at any time since  
February 7, 2011, but who had no service time in the major leagues  
at the time of performing work as a minor leaguer.

25 Motion at 4. Plaintiffs offer forty declarations by minor league players (“Player Declarations”)  
26 which they contend show that the members of the proposed Minor League Collective have the  
27 following shared duties, responsibilities and obligations, regardless of the Major League franchise  
28 or minor league affiliate to which they are assigned:

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- **Schedule during championship season:** According to Plaintiffs, the Player Declarations reflect that during the championship season, the minor league teams play games either six or seven days per week and that “[a]s a result of Defendants’ unilateral control over scheduling decisions, minor leaguers enjoy a day off on average only once every 2-3 weeks.” *Id.* at 8 (citing Player Declarations at 2-3).
- **Game day obligations:** Plaintiffs contend that “[o]n a typical game day, all minor leaguers share the same general responsibilities: they have to arrive at the stadium hours prior to the game, they warm up and stretch; they participate in batting practice and other pre-game work; they meet with their team and coaches before the game; they play a game that typically lasts three hours; and they shower, change, and go home - often as late as 11:00 p.m.” *Id.* (citing Player Declarations at 2-3). As a result of this routine, they assert, minor league players are “systematically” required to work eight or more hours per day and more than forty hour per week. *Id.*
- **Travel:** Plaintiff asserts that all minor leaguers are “required to perform protracted travel, usually by a team bus in order to attend road games.” *Id.* (citing Player Declarations at 2-3). In particular, Plaintiffs assert that about half of the “road games” that involve multiple bus rides over the course of several hours. *Id.* (citing Player Declarations at 2-3). They note that under MLR 57(a), travel itineraries must be reviewed and approved by the MLB franchises and conform to MLB’s standards and procedures. *Id.*
- **Off-Season Work:** According to Plaintiffs, Defendants require the Minor League Collective to perform extensive work outside the championship season without pay during spring training, fall instructional leagues, and the winter training period. *Id.* at 9 (citing Player Declarations at 3-4; MLR Attachment 3, UPC ¶ VII.B).  
Plaintiffs contend that the members of the Minor League Collective do not exercise independent judgment or discretion and that the shared duties and obligations arise from the extensive control of MLB and the MLB franchises over the Minor League Collective “through the MLR, UPC, and other collusive means.” Motion at 10. They further contend that Defendants’ uniform wage-and-hour policies violate the FLSA’s requirements as to payment of minimum

1 wages and overtime and the maintenance of accurate time records. *Id.* at 10-11 (citing 29 U.S.C.  
2 §§ 206, 207 & 211(c)).

3 Plaintiffs argue that the Player Declarations, along with the MLR and UPC, are sufficient  
4 to meet the lenient requirements for conditional certification under the FLSA, which allows  
5 employees to bring a collective action “[on] behalf . . . of themselves and other employees  
6 similarly situated.” *Id.* at 11 (quoting 29 U.S.C. § 216(b) and citing *Does v. Advanced Textile*  
7 *Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000); *Leuthold v. Destination America, Inc.*, 224 F.R.D.  
8 462, 466 (N.D. Cal. 2004)). They claim that the “similarly situated” standard is not as stringent as  
9 Rule 23(b)(3)’s requirement that common questions of law and fact predominate. *Id.* (citing  
10 *Santiago v. Amdocs, Inc.*, No. C 10-4317 SI, 2013 WL 5444324, at \*3 (N.D. Cal. Sept. 30, 2013)).  
11 In the Ninth Circuit, Plaintiffs contend, the “similarly situated” inquiry is conducted in two stages:  
12 first, courts consider pleadings and affidavits addressing whether class members are similarly  
13 situated and should receive notice (the conditional certification stage); second, after substantial  
14 discovery has occurred, the Court can revisit the issue to decide if the case should proceed to trial  
15 as a collective action, that is, if the collective should be decertified. *Id.* (citing *Lewis v. Wells*  
16 *Fargo & Co.*, 669 F. Supp. 2d 1124,1127 (N.D. Cal. 2009); *Misra v. Decision One Morg. Co.*,  
17 LLC, 673 F. Supp. 2d 987, 992-93 (C.D. Cal. 2008); *Wren v. RGIS Inventory Specialists*, 2007  
18 WL 4532218, \*4-5 (N.D. Cal. Dec. 19, 2007)).

19 Plaintiffs assert that to establish that conditional certification is warranted, they need only  
20 point to “substantial allegations that the putative class members were together the victims of a  
21 single decision, policy, or plan.” *Id.* at 12 (quoting *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d  
22 1095, 1102 (10th Cir. 2001) (internal quotation and citation omitted)). Typically, this showing is  
23 made based on pleadings and affidavits and can be met in an FLSA case by making a threshold  
24 showing that the class members’ job duties are “similar in pertinent regards.” *Id.* (citing *Leuthold*,  
25 224 F.R.D. at 468-69; *Helton v. Factor 5, Inc.*, 2012 WL 2428219, at \*4 (N.D. Cal. June 26,  
26 2012); *Kress v. PricewaterhouseCoopers, LLP*, 263 F.R.D. 623, 630 (E.D. Cal. 2009)).

27 According to Plaintiffs, the conditional certification inquiry does not “include an  
28 examination of the merits of the alleged FLSA claims.” *Id.* (citing *Helton*, 2012 WL 2428219, at

1 \*5). The determination of whether Plaintiffs are similarly situated is, however, evaluated, in light  
2 of the issues raised by the particular FLSA claim. *Id.* at 13 (citing *Kress*, 263 F.R.D. at 630).  
3 Here, they contend, the members of the proposed collective are subject to “the identical,  
4 compulsory terms of the UPC and the MLRs,” leading to “FLSA allegations applicable to all  
5 members of the Collective, including: failure to pay minimum wage for hours worked during the  
6 championship season; failure to pay overtime wages for performing more than forty hours in a  
7 workweek; and failure to pay any wages for work performed throughout the calendar year outside  
8 of the championship season.” *Id.* According to Plaintiffs, they have shown through affidavits and  
9 documentary evidence that the Minor League Collective Members are similarly situated and  
10 subject to a “single scheme orchestrated by Defendants.” *Id.*

11 Plaintiffs concede that the issue of damages may require individualized inquiries but  
12 contend that “the possible presence of individual inquiries related to the number of hours worked  
13 and damages allotted to class members cannot undermine the appropriateness of collective  
14 adjudication under the FLSA.” *Id.* at 14 (citing *Wren*, 2007 WL 4532218, at \*5).

15 Because Plaintiffs have demonstrated that the Minor League Collective should be  
16 conditionally certified, they assert, the Court should also order that notice be distributed to the  
17 class members and that Defendants be required to produce contact information for the class  
18 members. *Id.* at 15 (citing *Wren*, 2007 WL 4532218, at \*9; *Hoffman-La Roche, Inc. v. Sperling*,  
19 493 U.S. 165, 172 (1989); *Gerlach v. Wells Fargo & Co.*, No. C 05-0585 CW, 2006 WL 824652  
20 (N.D. Cal. Apr. 11, 2007); *Benedict v. Hewlett-Packard Co.*, No. 13-CV-00119 LHK, 2014 WL  
21 587135, at \*14 (N.D. Cal. Feb. 13, 2014)). Plaintiffs have provided a proposed notice, which they  
22 contend “has been drafted utilizing neutral language and adequately informs members of the  
23 Minor League Collective of their rights.” *Id.* at 16; Pouya Motion Decl., Ex. A. They propose  
24 that the “notice be distributed to putative members of the Minor League Collective through  
25 individualized notice via U.S. mail, e-mail, each Defendant’s official website, a case website, and  
26 at each location or facility where minor league players work.” Motion at 16.

27 Plaintiffs argue that for the purposes of notice, the Court should apply a three-year statute  
28 of limitations on Plaintiffs’ claims, applicable in cases involving willful violations of the FLSA,

1 rather than the two-year of statute of limitations that applies when a violation is not willful. *Id.*  
2 According to Plaintiffs, the two-year statute of limitations should be applied at the conditional  
3 certifications stage of the case only when it is clear, as a matter of law, that the violation was not  
4 willful. *Id.* (citing *Wren*, 2007 WL 4532218 \* 10; *Adams*, 242 F.R.D. at 542). That is not the  
5 case here, Plaintiffs contend, where “Defendants have willfully and purposely imposed wages,  
6 hours and conditions on minor leaguers that disregard the fundamental minimum wage and  
7 overtime requirements of the FLSA.” *Id.*

8 Plaintiffs request that the Court approve a proposed ninety-day opt-in period, which they  
9 contend is appropriate in light of the long hours of the minor league players and the fact that they  
10 are often on the road. *Id.* at 17. Similarly, they propose that members receive a reminder notice  
11 thirty days before the expiration of the ninety-day period in view of the “nomadic nature of the  
12 work and the relative youth of many of the potential claimants.” *Id.*

