IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE DOE 1, and JANE DOE 2,
individually and on behalf of others
similarly situated,

Plaintiffs,

v.

Case No.: 3:19-CV-09471

BLOOMBERG L.P.,

Defendant.

BRIEF IN SUPPORT OF MOTION TO APPROVE COLLECTIVE ACTION NOTICE

Respectfully Submitted,

by

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

I. INTRODUCTION

This is a wage and hour case raising overtime claims under state and federal labor law. Plaintiff brings this case as a collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. §216(b)[1] on behalf of a class of Global Data Analysts who worked for Bloomberg's Global Data division and were not paid time and one-half for hours over 40 worked in one or more weeks.

Conditional certification of an FLSA class, for the purposes of issuing notice to class members in order to preserve their overtime claims, is proper when the plaintiffs are similarly situated to the class of workers that they seek to represent. Here, all Global Data Analysts performed the same primary job duty, were wrongfully classified as exempt from overtime, worked overtime hours, and were not paid overtime compensation. Based on the complaint, sworn declarations from Global Data Analysts, and evidence from five prior Bloomberg FLSA cases, there is more than sufficient evidence to establish that the Plaintiffs are similarly situated to the class of Global Data Analysts. Indeed, in five different cases on behalf of tech workers against Bloomberg in the Southern District of New York, courts conditionally certified collective actions based on the same facts for employees who worked in different departments but performed similar duties as the Plaintiffs did here. Thus, conditional certification of an FLSA class is warranted.

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[1] Plaintiffs also bring this case as a class action under Fed. R. Civ. P. 23 under New Jersey's overtime laws. However, state overtime law is not at issue in this motion.

II. RELEVANT BACKGROUND

A. Bloomberg Is A Tech Company In The Business Of Delivering Data To Its Customers.

Defendant Bloomberg L.P. is a multinational tech company that provides data, news, and information to financial companies and organizations around the world. Bloomberg's customers access data through Bloomberg's proprietary software platforms including the Bloomberg Terminal and Bloomberg Law ("BLAW").[2] Bloomberg's Global Data division, with offices located in Skillman, New Jersey, is responsible for acquiring and processing data so it can be accessed through Bloomberg's platforms.[3]

B. Plaintiffs and Other Global Data Analysts Performed The Same Non-Exempt Primary Job Of Supplying Properly Formatted Data To Bloomberg's Platforms.

Named Plaintiffs and the members of the proposed collective class (collectively "Plaintiffs") are current and former Global Data employees who work in a non-supervisory capacity and whose primary job is to supply properly formatted data to Bloomberg's platforms.[4] Plaintiffs often had the titles of "Data Analyst" or "Data Specialist."[5] While Plaintiffs' titles

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[2] Doe 1 Dec. at ¶ 15 (describing the primary job of supplying data to the BLAW platform); Doe 2 Dec. at ¶ 15 (also describing the primary job of supplying data to the BLAW platform); Vagle Dec. at ¶ 15 (describing the primary job of supplying data to the Bloomberg Terminal platform); Bell Dec. at ¶ 15 (also describing the primary job of supplying data to the Bloomberg Terminal platform).

[3] While Bloomberg's Global Data division has its principal offices in Skillman, New Jersey, Bloomberg also employs Global Data Analysts who work for Global Data teams in New York and the District of Columbia. Doe 1 Dec. at ¶ 7; Doe 2 Dec. at ¶ 7; Vagle Dec. at ¶ 7; Bell Dec. at ¶ 7.

[4] Doe 1 Dec. at ¶ 15 ("As a Global Data Analyst my primary job is to supply properly formatted data to the BLAW platform."); Doe 2 Dec. at ¶ 15 ("As a Global Data Analyst my primary job was to supply properly formatted data to the BLAW platform."); Vagle Dec. at ¶ 15 ("As a Global Data Analyst my primary job was to supply properly formatted dividend forecast data to the Bloomberg Terminal platform."); Bell Dec. at ¶ 15 ("As a Global Data Analyst my primary job was to supply properly formatted shareholder and corporate events data to the Bloomberg Terminal platform.")

