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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PAMELA BOND, individually and on
behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 FLUKE CORPORATION and FLUKE
14 MANUFACTURING
CORPORATION,

15 Defendants.
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CASE NO. 22-cv-1241 MJP

ORDER GRANTING STIPULATED
MOTION AUTHORIZING NOTICE
TO FLSA COLLECTIVE

17 This matter comes before the Court on the parties' Stipulated Motion Authorizing Notice
18 to FLSA Collective. (Dkt. No. 31.)

19 Plaintiff brings this action to recover unpaid overtime wages and other damages under the
20 Fair Labor Standards Act, 29 U.S.C. § 201, et seq ("FLSA") and the Washington Minimum
21 Wage Act, RCW 49.46. (Complaint at 1 (Dkt. No. 1).) Under the FLSA, employees are
22 permitted to bring lawsuits on behalf of "themselves and other employees similarly situated." 29
23 U.S.C. § 216(b); Hoffman-La Roche Inc. v. Sperling, 493 U.S. 165, 170-73 (1989). The Court
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1 evaluates “the propriety of the collective mechanism—in particular, plaintiffs’ satisfaction of the
2 ‘similarly situated’ requirement—by way of a two-step ‘certification’ process.” Campbell v. City
3 of Los Angeles, 903 F.3d 1090, 1110 (9th Cir. 2018) (citing 1 McLaughlin on Class Actions §
4 2:16 (14th ed. 2017)). At step one, the “plaintiffs will, at some point around the pleading stage,
5 move for ‘preliminary certification’ of the collective action, contending that they have at least
6 facially satisfied the ‘similarly situated’ requirement.” Id. (citing 1 McLaughlin on Class Actions
7 § 2:16). At step two, “after the necessary discovery is complete, defendants will move for
8 ‘decertification’ of the collective action on the theory that the plaintiffs’ status as ‘similarly
9 situated’ was not borne out by the fully developed record.” Id. (citing 1 McLaughlin on Class
10 Actions § 2:16).

11 A grant of preliminary certification results in the dissemination of a court-approved
12 notice to the putative collective action members, advising them that they must affirmatively opt
13 in to participate in the litigation.” Bollinger v. Residential Cap., LLC, 761 F. Supp. 2d 1114,
14 1119 (W.D. Wash 2011). But preliminary certification does not “produce a class with an
15 independent legal status[] or join additional parties to the action.” Genesis Healthcare Corp. v.
16 Symczyk, 569 U.S. 66, 75 (2013). “The sole consequence” of a successful motion for
17 preliminary certification is “the sending of court-approved written notice” to workers who may
18 wish to join the litigation as individuals. Id.

19 Through the stipulated Motion, the parties agree that this matter should be certified as a
20 collective action. The Court finds no flaw in this request and approves this approach. The parties
21 do, however, dispute the form of the notice to the putative collective members. The parties
22 disagree on three things: (1) whether defense counsel’s contact information should be included;
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1 (2) whether notice by text message is appropriate, and (3) the language of the proposed email
2 and text notifications. (Stip. Mot. at 1.)

3 “In exercising the discretionary authority to oversee the notice-giving process, courts
4 must be scrupulous to respect judicial neutrality.” Hoffman-La Roche Inc. v. Sperling, 493 U.S.
5 165, 174 (1989). “To that end, trial courts must take care to avoid even the appearance of judicial
6 endorsement of the merits of the action.” Id.

7 First, the Court finds that the notice should not include contact information for defense
8 counsel. Such information is unnecessary and could lead to potential confusion. Second, the
9 notice may be sent by text message. Defendants object to text messaging as unnecessarily
10 duplicative. The Court agrees with Plaintiff and finds text message to be appropriate. In today’s
11 modern society, people often do not respond to physical mail or look at emails from unknown
12 senders. They do, however, tend to keep phone numbers and look at text messages as they come
13 in. For this reason, the Court will permit Plaintiff to send text message notices to the putative
14 collective members. Third, subject to the removal of defense counsel’s contact information, the
15 Court approves the form of the email and text notifications.

16 The Court also finds that defense counsel must provide Plaintiff with the last known cell-
17 phone numbers of all the putative collective members. Per the parties’ stipulated schedule
18 regarding the notice, this must be done within ten (10) business days of this Order.

19 Finally, the Court APPROVES the stipulated schedule regarding the notice and opt-in
20 process, with one exception. The Court changes the opt-in period from sixty (60) days to forty-
21 five (45) days. Putative collective members shall have forty-five days to return their signed opt-
22 in forms.

1 **CONCLUSION**

2 The Court GRANTS the Motion and APPROVES the proposed notices subject to the
3 changes identified in this Order. The Court finds that class members may receive notice via text
4 messaging. And Defendant must provide the collective members' last known cell phone numbers
5 within ten (10) business days of this Order.

6 The clerk is ordered to provide copies of this order to all counsel.

7 Dated May 19, 2023.

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10 Marsha J. Pechman
11 United States Senior District Judge
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