13 Finally, Plaintiffs ask the Court to toll the statute of limitations on Plaintiffs’ claims from  
14 the date the Motion was filed through the close of the applicable opt-in period. *Id.* at 18.  
15 Plaintiffs contend this further tolling of the limitations period is consistent with the intent of the  
16 parties, as reflected in the previous tolling agreement between the parties (discussed above) and is  
17 also necessary to protect the rights of the members of the Minor League Collective. *Id.* (citing  
18 *Owens v. Bethlehem Mines Corp.*, 630 F. Supp. 309, 312-13 (S.D. W. Va. 1986); *Adams*, 242  
19 F.R.D. at 543-44). Specifically, Plaintiffs argue that “[b]ased on the parties’ tolling agreement, the  
20 statute of limitations should . . . run from at least July 11, 2011 until the end of the 90-day notice  
21 period for those opting into the action after July 11, 2014” and that “[f]or those persons who opted  
22 in before July 11, 2014, the limitations period should at least extend to three years from the date  
23 the opt-in form was signed.” *Id.* Plaintiffs further request that the Court “apply principles of  
24 equitable tolling to extend the tolling period to the date that the initial complaint was filed on  
25 February 7, 2014” on the basis of their belief that Defendants failed to post the required minimum  
26 wage and overtime posters in minor leaguers’ workplaces. *Id.* at 18-19 (citing *Yu G. Ke. v. Saigon*  
27 *Grill, Inc.*, 595 F. Supp. 2d 240, 258–59 (S.D.N.Y. 2008)). Plaintiffs concede that discovery is  
28 necessary to substantiate this belief but argue that for the purposes of notice, the limitations period



1 should be extended based on the possibility that equitable tolling may be justified. *Id.* at 19 (citing  
2 *Ayala v. Tito Contractors, Inc.*, 2015 WL 968113, at \*6-9 (D.D.C. Mar. 4, 2015)).

3 In their Opposition brief, Defendants argue that the Minor League Collective proposed by  
4 Plaintiffs should not be certified because there is nothing in the MLB Rules or the UPC that  
5 renders Plaintiffs similarly situated. Opposition at 1. More importantly, they argue, the MLB  
6 Rules and UPC are only “overarching guidelines”; the actual determinations as to how much  
7 work Plaintiffs do and where and how they are compensated are made by the individual Clubs and  
8 by the various supervisors for those clubs. Opposition at 2-3. According to Defendants, this  
9 means that the collective proposed by Plaintiffs “would include minor league players who have  
10 played for various combinations of 180 minor league teams, each of which is affiliated with one of  
11 30 different Major League Clubs . . . during the 2011, 2012, 2013, 2014 and/or 2015 seasons.” *Id.*  
12 at 2. In order to “put that number into perspective,” Defendants offer evidence that “each year  
13 there are approximately 200 individuals on an active minor league baseball roster for each of the  
14 30 Clubs,” that “each of the 30 Clubs is its own distinct, separately owned corporate entity,” that  
15 “each Club is affiliated with between six and seven U.S.-based minor league affiliates,” that the  
16 compensation, skill-level and location of these affiliates varies, and that players in the collective  
17 “will have each been supervised by a combination of the numerous managers, coaches, instructors  
18 and trainers.” *Id.* at 3 (citing Declaration of Peter Woodfork in Support of Defendants’  
19 Opposition to Plaintiffs’ Motion for Notice to the Class and Conditional Certification Pursuant to  
20 the Fair Labor Standards Act (“MLB Decl.”) at ¶ 4; Declaration of Elise Bloom in Support of  
21 Defendants’ Opposition to Plaintiffs’ Motion for Notice to the Class and Conditional Certification  
22 Pursuant to the Fair Labor Standards Act (“Bloom Decl.”) at ¶ 5; Declarations of Scott Sharp  
23 (“Royals Decl.”), Ian Levin (“Mets Decl.”), Brian Chattin (“Marlins Decl.”), Tom Flanagan  
24 (“Brewers Decl.”), Zach Wilson (“Rockies Decl.”) (collectively, “Club Decl.”) at ¶ 2; MLB Decl.,  
25 Ex. A).

26 Defendants also offer evidence that the practices of the Clubs and affiliates vary in numerous  
27 respects with respect to the hours and compensation of minor league players:

- 28 • **Determination of non-first year player salaries:** While Defendants do not dispute that

1 MLB Rules and the UPC set the salary for first-year players, they point out that under  
2 MLR 3(c)(2)(B) and UPC ¶ VII, only baselines are created for players' compensation. *Id.*  
3 at 3. Defendants contend it is the individual Clubs that determine the salaries of non-first  
4 year players and that the Clubs have discretion to determine salaries "based on the factors  
5 *they chose.*" *Id.* (emphasis in original) (citing MLB Decl. ¶ 8). Defendants also offer  
6 declarations to show that the practices of the Clubs in setting salary levels for non-first  
7 year players do, in fact, vary. *Id.* (citing Club Decl. ¶ 7). For example, "[s]ome clubs,  
8 such as the Marlins, provide their players with an additional \$100 per month in salary if  
9 they are awarded an organizational pitcher or player of the month award during the prior  
10 season; the Royals have a similar practice, although they may provide the bonus in the  
11 form of a cash or gift card; the Mets award salary increases to minor league players for  
12 those who won an MVP award and/or led their leagues in certain statistical categories the  
13 prior season; other Clubs have no such practice." *Id.* (citing MLR 3(b)(2); Club Decl. at ¶  
14 7).

- 15 • **Determination of free agent salaries:** Defendants contend "the first-year salary or  
16 subsequent salary scales established by each Club are inapplicable to free agent players  
17 signed to non-first year minor league UPCs." *Id.* According to Defendants, "[t]hose  
18 negotiations are completely individualized between the Club and the free agent player  
19 based on that player's skill level." *Id.* (citing Club Decl. ¶ 8). Defendants present  
20 evidence that from 2011 to the present, 30 MLB Clubs executed a total of 5,820 UPCs  
21 with 2,960 different minor league free agents. *Id.* at 3-4 (citing MLB Decl. ¶ 5).
- 22 • **Practices relating to player bonuses:** Defendants contend the Clubs "individually  
23 negotiate bonuses and/or incentive payments (e.g., signing bonuses, incentive bonuses,  
24 College Scholarship Plan payments, etc.) with players, and thus, the additional  
25 bonuses/payments can vary widely." *Id.* at 4 (citing MLR 3(c)(4)(B)-(D); MLB Decl. ¶ 9;  
26 Club Decl. ¶ 9). Defendants point to evidence that one name Plaintiff, Joseph Newby,  
27 received a signing bonus of \$500 while another, Jonathan Gaston, received a signing bonus  
28 of \$150,000. *Id.* (citing Bloom Decl. ¶¶ 6-8). Defendants also offer evidence that

1 members of the putative class have received even higher signing bonuses, receiving  
2 bonuses as high as \$6,500,000 in the 2015 Rule 4 Draft. *Id.* (citing Bloom Decl., Ex. E).  
3 Defendants further cite evidence that other bonuses and incentives received by the name  
4 Plaintiffs were individually negotiated, including evidence that “at least 24 out of 42  
5 Plaintiffs negotiated for the receipt of incentive bonus plan payments in their UPCs” and  
6 “at least 20 out of 42 Plaintiffs had provisions in their UPCs where the Clubs agreed to  
7 reimburse them for tuition, room, board, books and fees in connection with their  
8 attendance in pursuit of an undergraduate degree at an accredited university as part of the  
9 College Scholarship Plan.” *Id.* (citing Bloom Decl. ¶¶ 9-10).

- 10 • **Players’ schedules and travel itineraries:** Defendants assert that MLB does not dictate  
11 the daily schedules or travel itineraries of the minor league players. *Id.* (citing MLB Decl.  
12 ¶ 7). Defendants argue that schedules and travel policies for the minor league players  
13 depend on the “various policies or practices that were implemented either by each Club, or  
14 by the managers and coaches at each affiliate.” *Id.* (citing Club Decl. ¶¶ 5-6). Defendants  
15 reject Plaintiffs’ reliance on MLR 32 for the assertion that “MLB Rules dictate the minor  
16 league playing schedule,” *id.* (citing Motion at 5), arguing that MLR 32 “only sets forth  
17 parameters (such as the total number of games per season, as well as opening and closing  
18 dates) so that the Minor Leagues may establish the actual game schedules governing  
19 players.” *Id.* Defendants assert that the player declarations offered by Plaintiffs also  
20 support Defendants’ position that there is a great deal of variation as to when players must  
21 report; these variations are not due to the MLB Rules or policies, they contend, but rather,  
22 to factors such as whether a game is at home or on the road, day or night, or during spring  
23 training or the championship season. *Id.* at 5. According to Defendants, reporting time  
24 also varies “on a player-by-player basis, depending on the player’s position (i.e., pitchers,  
25 non-pitchers, etc.), injury (i.e., whether the individual player is rehabilitating an injury or  
26 needs additional treatment prior to the game), or placement in the game (whether the  
27 team is planning to start the player on the particular day).” *Id.* (citing Royals Decl. ¶ 5;  
28 Mets Decl. ¶ 5). Defendants further assert that “MLR 57 only provides travel guidelines,

1 including general policies regarding limits on distances that players travel each year.” *Id.*