[5] Doe 1 Dec. at ¶ 5; Doe 2 Dec. at ¶ 5; Vagle Dec. at ¶ 5; Bell Dec. at ¶ 5.

might have changed over time, their primary job has not changed.[6] Plaintiffs are collectively referred to here as "Global Data Analysts" and this definition includes Global Data employees who held the title of Data Analysts, Data Specialists, and other related titles.

Global Data Analysts work in teams pertaining to the specific sets of data used in Bloomberg's platforms. [7] Global Data teams include BLAW, Commodities, Derivatives, Equities, Economic Statistics, Fixed Income, and others.[8] Global Data Analysts working across these data teams have the same primary job of supplying properly formatted data to Bloomberg's platforms by following protocols to collect large amounts of data, maintain the data to ensure that it is free of errors, and update the format of the data so that it can be used in Bloomberg's platforms.[9] Global Data Analysts are also responsible for troubleshooting problems with the data, fixing "bugs" in the data, and escalating problems to Bloomberg's programmers and engineers.[10]

In addition to Global Data Analysts, Bloomberg employs Data Engineers and Data Scientists who, unlike Global Data Analysts, must have educational backgrounds in engineering and science.[11] Data Scientists and Data Engineers work as programmers and software engineers and are responsible for developing Bloomberg's platforms and optimizing the acquisition of data

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[6] Vagle Dec. at ¶ 16; Bell Dec; at ¶ 16.
[7] Doe 1 Dec. at ¶ 8; Doe 2 Dec. at ¶ 8; Vagle Dec. at ¶ 8; Bell Dec. at ¶ 8.

[8] Doe 1 Dec. at ¶ 10; Doe 2 Dec. at ¶ 10; Vagle Dec. at ¶ 10; Bell Dec. at ¶ 10; *see also,* Global Data - Bloomberg Law, (BLAW) Data Analyst - London Job, website last accessed on July 23, 2019, https://www.velvetjobs.com/job-posting/global-data-bloomberg-law-blaw-data-analyst-london-job-233237

[9] Doe 1 Dec. at ¶ 14; Doe 2 Dec. at ¶ 14; Vagle Dec. at ¶ 14; Bell Dec. at ¶ 14.
[10] Doe 1 Dec. at ¶ 14; Doe 2 Dec. at ¶ 14; Vagle Dec. at ¶ 14; Bell Dec. at ¶ 14.

[11] Bloomberg Careers, website last accessed on May 14, 2019, https://www.bloomberg.com/careers/technology/engineering/data-science-teams/

that runs in those platforms.[12] Global Data Analysts are not employed as computer systems analysts, computer programmers, software engineers. [13]

The primary job that Global Data Analysts perform does not fall within any exemption of the overtime laws. Nonetheless, Plaintiffs expect that Bloomberg will argue that Global Data Analysts are exempt from overtime under the "administrative exemption"[14] citing to the complexity of the data sets they work with and the technical nature of their work.[15] This prediction is based on the undersigned counsels' experience in 5 other cases against Bloomberg where it argued the exact same defense for receptionists, software help desk, hardware help desk, in-house help desk, and installation representatives. However, in order to show that the administrative exemption applies, Bloomberg will have the burden to demonstrate that the primary job of Analysts is "directly related to the management or general business operations" of Bloomberg or Bloomberg's customers. 29 C.F.R. § 541.201. Bloomberg cannot meet this burden.

Third Circuit precedent and guidance from the United States Department of Labor (USDOL) confirm that the administrative exemption cannot apply to Global Data Analysts whose primary job is to supply the data that runs in Bloomberg's platforms – which is work

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[12] *Id.*

[13] Doe 1 Dec. at ¶ 13; Doe 2 Dec. at ¶ 13; Vagle Dec. at ¶ 13; Bell Dec. at ¶ 13.

[14] 29 C.F.R. § 541.201.

