IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Lynn Walters, Lynn Brown, Kathleen Abston, *individually and on behalf of all others similarly situated,*	)	
Plaintiffs,	)	Civil Action No. 6:13-cv-02995-JMC
v.	)	**ORDER**
Buffets, Inc. d/b/a Home Town Buffets, Ryan's Old Country Buffet, Fire Mountain, and Country Buffet, and Robert Curran,	)	
Defendants.	)	

This matter is before this court on Plaintiff's Joint Status Report (ECF No. 153) notifying the court that, for the purposes of collective action under the Fair Labor Standards Act ("FLSA") claims in this matter, the Parties agreed on the form of notice and "many aspects of the method of notice." (ECF No. 153 at 3.) However, this court also was informed that "the Parties have not agreed on whether a reminder postcard may be sent midway through notice period to those people who have not responded, whether notice should be posted at the putative plaintiffs' workplaces, and whether automated phone calls may be made to those people who have not responded by the middle of the notice period." (*Id.*) In light of this disagreement, Plaintiffs offer to limit its notice requests to a reminder postcard and forego its requests for a work posting and automated calls to putative plaintiffs. (*Id.*) According to the Joint Status Report (ECF No. 153), Defendants instead believe that notice by first class mail is enough and, presumably, that no further reminder notices are necessary. (*Id.*) The Parties ask the Court to help resolve this disagreement. (*Id.*)

Exercising their discretion to "facilitate[e]" notice of collective action to putative plaintiffs under the FLSA, *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169, 171 (1989), district courts are split in granting requests for reminder notices to be issued to putative collective action members in FLSA actions. *Compare, e.g.*, *Morris v. Lettire Const., Corp.*, 896 F. Supp. 2d 265, 275 (S.D.N.Y. 2012) ("Given that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in, we find that a reminder notice is appropriate."), *with Byard v. Verizon W. Virginia, Inc.*, 287 F.R.D. 365, 375 (N.D.W. Va. 2012) (first noting that "district courts around the country have found that reminder notices have a tendency to stir up litigation and inappropriately encourage putative plaintiffs to join the suit" and rejecting the plaintiff's request for a reminder notice issue because it was unnecessary and "potentially improper"). Here, Plaintiffs propose sending, at minimum, a reminder postcard "midway through notice period to those people who have not responded." (ECF No. 137 at 18.) Defendants provide no reason that such a reminder would unduly prejudice them or that there are any particular circumstances in this case that make allowing the issuance of a reminder notice improper.

This court therefore finds that allowing the issuance of a reminder notice in the form of a postcard is reasonable in this case. This court specifically finds compelling the FLSA's intentions to inform as many plaintiffs as possible of their right to opt into a collective action like the one here. *See, e.g.*, *Morris v. Lettire Const., Corp.*, 896 F. Supp. 2d 265, 275 (S.D.N.Y. 2012); *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 847 (N.D. Cal. 2010). Of note, for example, is that collective actions under the FLSA, unlike class actions pursuant to Fed. R. Civ. P. 23 (2012), *require* potential participants to opt in: "[N]o employee shall be a party plaintiff to any . . . action unless he gives his consent in writing to become such a party and such consent is filed in this Court

in which such action is brought." 29 U.S.C. 216(b) (2012). This court simultaneously finds too speculative Defendants' suggestion that reminder notices might instigate litigation. And to the extent that Defendants' argument in this regard is that it is inappropriate for a court to encourage litigation via reminder notices, this court responds that Plaintiffs—not this court—would be issuing the reminder notices. Moreover, such reminder notices would be sent only to those individuals on a list of putative plaintiffs that Defendants produce. (ECF No. 138 at 2.) In light of Plaintiffs' offer to forego its requests for notices in the form of work postings and automated calls, and in light of the Parties' agreement to a 60-day notice period to opt in to this action, (*see* ECF No. 153 at 3), this court limits its permission in this order to allowing the issuance only of reminder notices, in the form of postcards, on or about thirty (30) days after the original notice to those putative plaintiffs that have not responded by that time. Based on Defendant's request, (*see* ECF No. 138 at 9), this court also has reviewed the proposed contents and language of the reminder postcard notice, (*see* ECF No. 60-15), and it finds the contents and language therein reasonable. This court dismisses all of Plaintiff's other requests for other forms of reminder notices.

IT IS SO ORDERED.

United States District Judge

March 1, 2016
Columbia, South Carolina