- 2 • **Training activities outside championship season:** Defendants argue that the minor  
3 league players’ training activities during the off-season also vary widely depending on  
4 “player-specific variables.” *Id.* According to Defendants, these variables include “a  
5 player’s skill level, experience and/or health status (as well as the Club’s individual  
6 practices).” *Id.* (citing Player Decl. generally; Royals Decl. ¶¶ 12-13; Rockies Decl. ¶ 14).  
7 Defendants cite evidence that some players are not required to attend spring training, and  
8 that for those who do attend, the schedule varies from Club to Club and player-by-player.  
9 *Id.* at 5-6 (citing Hutson Decl. ¶ 19; Mets Decl. ¶ 12; Royals Decl. ¶ 12). They also assert  
10 that “players choose to perform offseason conditioning at the location of their choice, and  
11 for any number of hours (ranging drastically based on the discretion of each player).” *Id.*  
12 at 6 (citing Player Decl.; Club Decl. ¶ 10; Royals Decl. ¶ 10; and comparing Lawson  
13 Decl. ¶ 20 with Aguilar Decl. ¶ 18). Defendants contend putative collective members also  
14 had “widely varying experiences regarding the contact they received from Clubs during the  
15 offseason,” citing evidence that “some players completed progress reports via websites,  
16 some submitted ‘workout’ cards, and others did not report their progress at all.” *Id.* (citing  
17 Nicholson Decl. ¶ 19, Pease Decl. ¶ 18; Ortiz Decl. ¶¶ 17-18; Club Decl. ¶ 10). According  
18 to Defendants, “the degree to which the Clubs (through their coaches) even ‘checked-in’  
19 with players - if at all - during the offseason regarding their conditioning varied  
20 dramatically by player, depending on, among other things, the player’s injury status and  
21 skill level.” *Id.* (citing Brewers Decl. ¶ 10; Royals Decl. ¶ 10).

22 In light of the facts discussed above, Defendants argue that Plaintiffs have not  
23 demonstrated that they are “similarly situated” to the collective. *Id.* According to Defendants, to  
24 meet their burden Plaintiffs must show that they and the putative class were “subject to a *single*  
25 decision, policy or plan that *violated the law*” and - to the extent they seek to certify a nationwide  
26 collective - that the policy was nationwide. *Id.* at 6-7 (quoting *Banks v. Robinson*, No. 2:11-CV-  
27 00441-RLH-PAL, 2011 WL 3274049, at \*5 (D. Nev. July 28, 2011) (emphasis added in  
28 Defendants’ brief); citing *Castle v. Wells Fargo Fin., Inc.*, No. C 06-4347 SI, 2008 WL 495705, at

1 \*2 (N.D. Cal. Feb. 20, 2008); *Sheffield v. Orius Corp.*, 211 F.R.D. 411, 413 (D. Or. 2002)).  
 2 Defendants argue that Plaintiffs have not met this burden because that have not identified any  
 3 uniform common policy that was *facially* unlawful and they also have not demonstrated that any  
 4 policies were unlawfully *applied* in a uniform manner. *Id.* at 7.

5 Defendants argue that the only common policy identified by Plaintiffs is the requirement  
 6 under MLB Rules that all minor league players sign a UPC. *Id.* But the determination of the  
 7 salary is by the Club and the player, Defendants assert, and there is “nothing unlawful, *per se*,  
 8 about a contract paying players for time spent playing baseball,” given that “[t]he UPCs apply to  
 9 individuals who are not necessarily FLSA ‘employees’; who participated in varying activities, not  
 10 all (or any) of which are compensable under the FLSA; who were not necessarily deprived  
 11 minimum wage or overtime; and who may be exempt from the FLSA.” *Id.* In contrast,  
 12 Defendants contend, in the *Wren* and *Helton* cases cited by Plaintiffs, motions for conditional  
 13 certification were granted where the “defendants had maintained *facially unlawful* practices and  
 14 policies.” *Id.* at 7 n. 26 (emphasis in original). Defendants argue that the MLB Rules do not  
 15 establish sufficient similarity for conditional certification because they are merely “overarching  
 16 parameters” that “enable *each Club to create its own policies* governing training, reporting times,  
 17 schedules, and players’ responsibilities, etc., (and, at times, each Club can, and does, establish  
 18 different policies for different players).” *Id.* at 8 (emphasis in original). Because there is no  
 19 common or national policy applicable to Plaintiffs’ claims, Defendants assert, collective treatment  
 20 is inappropriate. *Id.* (citing *Velasquez v. HSBC Fin. Corp.*, 266 F.R.D. 424, 426 (N.D. Cal. 2010);  
 21 *Sheffield*, 211 F.R.D. at 413).

22 Defendants argue that in the absence of any facially unlawful uniform policy, Plaintiffs  
 23 must show that Defendants applied policies unlawfully “in a way that is ‘sufficiently uniform and  
 24 pervasive to warrant [collective] treatment.’” *Id.* at 9 (quoting *In re Wells Fargo Loan Processor*  
 25 *Overtime Pay Litig.*, No. C 07-01841 MHP, 2008 WL 2397424, at \*8 (N.D. Cal. June 10, 2008)).  
 26 Defendants point to cases in which conditional certification was denied because, they assert, the  
 27 application of the defendants’ policies required “too many diverse analyses.” *Id.* (citing *Till v.*  
 28 *Saks Inc.*, No. C 11-00504 SBA, 2013 WL 5755671, at \*9 (N.D. Cal. Sept. 30, 2013); *Sheffield*,

1 211 F.R.D. at 416-17; *West v. Border Foods, Inc.*, No. 05-2525 (DWF/RLE), 2006 WL 1892527,  
2 at \*8 (D. Minn. July 10, 2006); *Brooks v. BellSouth Telecomms., Inc.*, 164 F.R.D. 561, 569 (N.D.  
3 Ala. 1995)). Defendants argue that in this case the facts are even more compelling, where the  
4 putative collective worked for 180 affiliates of 30 different clubs in 44 different states with more  
5 than 700 different supervisors. *Id.* at 9-10. Defendants point to a series of questions that they  
6 contend would require individualized inquiries.

7 First, Defendants argue, Plaintiffs' claims will require individualized inquiries as to the  
8 threshold question of whether the putative collective members are "employees" under the FLSA.  
9 *Id.* at 10-11. According to Defendants, this inquiry is governed by the "primary beneficiary" test,  
10 which in turn requires the court to weigh and balance eight factors to determine which party  
11 benefits from the relationship. *Id.* (citing *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947);  
12 *Tenn. Coal Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944)). In applying this test, courts  
13 must consider the "individual aspects of the [individual's] experience," Defendants argue, which  
14 makes class treatment inappropriate. *Id.* at 11 (citing *Glatt v. Fox Searchlight Pictures, Inc.*, 791  
15 F.3d 376 (2d Cir. 2015)). Defendants further assert that there would be individualized inquiries as  
16 to whether the players' non-championship season training activities were "'integral,'  
17 'indispensable,' and . . . 'controlled or required by the employer and pursued necessarily and  
18 primarily for the benefit of the employer.'" *Id.* at 11-12 (citing *Bamonte v. City of Mesa*, 598 F.3d  
19 1217, 1220 (9th Cir. 2010)).

20 Second, Defendants argue that Plaintiffs' "claims regarding alleged offseason training are  
21 quintessential 'off the clock' claims, which are especially unsuitable for collective treatment"  
22 because they require too many individualized determinations as to hours actually worked and  
23 awareness of supervisors. *Id.* at 12 (citing *Castle*, 2008 WL 495705, at \*5). This problem is  
24 particularly acute here, Defendants contend, "because Plaintiffs' offseason conditioning occurred  
25 on the players' terms, and the activities varied extensively by position and by player." *Id.* (citing  
26 *Nicholson Decl.* ¶ 19; *Ortiz Decl.* ¶¶ 17-18). Further, it was the players themselves who  
27 determined how much work they performed during the offseason, Defendants contend, and  
28 therefore, the Court "cannot possibly assess the viability of these claims on a collective basis." *Id.*

1 at 13 (citing *Williams v. Securitas Sec. Servs. USA, Inc.*, No. CIV.A. 10-7181, 2011 WL 3629023,  
2 at \*6 (E.D. Pa. Aug. 17, 2011)). Defendants note that while Plaintiffs “have not produced a single  
3 document reflecting their other activities during the offseason,” publicly available information  
4 indicates that some plaintiffs, such as Lauren Gagnier, were paid for playing baseball during the  
5 offseason. *Id.* at 13 (citing Bloom Decl., Ex. F).

6 Third, Defendants argue that players’ other activities outside the championship season,  
7 including participation in minicamps, instructional leagues, extended spring training, and/or  
8 rehabilitation training, were also “individualized and player-specific” because these activities  
9 varied by affiliate and the types of training activities in which players were invited to participate  
10 depended on individualized factors such as the player’s position and skill level. *Id.* at 14.

11 Defendants point to the Player Declarations offered by Plaintiffs, which they contend show that:

- 12 • 3 out of 42 (7%) Plaintiffs took the opportunity to receive extra training  
13 during “minicamps” in the offseason.
- 14 • 23 out of 42 (55%) Plaintiffs attended “instructional leagues” at least once.
- 15 • 16 out of 42 (38%) Plaintiffs were never required to attend extended spring  
16 training.
- 17 • Of those 26 out of 42 (62%) Plaintiffs who did attend extended spring  
18 training at least once, some were paid for that time, while others were not  
19 (despite Plaintiffs’ claims that they were not paid outside of the  
20 Championship Season). . . . Because at least two Clubs compensated players  
21 for time spent at extended spring training, at an absolute minimum, 500  
22 members of the putative collective (approximately 100 per year, over the  
23 course of five years) may have, in fact, received compensation during this  
24 period.
- 25 • 5 out of 42 (12%) Plaintiffs alleged to have “rehabbed” during at least one  
26 training season (e.g., extended spring training), by receiving treatment for  
27 an injury or injuries.