[15] *See e.g.; Siegel v. Bloomberg,* Bloomberg's Opposition to Summary Judgment, Dkt. 90 at pp. 8, 14-15 (arguing that the administrative exemption applied to tech support workers because they handled "complex" questions related to computers); *see also, Siegel v. Bloomberg Siegel v. Bloomberg L.P.,* 13CV1351 DLC, 2015 WL 223781, at *5 (S.D.N.Y. Jan. 16, 2015) (granting summary judgment to plaintiffs "[b]ecause nothing in the record, when viewed in the light most favorable to Bloomberg, raises a triable issue as to whether plaintiffs exercised discretion and judgment with respect to matters of significance—an issue on which Bloomberg bears the burden—plaintiffs are entitled to the summary determination that they do not fall under the administrative exemption to the FLSA")

involved in the production of Bloomberg's product - rather than the performance of administrative functions for the company. Courts in the Third Circuit analyze the administrative exemption by applying the "administrative-productive work dichotomy."

> The Third Circuit uses the "administrative-productive work dichotomy" in determining whether certain employees qualify for the administrative exemption, with "administrative" employees being exempt and "productive" employees being nonexempt. *See Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 902 (3d Cir. 1991); *see also In re Enterprise Rent-a-Car Wage & Hour Employment Practices Litig.*, Case No. 07-cv-1687, 2012 WL 4356762, *17 (W.D. Pa. Sept. 24, 2012). Recently, the Ninth Circuit provided useful insight on the administrative-productive work dichotomy, noting the purpose of this distinction is "to distinguish 'between work related to the goods and services which constitute the business' marketplace offerings and work which contributes to 'running the business itself.' " *McKeen-Chaplin v. Provident Savings Bank, FSB*, 862 F.3d 847, 851 (9th Cir. 2017) (quoting DOL Wage & Hour Div. Op. Ltr., 2010 WL 1822423, *3 (Mar. 24, 2010)).

Karali v. Branch Banking and Tr. Co., CV 16-02093-BRM-TJB, 2018 WL 4676073, at *7 (D.N.J. Sept. 28, 2018). The USDOL recently analyzed the administrative-productive work dichotomy (also known as the "production-vs-staff" dichotomy) and found that the administrative exemption could not apply to Analysts employed by a company that was in the business of gathering, analyzing, and distributing information.

> You state that your client combats fraud and theft in the insurance industry by gathering, analyzing, and distributing information to member companies and law enforcement agencies; conducting investigative operations; providing educational services; and communicating messages on theft and fraud to member companies and the public…
>
> We believe that Analyst 1 and 2 provide ongoing, day-to-day gathering, analyzing, and reporting of information rather than performance of administrative functions directly related to managing your client's business. *See* 29 C.F.R. § 541.201(b). From the information provided, the primary duty of Analyst 1 and Analyst 2 is production of analytical reports. Such activity does not directly relate to the management or general business operations of your client or your client's customers within the meaning of the regulations; rather they fall on the production side of the production-versus-staff dichotomy.

DOL Wage & Hour Div. Op. Ltr., 2018 WL 2348792 (Jan. 5, 2018). The facts analyzed by the Opinion Letter are strikingly similar to the facts of this case. Bloomberg is in the business of providing data, news, and information to its customers.[16] Indeed, Bloomberg's website proclaims that "we connect decision makers to a dynamic network of data, people and ideas – accurately delivering business and financial information, news and insights to customers around the world."[17] It is exactly this "business and financial information, news and insights" which Analysts put in to Bloomberg's system for delivery to Bloomberg customers. Global Data Analysts work in the virtual production lines of the data company and are primarily responsible for supplying the data for which Bloomberg customers pay for access through Bloomberg's platforms. [18] The work of Global Data Analysts does not directly relate to the management or general business operations of Bloomberg or Bloomberg's customers within the meaning of the administrative exemption; rather they fall on the production side of the administrative-productive work dichotomy. And as of January 1, 2019, Bloomberg reclassified the position as overtime eligible and began paying Analysts overtime. [19]

C. Global Data Analysts Worked More Than 40 Hours A Week.

Global Data Analysts work hours in excess of their 40-hour workweek. Bloomberg keeps track of the hours that Global Data Analysts work on-site through its badge data system, which records the date and time when employees enter and leave Bloomberg's offices.[20] This badge data will show the weeks when Global Data Analysts worked more than forty hours on-site[21].

