

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CAROL FERGUSON and LYNDA
FREEMAN, on behalf of themselves and, in
addition, on behalf of others similarly situated,

Plaintiffs,

v.

MARIA SMITH, an individual; GLADSTONE
AUTO, LLC, an Oregon limited liability
company; and CARROS, INC., an Oregon
corporation,

Defendants.

Case No. 3:18-cv-00372-SB

OPINION AND ORDER

BECKERMAN, U.S. Magistrate Judge.

This matter comes before the Court on plaintiffs Carol Ferguson and Lynda Freeman's (together, "Plaintiffs") motion for approval of their collective action notice ([ECF No. 165](#)).

Defendants Maria Smith, Gladstone Auto, LLC, and Carros, Inc. (together, "Defendants") object to several aspects of Plaintiffs' proposed collective action notice ([ECF No. 166](#)). For the reasons discussed below, the Court sustains in part and overrules in part Defendants' objections.

As an initial matter, the Court overrules Defendants' objections to sending the notice and receiving opt-ins via electronic media in addition to U.S. mail. Email, text, and website

communications increase the likelihood of reaching potential members of the collective action (especially during a global pandemic), and there is no serious risk of multiple entries by a single individual nor phantom entries in light of the relatively small and readily identifiable collective.

With respect to Defendants' objections to the proposed notice language, the Court addressees each objection herein:

<u>Number</u>	<u>Relevant Language</u>	<u>Disposition</u>	<u>Explanation</u>
1	"A federal court authorized this notice. This is not a solicitation from a lawyer."	Sustained in part.	Approved language: "A federal court authorized this notice." The approved language is accurate. The second sentence should be excluded because the notice is, in fact, a solicitation by Plaintiffs' counsel to join the collective action and to be represented by Plaintiffs' counsel.
	Add Maria Smith	Sustained	Accuracy
	"You have to decide whether to join this collective action."	Sustained	Defendants' proposed language is more clear.
	"share in" should be "join"	Sustained	Defendants' proposed language is more clear.
	"You will not be penalized in any way for joining this action."	Sustained	Defendants' proposed language is more accurate.
2	Adding date	Sustained in part	The Court approves the language Plaintiffs suggest in their reply.
3	Several proposed changes	N/A	Plaintiffs agree to the proposed changes, as noted in their reply.
4	First sentence	Sustained in part	Approved language: "Lynda Freeman and Carol Ferguson claim that Defendants paid some paychecks after the regular payday, and further claim that when that happened, Defendants violated federal law."
	"in the amount of \$7.25"	Sustained	Defendants' proposed language is more clear.
	"an extra 50% of their regular wage rate for all hours over 40 in a week"	Sustained	Defendants' proposed language more accurately reflects the proper calculation of liquidated damages under the FLSA. Plaintiffs present

Number	Relevant Language	Disposition	Explanation
			no authority for their position that they are entitled to overtime wages and liquidated damages for all hours in the relevant pay period, as opposed to any hours over 40 hours per week. <i>See</i> 29 U.S.C. § 216(b) (“Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of . . . their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.”).
	Reference to related state litigation	Sustained	If the state court certifies the state claims, the state notice can explain the difference between the state and federal actions. Referencing the state case here may be confusing.
5	“that their payments to employees on the next business day after a weekend or holiday did not violate federal law”	Overruled	Plaintiffs’ proposed language more accurately reflects their claims. Whether Defendants paid employees on the next business day after a weekend or holiday remains a disputed fact.
6	“on the next business day . . . was on a weekend or holiday”	Overruled	Plaintiffs’ proposed language more accurately reflects their claims. Whether Defendants paid employees on the next business day after a weekend or holiday remains a disputed fact.
	“eligible to be”	Sustained	Defendants’ proposed language is more clear.
7	Return form to the “claims administrator”	N/A	Plaintiffs agree to the proposed changes.
	Website	Overruled	The Court assumes the website language will mirror approved language in the short and long form notices.
8	Eligibility language (including “apply to”)	Sustained	Defendants’ proposed language is more accurate.
9	Add “consent to”	N/A	Plaintiffs agree to the proposed changes.

Number	Relevant Language	Disposition	Explanation
10	Defendants' names	Overruled	Gladstone Auto, LLC is defined as "Toyota of Gladstone" and Carros, Inc. is defined as "Mazda of Gladstone" earlier in the notice, and this reference is not confusing.
11	Defendants' names	N/A	Plaintiffs agree to the proposed changes.
12	Defendants' names	Overruled	Gladstone Auto, LLC is defined as "Toyota of Gladstone" and Carros, Inc. is defined as "Mazda of Gladstone" earlier in the notice, and this reference should not be confusing.
	"were issued on the next business day when the 5th and 20th of each month fell on a weekend or holiday"	Overruled	Plaintiffs' proposed language more accurately reflects their claims. Whether Defendants paid employees on the next business day after a weekend or holiday remains a disputed fact.
13	Several proposed changes	N/A	Plaintiffs agree to the proposed changes.
14	First sentence	Sustained in part	Approved language: "In the lawsuit, Lynda Freeman and Carol Ferguson claim that Defendants sometimes paid them their paychecks after the regular payday, that this violated federal law, and that they are therefore entitled to money damages."
15	"that their payments to employees on the next business day after a weekend or holiday did not violate federal law"	Overruled	The proposed additional language is not necessary and does not accurately state Plaintiffs' claims. Whether Defendants paid employees on the next business day after a weekend or holiday remains a disputed fact.
16	Plaintiffs' names	Sustained	Referring to the plaintiffs by name is more clear and accurate, and the addition of the word "either" adds clarity.
17	Plaintiffs' names	Sustained	Referring to the plaintiffs by name is more clear and accurate. Defendants' proposed language "where they are determined to have been paid late" is also appropriate.

Number	Relevant Language	Disposition	Explanation
	Liquidated damages	Sustained	Defendants' proposed language more accurately reflects the proper calculation of liquidated damages under the FLSA. Plaintiffs present no authority for their position that they are entitled to overtime wages and liquidated damages for all hours in the relevant pay period, as opposed to all hours greater than 40 hours per week. <i>See</i> 29 U.S.C. § 216(b) ("Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of . . . their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.").
18-19	Defendants' names	Overruled	Gladstone Auto, LLC is defined as "Toyota of Gladstone" and Carros, Inc. is defined as "Mazda of Gladstone" earlier in the notice, and this reference should not be confusing.
20	"you have to decide"	Sustained	Defendants' proposed language is more clear and accurate.
21	Proposed deletion	N/A	Plaintiffs agree to the proposed change.
22	Website	Overruled	The Court assumes the website language will mirror approved language in the short and long form notices.
23	Several proposed changes	N/A	Plaintiffs agree to the proposed changes.
24	Proposed addition	N/A	Plaintiffs agree to the proposed changes.
25	Proposed addition	N/A	Plaintiffs agree to the proposed changes.

CONCLUSION

For these reasons, the Court sustains in part and overrules in part Defendants' objections to Plaintiffs' proposed collective action notice ([ECF No. 165](#)). Plaintiffs' counsel shall incorporate

the approved changes discussed herein and obtain approval on the revised notice from Defendants' counsel prior to circulating the notice. If any disputes remain, counsel shall contact the Court to schedule a telephonic conference.

DATED this 19th day of January, 2022.



HON. STACIE F. BECKERMAN
United States Magistrate Judge