28 *Id.* Defendants further point out that “[m]any players attended varying combinations of trainings  
each year,” while “[s]ome attended none.” *Id.* (citing Kiel Decl.; Nadeau Decl.; Britt Decl.,  
Gagnier Decl.).

Fourth, Defendants argue that the question of liability on the minimum wage and overtime  
claims also involves individualized inquiries because “liability depends on a computation of  
dollars earned per hours worked, both of which vary by player [and] by year.” *Id.* at 14 (citing

1 *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at \*15 (N.D. Cal.  
2 Nov. 12, 2014); *Hinojos v. Home Depot, Inc.*, No. 2:06-CV-00108, 2006 WL 3712944, at \*2 (D.  
3 Nev. Dec. 1, 2006)). Here, certification is not appropriate, Defendants argue, because Plaintiffs'  
4 allegations as to hours worked and compensation received vary dramatically, both as between  
5 players and from year to year. *Id.* at 15-17. Similarly, Plaintiffs' allegations as to how much time  
6 they devoted to travel varies widely, also making conditional certification inappropriate, according  
7 to Defendants. *Id.* at 16- 17 (citing *Hilley v. Tacala, L.L.C.*, No. 2:12-CV-2691-SLB, 2014 WL  
8 1246364, at \*18 (N.D. Ala. Mar. 24, 2014); *Syrja v. Westat, Inc.*, 756 F. Supp. 2d 682, 688 (D.  
9 Md. 2010)).

10 Finally, Defendants argue that there are likely to be individualized inquiries required to  
11 determine whether the FLSA's seasonal amusement or recreational establishment exemption  
12 applies to the "'distinct physical place[s] of business' where minor league players play baseball."  
13 *Id.* (citing 29 C.F.R. § 779.23; *Chen v. Major League Baseball Props.*, No. 14-1315-CV, 2015  
14 U.S. App. LEXIS 14275, at \*15 (2d Cir. Aug. 14, 2015)).

15 Defendants reject Plaintiffs' assertion that the statute of limitations should be tolled for  
16 putative class members for the purposes of giving notice to putative class members. *Id.* at 18-21.  
17 In the first place, tolling is not warranted because the class should not be conditionally certified,  
18 Defendants contend, and therefore no notice is required. *Id.* at 18. Even if the Court orders  
19 notice, Defendants assert, tolling is not appropriate because Congress "made a conscious decision  
20 not to permit tolling when it required that the statute of limitations continue to run on an  
21 individual's claim until a written consent form is filed." *Id.* at 18-19 (citing 29 U.S.C. § 216(b);  
22 *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1106 (11th Cir. 1996)). Further, Plaintiffs bear a heavy  
23 burden to establish that equitable tolling is warranted and they have not met that burden,  
24 Defendants contend. *Id.* at 18. According to Defendants, Plaintiffs "fail to identify any  
25 wrongful conduct on the part of Defendants (or Defendants' counsel) and do not even allege that  
26 any extraordinary circumstances justify equitable tolling." *Id.* Plaintiffs' reliance on *Adams v.*  
27 *Inter-Con Security Systems., Inc.*, 242 F.R.D. 530, 543 (N.D. Cal. 2007) in support of equitable  
28 tolling is misplaced, Defendants assert, because in that case the court tolled the statute of



1 limitations on the basis of the defendants’ refusal to comply with the plaintiffs’ request for contact  
2 information for the putative collective. *Id.* Because there has been no such request here,  
3 Defendants assert, “Defendants’ failure to provide that information could not have delayed  
4 Plaintiffs’ pursuit of their legal rights.” *Id.*

5 To the extent that Plaintiffs rely on the parties’ previous tolling agreement, Defendants  
6 contend courts in this district have routinely denied similar requests where the parties had  
7 previously entered into a tolling agreement. *Id.* at 20 (citing *Woods v. Vector Mktg. Corp.*, No. C-  
8 14-0264 EMC, 2015 U.S. Dist. LEXIS 32370, at \*20-21 (N.D. Cal. Mar. 16, 2015); *Shaia v.*  
9 *Harvest Mgmt. Sub LLC*, No. C 14-4495 PJH, 2015 U.S. Dist. LEXIS 49808, at \*12-15 (N.D. Cal.  
10 Apr. 15, 2015)). Defendants also argue that “Plaintiffs’ speculative belief that some or all  
11 Defendants did not post wage and hour posters is insufficient to justify [equitable tolling].” *Id.*  
12 (citing *Campanelli v. Hershey Co.*, No. C 08-1862 BZ, 2010 U.S. Dist. LEXIS 92364, at \*18  
13 (N.D. Cal. Aug. 13, 2010)).<sup>6</sup>

14 Defendants also ask the Court to reject Plaintiffs’ proposed notice on the basis that “it: (i)  
15 sets an unreasonably long opt-in period (90 days); (ii) includes the Court’s name, creating the  
16 impression of judicial sponsorship of this litigation; and (iii) misleads potential class members by  
17 failing to notify them that they may seek further information about the case from Defendants.” *Id.*  
18 at 21. In addition, Defendants contend the proposed notice is overbroad. *Id.* In particular,  
19 “Plaintiffs’ proposed notice cannot include players who played exclusively for dismissed Clubs,  
20 because each of those players’ claims depends entirely on each of their alleged joint employment  
21 relationships with MLB, which must be conducted on a player-by-player basis, and accordingly  
22 cannot be treated collectively.” *Id.* Further, “because FLSA opt-in forms do not relate back to a  
23 complaint and tolling is inappropriate, [Defendants contend that] the Court should restrict any  
24 collective time period in any FLSA Class Notice to commence no more than two years back from  
25 the Court’s Order on this Motion, and to end thirty days after notice is mailed.” *Id.* Defendants  
26

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27 <sup>6</sup> While Defendants argue that they have not engaged in any conduct that warrants equitable  
28 tolling, they recognize that in light of “this Court’s decision in *Wren*, . . . notice will likely be  
distributed based on a three-year limitations period.”

1 have submitted a proposed revised notice that addresses these issues. *See* Bloom Decl., Exs. C-D.

2 Next, Defendants argue that the six methods of giving notice proposed by Plaintiffs are  
3 overbroad and unnecessary. Opposition at 22. According to Defendants, notice by first-class mail  
4 is adequate and therefore Defendants should not be required to post the notice: (i) at each location  
5 or facility where minor league players work; (ii) on their websites; or (iii) on a case website. *Id.* at  
6 22-23. Nor should Plaintiffs be permitted to give notice via email, Defendants assert “due to the  
7 high risk that the notification will be distorted through modification of the notice itself or the  
8 addition of commentary to the e-mail.” *Id.* at 23 (citing *Reab v. Elec. Arts, Inc.*, 214 F.R.D. 623,  
9 630-31 (D. Colo. 2002)); *McKeen-Chaplin v. Provident Sav. Bank, FSB*, No. 2:12-CV-03035-  
10 GEB-JFM, 2013 WL 4056285, at \*8 (E.D. Cal. Aug. 12, 2013)). Plaintiffs’ proposal that  
11 reminder notices be sent thirty days before the end of the class period also should be rejected,  
12 Defendants assert, both because Plaintiffs have not provided a draft notice and because reminder  
13 notices will be unnecessary if the Court adopts a shorter opt-in period, as Defendants argue it  
14 should. *Id.* at 22 (citing *Villarreal v. Caremark LLC*, 66 F. Supp. 3d 1184, 1196 (D. Ariz. 2014);  
15 *Cardoza v. Bloomin’ Brands Inc.*, No. 13-cv-1820-JAD-NJK, 2014 WL 5454178, at \*5 (D. Nev.  
16 Oct. 24, 2014)).

17 Regardless of the manner of notice, Defendants argue that they should not be required to  
18 provide Plaintiffs’ counsel with the contact information for putative class members. *Id.* at 23.  
19 First, they assert, Plaintiffs have not established that they are similarly situated. *Id.* (citing  
20 *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989)). Second, to prevent “unwarranted  
21 intrusions” into the privacy of the putative class members, Defendants argue that “a claims  
22 administrator should be used to facilitate notice and any list of address[es] should be provided  
23 only to the claims administrator.” *Id.* at 24 (citing *Wren*, 2007 WL 4532218, at \*9). Defendants  
24 further assert that Plaintiffs’ counsel should bear all of the costs associated with the notice process.  
25 *Id.*

26 In their Reply brief, Plaintiffs contend Defendants have incorrectly applied a heightened  
27 standard to conditional certification, taking the position that Plaintiffs are required to prove the  
28 merits of their claims, that is, that all putative collective members were subject to a single

1 decision, policy or plan that violated the law, and to weigh competing evidence. Reply at 1.  
2 According to Plaintiffs, they need not demonstrate that the policy at issue violated the law, and the  
3 cases cited by Defendants in support of that assertion - *Banks*, *Castle*, and *Sheffield* - do not  
4 support their position. *Id.* at 2-3. Plaintiffs also are not required to *prove* their claims at the  
5 conditional certification stage, they assert, or to demonstrate that the policy at issue was *per se* or  
6 facially unlawful. *Id.* at 3.

7 Plaintiffs argue that the “six carefully crafted and hand-picked declarations” offered by  
8 Defendants should not be considered as they are “untested” at this early stage of the case, when  
9 little discovery has occurred. *Id.* at 3-4. According to Plaintiffs, courts generally do not consider  
10 declarations offered to defeat conditional certification where, as here, Plaintiffs’ allegations and  
11 declarations meet the lenient requirements for conditional certification. *Id.* at 4 (citing *Lewis v.*  
12 *Wells Fargo & Co.*, 669 F.Supp.2d 1124, 1127 (N.D. Cal. 2009); *Escobar v. Whiteside Const.*  
13 *Corp.*, No. C 08-01120 WHA, 2008 WL 3915715 \*4 (N.D. Cal. Aug. 21, 2008); *Leuthold v.*  
14 *Destination America, Inc.*, 224 F.R.D. 462, 468 (N.D. Cal. 2004)). Here, the policies identified in  
15 the MLR and UPC, along with the Player Declarations, are sufficient to show that Plaintiffs are  
16 “similarly situated,” Plaintiffs assert, and Defendants’ assertion that these policies are merely  
17 “guidelines” is contradicted by “the express language of these compulsory agreements hold[ing]  
18 otherwise.” *Id.* at 4-5.

19 Plaintiffs also argue that even if Defendants’ assertions regarding differences in hours,  
20 wages and work by putative collective members are accepted as true, these do not defeat  
21 Plaintiffs’ request for conditional certification because they need only demonstrate that they are  
22 “similarly situated” and not that all class members’ claims are identical. *Id.* at 6 (citing *Wren*,  
23 2007 WL 4532218, at \*5; *Benedict*, 2014 WL 587135, at \*10). Further, Plaintiffs reject  
24 Defendants’ argument that some of the differences go to liability rather than damages, arguing that  
25 they have presented evidence and allegations that: 1) all class members worked overtime without  
26 receiving overtime pay; and 2) all class members worked outside the championship season without  
27 receiving pay. *Id.* at 8. Plaintiffs also reject Defendants’ reliance on evidence that signing and  
28 other types of bonuses received by minor league players vary widely in support of their position

1 that the collective should not be certified. *Id.* at 8-9. According to Plaintiffs, some of these  
2 bonuses likely are not considered wages under the FLSA and therefore have no bearing on the  
3 question of conditional certification; other bonuses that might be considered wages would simply  
4 mean that damages for lost overtime pay would be higher and not that the class should not be  
5 conditionally certified. *Id.* at 9.

6 Plaintiffs argue that Defendants’ assertion that minor league players are not “employees”  
7 and do not perform “work” under the FLSA has no merit under the test used to determine whether  
8 an employment relationship exists, which is evaluated in the Ninth Circuit under the factors  
9 identified in *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983). *Id.*  
10 at 10 (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947); *Real v. Driscoll*  
11 *Strawberry Assocs., Inc.*, 603 F.2d 748, 754 (9th Cir. 1979); *Hale v. State of Ariz.*, 967 F.2d 1356,  
12 1364 (9th Cir. 1992)). Under *Bonnette*, courts “focus on whether the proposed employer: ‘(1) had  
13 the power to hire and fire employees, (2) supervised and controlled employee work schedules or  
14 conditions of employment, (3) determined the rate and method of payment, and (4) maintained  
15 employment records.’” *Id.* (quoting *Hale*, 967 F.2d at 1364). According to Plaintiffs, “[t]here can  
16 be no dispute that these factors are satisfied in this case.” *Id.* Further, they assert, Defendants’  
17 reliance on the “primary beneficiary test” applied in *Glatt v. Fox Searchlight Pictures, Inc.*, 791  
18 F.3d 376 (2d Cir. 2015) is misplaced because that case involved the “narrow question of whether  
19 ‘an unpaid intern [is] entitled to compensation as an employee under the FLSA.’” *Id.* at 10-11  
20 (quoting *Glatt*, 791 F.3d at 382)).

21 Plaintiffs also reject Defendants’ assertion that conditional certification should be denied  
22 because the possibility that the amusement exception may apply will require individualized  
23 inquiries. *Id.* at 11. First, Plaintiffs argue, whether this exception applies is a question that is  
24 more appropriately addressed at a later stage of the case, when the record has been fully  
25 developed. *Id.* (citing *Shaia*, 306 F.R.D. at 272; *Alvarez Perez v. Sanford–Orlando Kennel Club,*  
26 *Inc.*, 515 F.3d 1150, 1156 (11th Cir. 2008)). Second, even when the Court reaches this question, it  
27 will not do so on a particularized level, player-by-player, but rather, will resolve the issue for large  
28 classes of workers. *Id.* at 11-12.

1           On the question of tolling, Plaintiffs reiterate their arguments that it is equitable to toll the  
2 limitations period and also consistent with the parties’ intent in the previous tolling agreement.  
3 *Id.* at 12-13. Plaintiffs argue that it is disingenuous of Defendants to argue against tolling on the  
4 basis that Plaintiffs have not yet requested contact information given that Plaintiffs expressly  
5 agreed in the previous tolling agreement that they would not request such information until after  
6 the Court decided the Jurisdiction and Venue motions. *Id.* at 13. Plaintiffs further assert that  
7 Defendants’ failure to offer any evidence in response to the Motion showing that they have, in  
8 fact, posted mandatory minimum wage and overtime posters “speaks volumes and supports tolling  
9 the statute of limitations until [] February 7, 2011, three years prior to the filing of Plaintiffs’  
10 lawsuit.” *Id.*

11           With respect to the proposed notice plan, Plaintiffs argue that it is appropriate to use  
12 multiple methods to give notice and that “this Court and others have ordered FLSA notice utilizing  
13 multiple means including direct mail, e-mail, postings on the defendant’s website, and posting in a  
14 conspicuous place in defendant’s offices.” *Id.* (citing *Otey v. CrowdFlower, Inc.*, No. 12-cv-  
15 05524 JST, 2013 WL 4552493, at \*3 (N.D. Cal. Aug. 27, 2013); *Butler v. DirectSAT USA, LLC*,  
16 876 F.Supp.2d 560, 575 (D. Mar. 2012); *Wren*, 2007 WL 4532218 at \*9)). Plaintiffs further assert  
17 that both the 90-day opt-in period and the 30-day reminder notice are appropriate. *Id.* at 14-15.

18           Finally, Plaintiffs argued that the language of their original proposed notice was not  
19 overbroad but noted the parties were in the process of meeting and conferring in an effort to  
20 resolve some of their disputes.

21           Plaintiffs filed an alternative proposed notice on October 1, 2015. *See* Docket No. 433.

22 **III. ANALYSIS**

23 **A. Legal Standard**

24           Under the FLSA, employers are required to pay covered employees overtime  
25 compensation of one and one-half times the regular rate of pay for all hours worked in excess of  
26 forty hours per week, unless an exemption applies. 29 U.S.C. § 207(a)(1). The FLSA authorizes  
27 an employee to bring an individual action for violations or a collective action on behalf of the  
28 employee and other “similarly situated” employees. 29 U.S.C. § 216(b). Where employees bring

1 a collective action under the FLSA, potential members of a collective action must “opt-in” to the  
2 suit by filing a written consent with the Court in order to benefit from and be bound by a  
3 judgment. *Id.*

4 The determination of whether a collective action under the FLSA is appropriate is within  
5 the Court’s discretion. *Benedict v. Hewlett-Packard Co.*, No. 13-CV-00119-LHK, 2014 WL  
6 587135, at \*4-6 (N.D. Cal. Feb. 13, 2014) (citing *Adams v. Inter-Con Security Sys., Inc.*, 242  
7 F.R.D. 530, 535 (N.D.Cal. Apr. 11, 2007)). It is the plaintiff’s burden to show that he and the  
8 proposed class members are “similarly situated.” *Id.*; 29 U.S.C. § 216(b). The FLSA does not  
9 define “similarly situated” and neither the Supreme Court nor the Ninth Circuit has interpreted the  
10 term. *Kress v. Pricewaterhouse Coopers, LLP*, 263 F.R.D. 623, 627-628 (E.D. Cal. 2009). In this  
11 Circuit, district courts generally apply a two-step inquiry. *Benedict*, 2014 WL 587135, at \*5  
12 (citing *Leuthold*, 224 F.R.D. at 466-67; *Adams*, 242 F.R.D. at 536). Under the first step of the  
13 inquiry, “the court makes an initial ‘notice-stage’ determination of whether potential opt-in  
14 plaintiffs are similarly situated to the representative plaintiffs, determining whether a collective  
15 action should be certified for the sole purpose of sending notice of the action to potential class  
16 members.” *Id.* The second step occurs later, after discovery is complete, when the party  
17 opposing certification may move to decertify the class. *Id.* at \*6.

18 At the first stage, when courts decide whether to conditionally certify the class, the burden  
19 is “not heavy” and requires only that plaintiffs show a “reasonable basis for their claim of class-  
20 wide” conduct. *Morton v. Valley Farm Transport, Inc.*, No. C-06-2933 SI, 2007 WL 1113999, at  
21 \*2 (N.D.Cal. Apr. 13, 2007). To meet this burden, “courts require little more than substantial  
22 allegations, supported by declarations or discovery, that ‘the putative class members were together  
23 the victims of a single decision, policy, or plan.’” *Benedict*, 2014 WL 587135, at \*5. “All that  
24 need be shown is that ‘some identifiable factual or legal nexus binds together the various claims of  
25 the class members in a way that hearing the claims together promotes judicial efficiency and  
26 comports with the broad remedial policies underlying the FLSA.’” *Id.* (quoting *Russell v. Wells  
27 Fargo & Co.*, No. 07-CV-3993CW, 2008 WL 4104212, at \*3 (N.D. Cal. Sept. 3, 2008)). The  
28 standard is lenient at this stage of the inquiry and typically results in certification. *Kress v.*

1 *Pricewaterhouse Coopers, LLP*, 263 F.R.D. at 627-28 (citation omitted). Courts have explained  
2 that this lenient standard is appropriate because there is not a great deal of evidence available to  
3 the court at this stage of the proceedings and moreover, the defendant will have the opportunity to  
4 revisit the question of whether collective resolution is proper at the close of discovery. *Benedict*,  
5 2014 WL 587135, at \*5-6 (citing *Kress*, 263 F.R.D. at 630; *Vasquez v. Coast Valley Roofing, Inc.*,  
6 670 F. Supp. 2d 1114, 1123 (E.D. Cal. 2009); *Labrie v. UPS Supply Chain Solutions, Inc.*, No. C  
7 08-3182 PJH, 2009 WL 723599, at \*4 (N.D. Cal. Mar. 18, 2009)).

8 In light of the fact that conditional certification occurs before significant discovery has  
9 occurred, courts “bear in mind the following: (1) A plaintiff need not submit a large number of  
10 declarations or affidavits to make the requisite factual showing that class members exist who are  
11 similarly situated to him . . . [and] (2) The ‘fact that a defendant submits competing declarations  
12 will not as a general rule preclude conditional certification.’” *Benedict*, 2014 WL 587135, at \*6  
13 (*Gilbert v. Citigroup, Inc.*, No. 08–0385 SC, 2009 WL 424320, at \*2 (N.D. Cal. Feb. 18, 2009);  
14 *Escobar*, 2008 WL 3915715, at \*3-4; *Leuthold*, 224 F.R.D. at 468–69; *Harris v. Vector Mktg.*  
15 *Corp.*, 716 F. Supp. 2d 835, 838 (N.D. Cal. 2010)).

16 At the second step of the two-step inquiry, when discovery is complete, “the Court makes a  
17 factual determination about whether the plaintiffs are actually similarly situated by weighing such  
18 factors as: ‘(1) the disparate factual and employment settings of the individual plaintiffs; (2) the  
19 various defenses available to the defendants with respect to the individual plaintiffs; and (3)  
20 fairness and procedural considerations.’” *Id.* (quoting *Leuthold*, 224 F.R.D. at 467). While this  
21 standard is more stringent than at the conditional certification stage, it “is different, and easier to  
22 satisfy, than the requirements for a class action certified under Federal Rule of Civil Procedure  
23 23(b)(3).” *Id.* (citing *Lewis v. Wells Fargo & Co.*, 669 F.Supp.2d 1124, 1127 (N.D. Cal. 2009)).

24 **B. Whether the Minor League Collective Should be Conditionally Certified**

25 Plaintiffs contend they are “similarly situated” under the FLSA because, under MLB Rules  
26 and the UPC, all of them are required to work without compensation during the off-season, play  
27 six to seven games a week and engage in protracted travel during the championship season  
28

1 without receiving overtime, and adhere to the same grueling daily schedule on game days without  
2 receiving minimum wages. They further assert that putative collective members are subject to a  
3 uniform policy as to their salary levels, not only during the first year, but also in subsequent years.  
4 Plaintiffs offer Player Declarations to show that they are similarly situated, along with the MLB  
5 Rules and UPC. The Court finds that under the lenient standard that applies to conditional  
6 certification, Plaintiffs have met their burden.

7 **1. Failure to Pay Wages for Off-Season Work**

8 The strongest evidence that Plaintiffs are similarly situated is found in the uniform policy  
9 under MLR 3 and the UPC that the obligations of minor league players continue throughout the  
10 calendar year even though they receive a salary only during the championship season. *See* MLR  
11 Attachment 3, UPC ¶ VII.B. All of the Player Declarations submitted by Plaintiffs state that the  
12 players performed work during the off-season that was required but was not compensated, which  
13 included performing required winter conditioning and spring training. *See* Players Declarations at  
14 2-3. Based on the Player Declarations and the UPC, the Court finds that Plaintiffs have  
15 demonstrated a sufficient nexus binding the claims of the class members that Defendants failed to  
16 pay them for work during the off-season to warrant conditional certification.

17 The Court rejects Defendants’ assertion that conditional certification should not be granted  
18 because the nature and quantity of the work performed by Plaintiffs during the off-season varies  
19 depending on numerous factors, including skill level and team, as well as their reliance on various  
20 defenses that may apply to this claim, including the defense that the activities performed by  
21 Plaintiffs may not constitute “work” under the FLSA because Plaintiffs are not employees. These  
22 arguments go to questions that are more appropriately addressed at the second stage of the  
23 certification process, when courts consider the “disparate factual and employment settings of the  
24 individual plaintiffs” and “the various defenses available to the defendants with respect to the  
25 individual plaintiffs.” *Leuthold*, 224 F.R.D. at 467. The Court rejects Defendants’ invitation to  
26 address the merits of this claim at this stage of the proceedings. *See Otey*, 2013 WL 4552493, at  
27 \*3.

28 The Court also finds that the cases cited by Defendants in support of their assertion that



1 Plaintiffs are not similarly situated are distinguishable. See Opposition at 9 (citing *Till v. Saks*  
 2 *Inc.*, No. C 11-00504 SBA, 2013 WL 5755671 (N.D. Cal. Sept. 30, 2013), *Sheffield*; 211 F.R.D. at  
 3 416-17; *West v. Border Foods, Inc.*, No. 05-2525 (DWF/RLE), 2006 WL 1892527, at \*8 (D.  
 4 Minn. July 10, 2006); *Brooks v. BellSouth Telecomms., Inc.*, 164 F.R.D. 561, 569 (N.D. Ala.  
 5 1995)). In *Till* and *Brooks*, the courts applied the more stringent standard that applies at the  
 6 second step of the conditional certification inquiry because substantial discovery had already  
 7 occurred. See *Till v. Saks, Inc.*, 2013 WL 5755671, at \*9; *Brooks v. BellSouth Telecomms., Inc.*,  
 8 164 F.R.D. at 568. In *Sheffield*, plaintiffs sought conditional certification of a collective of  
 9 employees who worked for different subsidiaries and affiliates of the defendant. 211 F.R.D. at  
 10 413. The court found, based on the affidavits supplied by the plaintiffs, that “the dissimilarities  
 11 among the putative class members extend[ed] to geography, work sites, and payment systems” and  
 12 therefore denied conditional certification, noting that “[p]utative class members must share more  
 13 than a common allegation that they were denied overtime or paid below the minimum wage.” *Id.*  
 14 In contrast to the facts here, the plaintiffs in *Sheffield* pointed to no uniform policy or practice that  
 15 linked the claims of the putative class members. Similarly, in *West v. Border Foods, Inc.*,  
 16 conditional certification was denied where no uniform policy linked the claims of the putative  
 17 class members that they were denied overtime pay because they were required to work “off the  
 18 clock” without pay; indeed, the only express written policy in the record was offered by the  
 19 defendant and reflected that the defendant had a policy requiring all employees to clock in at the  
 20 beginning of their shifts and clock out at the end. See 2006 WL 1892527, at \*7 (D. Minn. July 10,  
 21 2006).

22 **2. Failure to Pay Overtime for Workweeks in Excess of Forty Hours During  
 23 Championship Season**

24 Plaintiffs claim that during the championship season they are required to work more than  
 25 forty hours a week and are not paid overtime. Rather, as discussed above, they are compensated  
 26 only as specified under UPC ¶ VII, which does not provide for overtime compensation. They  
 27 further assert that they are similarly situated as to their claim for failure to pay overtime because  
 28 the salary received by first year players is the same under MLR 3(c)(2)(B) and because salaries are  
 not actually negotiated for non-first year players (as permitted under the MLB Rules) but dictated

1 by the Clubs. Finally, they point to MLR Rules that establish guidelines as to scheduling and  
2 travel to show that the players are similarly situated as to the long hours they are required to work.  
3 The Court concludes that Plaintiffs have demonstrated that there is a nexus between Plaintiffs’  
4 claims based on the fact that all are subject to a uniform policy whereby they are paid a set salary  
5 without regard to whether they have worked more forty hours a week. Further, the Player  
6 Declarations support Plaintiffs’ allegations that they are routinely required to work more the forty  
7 hours a week during the championship season.<sup>7</sup>

8 The Court rejects Defendants’ assertion that conditional certification should be denied  
9 because Plaintiffs’ hours may vary, raising the possibility that some did not work more than forty  
10 hours a week during the championship season and therefore, that there may not be liability as to  
11 those class members. Defendants rely on *Brewer v. General Nutrition Corp.* in support of this  
12 argument, but in that case, Judge Gonzales-Rogers *granted* conditional certification of the FLSA  
13 collective; it was not until the second stage of the certification process, when she was considering  
14 whether to decertify the class on the basis of the fully developed record that she concluded that  
15 this variation supported decertification of the FLSA class. *See* 2014 WL 5877695, at \*15.  
16 Similarly, Defendants’ arguments relating to variations in the players’ compensation should be  
17 addressed at a later stage of the case, on a fully developed record.

18 Nor is the Court persuaded that it should deny conditional certification on the basis of  
19 possible individualized inquiries relating to the FLSA’s amusement exemption. Like the defense  
20 that Plaintiffs are not employees, discussed above, the amusement exception is a defense that goes  
21 to the merits of Plaintiffs’ claim and therefore, is not relevant to the conditional certification  
22 inquiry. *See Shaia v. Harvest Mgmt. Sub LLC*, 306 F.R.D. 268, 272 (N.D. Cal. 2015) (noting that  
23

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24 <sup>7</sup> Plaintiffs cite MLR 32 and 57 in support of their assertion that they are similarly situated. These  
25 rules, unlike Rule 3 (discussed above) do not expressly address the substance of Plaintiffs’ claim.  
26 While Rule 3 expressly states that players must perform work during the off-season without  
27 compensation, Rule 32 only states that minor league teams must submit their game schedules to  
28 the major league clubs for the purposes of soliciting “input.” MLR 32(b). Similarly, Rule 57  
requires that all travel itineraries must be approved by the Major League Club but does not impose  
any specific requirements that would obviously result in a work week that exceeds 40 hours.  
Therefore, the Court finds that these rules do not have any particular significance as to the  
conditional certification inquiry.

1 because “the initial ‘notice stage’ is not the appropriate time for a court to evaluate the merits of  
2 plaintiffs’ FLSA claims . . . courts routinely hold that the potential applicability of an FLSA  
3 exemption does not preclude conditional certification”) (internal quotations and citation omitted)).

### 4 **3. Failure to Pay Minimum Wages During the Championship Season**

5 Plaintiffs assert that they are similarly situated as to their claim that they are not paid  
6 minimum wage during the championship season for similar reasons they contend they are  
7 similarly situated as to the overtime claims. In particular, all of them are bound by the UPC,  
8 which requires players to worker for a fixed salary regardless of the number of hours worked,  
9 resulting in compensation that falls below the minimum wage because of the long hours they are  
10 required to work during the championship season. The Court finds that Plaintiffs’ allegations that  
11 they are subject to a uniform policy that results in failure to meet the minimum wage requirements  
12 of the FLSA are substantial for the same reasons the allegations as to Plaintiffs’ overtime claims  
13 are substantial. Therefore, conditional certification is warranted as to this claim.

#### 14 **C. Limitations Period**

##### 15 **1. Legal Standard**

16 The statute of limitations for filing a claim under the FLSA is two years, or three years if  
17 the violation is “willful.” 29 U.S.C. § 255(a). Under the FLSA, the filing of the complaint does  
18 not toll the limitations period for putative class members who are not named as plaintiffs; rather,  
19 those individuals’ claims are tolled only when they file an opt-in form consenting to joinder in the  
20 action. 29 U.S.C. § 256. The FLSA limitations period is subject to the doctrine of equitable  
21 tolling, but typically “[e]quitable tolling is extended sparingly and only where claimants exercise  
22 diligence in preserving their legal rights.” *Adams v. Inter-Con Sec. Sys., Inc.*, 242 F.R.D. 530, 543  
23 (N.D. Cal. 2007) (citing *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990)). “There are  
24 two general categories of situations warranting equitable tolling: (1) where the plaintiffs actively  
25 pursued their legal remedies by filing defective pleadings within the statutory period, and (2)  
26 where the defendants’ misconduct induces failure to meet the deadline.” *Adams v. Inter-Con Sec.*  
27 *Sys., Inc.*, 242 F.R.D. 530, 543 (N.D. Cal. 2007) (citing *Irwin*, 498 U.S. at 96). The equitable  
28 tolling inquiry focuses on fairness to both parties. *Id.* (citing *Partlow v. Jewish Orphans’ Home of*

1 *S. Cal., Inc.*, 645 F.2d 757, 760 (9th Cir. 1981), *overruled on other grounds by Hoffmann-La*  
2 *Roche, Inc. v. Sperling*, 493 U.S. 165 (1989)).

3 **2. Whether Two-Year or Three-Year Limitations Period Should Apply**

4 Plaintiffs assert that for the purposes of notice, the Court should apply the three-year  
5 limitation period that applies to willful violations of the FLSA. The Court agrees.

6 At this early stage of the case, it would be appropriate to limit the class period to two years  
7 only if it is apparent, as a matter of law, that Defendants' conduct was not willful. Given that  
8 Plaintiffs' FLSA claims are based, in part, on policies that are expressly set forth in the MLB  
9 Rules and the UPC, the Court cannot make such a finding. Therefore, it is appropriate to give  
10 notice based on the three-year limitations period that applies to willful violations of the FLSA.  
11 *See Wren*, 2007 WL 4532218, at \*10. The Court does not, however, decide which limitations  
12 period will ultimately apply to Plaintiffs' claims; that is a question more appropriately decided  
13 after the development of a complete factual record.

14 **3. Whether Court Should Toll FLSA Claims**

15 Plaintiffs ask the Court to toll the limitations period: 1) during the pendency of the instant  
16 motion and through the opt-in period; and 2) from the date of Plaintiff's originally filed complaint,  
17 February 7, 2014. The Court finds that equitable tolling is not warranted during the pendency of  
18 the Motion through the end of the opt-in period. The Court does not decide whether the  
19 limitations period should be tolled between February 7, 2014 and July 11, 2014 but permits  
20 Plaintiffs to extend the limitations period for this period for the purposes of notice only.

21 With respect to Plaintiffs' request that the tolling period be extended beyond the date to  
22 which the parties stipulated to the end of the opt-in period, the Court does not find that Defendants  
23 have engaged in any misconduct or misrepresentations that would justify tolling the statute of  
24 limitations for this period. Defendants were not required to agree to extend the parties' tolling  
25 agreement to cover the period during which the instant motion was being briefed and decided and  
26 it would certainly have been obvious to counsel at the time the parties entered into the original  
27 agreement that Plaintiffs' conditional certification motion would not be decided by the time the  
28 tolling agreement expired, 45 days after the Court's order on the Jurisdiction and Transfer

1 Motions. Moreover, as Judge Chen explained under almost identical circumstances, the time that  
2 elapses during the pendency of a motion for conditional certification is “the kind that Congress  
3 anticipated would pass when Congress enacted Section 256” of the FLSA. *Woods v. Vector Mktg.*  
4 *Corp.*, No. C-14-0264 EMC, 2015 WL 1198593, at \*7 (N.D. Cal. Mar. 16, 2015) (citing  
5 *Adedapoidle–Tyehimba v. Crunch, LLC*, No. 13-CV-00225 WHO, 2013 WL 4082137, at \*7 (N.D.  
6 Cal. Aug. 9, 2013)). Even assuming that significant delay on the part of the court in resolving a  
7 motion for conditional certification may be sufficient to toll the limitations period, there has been  
8 no such delay in this case and therefore, the Court rejects Plaintiffs’ request to toll the limitations  
9 period through the end of the opt-in period.

10 Plaintiffs also ask the Court to toll the limitations period for the approximately 5-month  
11 period between the date the Complaint was filed to the date the parties entered into the tolling  
12 agreement on the basis that Defendants may not have posted required minimum wage and  
13 overtime posters in the players’ workplaces notifying them of the applicable laws. In support of  
14 their position they cite *Yu G. Ke v. Saigon Grill, Inc.*, 595 F. Supp. 2d 240, 259 (S.D.N.Y. 2008).  
15 In that case, the court found following a trial that the statute of limitations was equitably tolled on  
16 the basis that the defendants failed to post required notices informing employees of their rights  
17 under the FLSA, and that the defendants’ failure to provide notice was intentional. 595 F. Supp.  
18 2d at 259. Therefore, the court rejected the defendants’ statute of limitations defense altogether,  
19 finding that “equitable tolling should apply up to the point that [the plaintiffs] learned of the  
20 requirements of the minimum-wage and overtime laws, shortly before they filed [their] lawsuit.”  
21 *Id.* In reaching this conclusion, the court noted that “tolling may be used to suspend the statute of  
22 limitations against a plaintiff who is unaware of his cause of action” and that an employer’s  
23 “failure to provide required notice of the governing legal requirements may be a sufficient basis  
24 for tolling.” *Id.* (internal quotations and citations omitted).

25 On the other hand, in *Campanelli v. Hershey Co.*, Judge Zimmerman rejected the  
26 plaintiffs’ assertion, in a motion for conditional certification of an FLSA class, that the statute of  
27 limitations should be tolled because the defendants failed to post required notices under the FLSA.  
28 2010 WL 3219501, at \*6. He acknowledged that there is a split of authority on the question of

1 whether failure to post FLSA notices may give rise to equitable tolling. He concluded, however,  
2 that the cases in which courts have found that failure to post such notices did not give rise to  
3 equitable tolling took the “more reasonable approach.” *Id.* In particular, he noted that “plaintiffs’  
4 proposed rule could lead to indefinite tolling.” *Id.* He also declined to apply the doctrine of  
5 equitable tolling because the plaintiffs had failed to establish that the defendants had not posted  
6 the required notices, failed to show that they were not aware of their right to overtime, and failed  
7 to cite factually similar authority where notices were “required and feasible” involving sales  
8 representatives who worked remotely, as did the plaintiffs in that case. *Id.*

9 The undersigned tends to agree with Judge Zimmerman that a per se rule that failure to  
10 post required notices results in equitable tolling would be inconsistent with the Supreme Court’s  
11 admonition that the doctrine is to be applied “sparingly.” On the other hand, in the absence of  
12 discovery, the Court concludes that it is premature to make any factual findings as to whether the  
13 required notices were posted, or more generally, whether and when Plaintiffs in this case had  
14 actual notice of their legal rights under the FLSA. Moreover, neither side has meaningfully  
15 addressed the split of authority as to the implications of a failure to post required notices under the  
16 FLSA as to tolling. Therefore, the Court defers deciding this question until the parties have  
17 conducted discovery and provided more extensive briefing on this issue. Plaintiffs will be  
18 permitted to give notice based on the assumption that equitable tolling applies for this period  
19 however.

20 **D. Notice**

21 **1. Production of Contact Information**

22 To the extent the Court has found that the collective should be conditionally certified,  
23 Defendants shall be required to produce the contact information for putative collective members.  
24 To protect the privacy of collective members, however, contact information shall be produced  
25 only to a claims administrator retained by Plaintiffs and not to Plaintiffs or to Plaintiffs’ counsel.  
26 *See Wren*, 2007 WL 4532218, at \*9.

27 **2. Form of Notice**

28 “The overarching policies of the FLSA’s collective suit provisions require that the

1 proposed notice provide ‘accurate and timely notice concerning the pendency of the collective  
2 action, so that [potential plaintiffs] can make informed decisions about whether to participate.’”  
3 *Whitehorn v. Wolfgang’s Steakhouse, Inc.*, 767 F. Supp. 2d 445, 450 (S.D.N.Y. 2011) (quoting  
4 *Fasanelli v. Heartland Brewery, Inc.*, 516 F.Supp.2d 317, 323 (S.D.N.Y. 2007) (quoting  
5 *Hoffmann–La Roche*, 493 U.S. at 17)). The form and content of the notice are left to the “broad  
6 discretion” of the trial court. *Id.*

7 In the Motion, Defendants challenge Plaintiffs’ original proposed notice on the grounds  
8 that it includes the Court’s name. In the revised notice that was filed just before the motion  
9 hearing, Docket No. 433, Plaintiffs’ proposed notice is no longer on pleading paper with the name  
10 of this Court. Therefore, the Court need not address this dispute, which has been resolved.  
11 Similarly, Defendants’ objection that the original notice did not provide putative class members  
12 with the contact information of Defendants’ counsel also has been resolved, with both sides’  
13 counsel being listed in the section entitled, “How do I get more information?” The Court  
14 overrules Defendants’ objection to the Plaintiffs’ proposed notice on the basis that it may include  
15 players who played exclusively for dismissed Clubs and/or whose claims accrued outside of the  
16 two-year limitations period. To the extent that the notice may encompass claims which are  
17 ultimately found to be barred or unsuitable for class treatment, these issues are more appropriately  
18 addressed at the second stage of the FLSA certification process, that is, at the decertification stage.

19 With respect to the parties’ specific disputes regarding wording, the Court rules as follows:

- 20 • **Section 1 (“Why did I get this notice”):** the Court finds that Plaintiffs’ version (which  
21 does not list out the specific teams who are defendants in this action) is acceptable and  
22 that Defendants’ version listing the teams is potentially confusing to putative class  
23 members without further language making clear that players for the dismissed Clubs may  
24 be members of the collective. With that guidance, Defendants withdrew their objection  
25 to Plaintiff’s version of Section 1 at the Motion hearing.
- 26 • **Section 3 (“Who can participate in the lawsuit?”):** the Court finds that Plaintiff’s  
27 version provides a more accurate description of the class and rejects Defendants’  
28 proposed version of that section.

- 1       • **Section 5 (“What happens if I join the lawsuit”):** the Court rejects the additions  
2       proposed by Defendants to Plaintiffs’ version. The statement “You will be bound by and  
3       share in any ruling, settlement or judgment, whether favorable or unfavorable,” is  
4       duplicative of other language in that section and the reference to payment of attorneys’  
5       fees and costs is confusing and unnecessary.
- 6       • **Section 6 (“What happens if I do nothing?”):** The Court overrules Defendants’  
7       objection to the third and fifth sentences proposed by Plaintiffs, which may be included  
8       in Plaintiffs’ notice.
- 9       • **Section 9 (“Who will represent me if I join the lawsuit”):** The first sentence of this  
10      section shall read: “If you choose to join this suit, you may retain your own counsel (at  
11      your own expense) or choose to be represented by the attorneys who represent the  
12      Named Plaintiffs and any players who consent to join this suit.”
- 13      • **Section 10 (“How do I get more information”):** The Court approves Plaintiffs’ version  
14      of this section.

15                   **3. Method of Delivering Notice**

16           The Court concludes that notice by First-Class mail, email and posting of the notice on a  
17      case website will provide sufficient notice to potential class members. Although Defendants  
18      suggest that notice by email should not be permitted because of the “high risk that the notification  
19      will be distorted through modification of the notice itself or the addition of commentary to the  
20      email,” Opposition at 23 (citing *Reab v. Elec. Arts, Inc.*, 214 F.R.D. 623, 630-31 (D. Colo. 2002)),  
21      courts routinely permit email notice. *See, e.g., Otey*, 2013 WL 4552493, at \*5 (approving notice  
22      by email and online postings); *Butler v. DirectSAT USA, LLC*, 876 F. Supp. 2d 560, 575 (D. Md.  
23      2012) (“[w]ith regard to the use of email to notify potential plaintiffs of this litigation,  
24      ‘communication through email is [now] the norm.’”) (quoting *In re Deloitte & Touche, LLP*  
25      *Overtime Litig.*, 2012 WL 340114, at \*2 (S.D.N.Y. Jan. 17, 2012)). Courts (including the  
26      undersigned) also routinely approve the posting of notices on a case website maintained by  
27      Plaintiffs’ counsel. *See Wren*, 2007 WL 4532218, at \*9. Any possibility of prejudice that might  
28      arise from giving notice via email or by posting a notification on a case website can be addressed



1 by an agreement between the parties as to the specific format of the email or website posting.

2 The Court rejects Plaintiffs’ request that notices also be posted on each Defendant’s  
3 website and in work places as Plaintiffs have not demonstrated that the three forms of notice  
4 discussed above will not adequately provide notice to putative class members. The court also  
5 notes that because the minor league players perform much of their off-season work at a variety of  
6 locations and often do not perform their work in traditional work places, the identification of the  
7 locations where notices would have to be posted would unnecessarily complicate the notice  
8 process.

9 **4. Opt-In Period and Proposed Reminder**

10 Plaintiffs ask the Court to approve a 90-day opt-in period and the issuance of a reminder  
11 notice after 30 days before the end of the opt-in period. As Judge Armstrong noted in *Sanchez v.*  
12 *Sephora USA, Inc.*, “[t]hough opt-in periods vary, timeframes of sixty to ninety days appear to  
13 have become the presumptive standard in this District.” No. 11-03396 SBA, 2012 WL 2945753,  
14 at \*6 (N.D. Cal. July 18, 2012). Plaintiffs have requested an opt-in period on the longer end of  
15 that scale because minor league players work long hours and are often on the road. The Court  
16 finds a 90-day opt-in period to be reasonable. Further, as noted by Judge Koh in *Benedict*,  
17 “courts commonly approve . . . reminders.” 2014 WL 587135, at \*14 (approving 90-day opt-in  
18 period with reminder notice 30 days before the end of the opt-in period in FLSA collective action)  
19 (citing *Helton v. Factor 5, Inc.*, No. C-10-04927 SBA, 2012 WL 2428219 (N.D. Cal. Jun. 25,  
20 2012) (authorizing reminder notice 30 days before the end of the opt-in period)). Therefore, the  
21 Court also approves Plaintiffs’ request to send a reminder notice to putative class members thirty  
22 days before the end of the opt-in period.

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**IV. CONCLUSION**

For the reasons stated above, the Motion is GRANTED. Plaintiffs shall submit to the Court for approval a copy of their proposed notice and reminder, consistent with this Order, before initiating the notice process.

**IT IS SO ORDERED.**

Dated: October 20, 2015



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JOSEPH C. SPERO  
Chief Magistrate Judge