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[16] Doe 1 Dec. at ¶ 2; Doe 2 Dec. at ¶ 2; Vagle Dec. at ¶ 2; Bell Dec. at ¶ 2.
[17] "About Bloomberg" at https://www.bloomberg.com/company/ (last visited 7/26/19).
[18] Doe 1 Dec. at ¶ 15; Doe 2 Dec. at ¶ 15; Vagle Dec. at ¶ 15; Bell Dec. at ¶ 15.
[19] Doe 1 Dec. at ¶ 28; Vagle Dec. at ¶ 30.
[20] Doe 1 Dec. at ¶ 18; Doe 2 Dec. at ¶ 18; Vagle Dec. at ¶ 20; Bell Dec. at ¶ 20.
[21] Doe 1 Dec. at ¶ 23; Doe 2 Dec. at ¶ 23; Vagle Dec. at ¶ 25; Bell Dec. at ¶ 25.

Global Data Analysts were scheduled to work eight hours per day, with a scheduled lunch break during the workday, five days a week, but for various reasons, they often worked longer than 8 hours per day.[22] Plaintiffs did work during meal periods to continue working on work assignments.[23] Plaintiffs also performed additional work past the end of their shifts to finish their assigned work.[24] For all these reasons, the badge data will show overtime worked by Global Data Analysts on-site.[25]

Bloomberg also expects Plaintiffs to access work platforms remotely from their smart phones, tablets, and home computers.[26] Plaintiffs worked off-site responding to work emails, keeping track of work assignments, and reviewing materials to stay up to date in work procedures.[27]

Because of the on-site extra work and the additional work off-site, Plaintiffs regularly worked overtime hours without receiving compensation at a premium rate.[28]

D. Bloomberg Failed to Pay Global Data Analysts Overtime.

From its inception through 2013, Bloomberg failed to pay overtime premium pay to any class of employees.[29] In 2019, after settling the wage and hour claims of a class of help desk tech

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[22] Doe 1 Dec. at ¶ 17; Doe 2 Dec. at ¶ 17; Vagle Dec. at ¶ 19; Bell Dec. at ¶ 19.
[23] Doe 1 Dec. at ¶ 22; Doe 2 Dec. at ¶ 22; Vagle Dec. at ¶ 24; Bell Dec. at ¶ 24.
[24] Doe 1 Dec. at ¶ 21; Doe 2 Dec. at ¶ 21; Vagle Dec. at ¶ 23; Bell Dec. at ¶ 23.
[25] Doe 1 Dec. at ¶ 23; Doe 2 Dec. at ¶ 23; Vagle Dec. at ¶ 25; Bell Dec. at ¶ 25.
[26] Doe 1 Dec. at ¶ 26; Doe 2 Dec. at ¶ 26; Vagle Dec. at ¶ 28; Bell Dec. at ¶ 28.
[27] Doe 1 Dec. at ¶ 25; Doe 2 Dec. at ¶ 25; Vagle Dec. at ¶ 27; Bell Dec. at ¶ 27.
[28] Doe 1 Dec. at ¶ 27; Doe 2 Dec. at ¶ 27; Vagle Dec. at ¶ 29; Bell Dec. at ¶ 29.

[29] Since 2013, after numerous wage and hour lawsuits were filed by tech workers and after a U.S. Department of Labor audit of the company, Bloomberg has reclassified more than 30 positions. For a detailed narrative of Bloomberg's history of FLSA violations and its internal review of its failure to pay overtime to any class of workers, see, *Enea v Bloomberg L.P.,* 12 Civ. 4656-GBD-FM, Dkt. 102 at pp. 3-8 (S.D.N.Y.), enclosed as Ex. C.

workers from New York and California[30], Bloomberg also began paying some Global Data Analysts overtime.[31] Prior to 2019, although Plaintiffs were not exempt from overtime and regularly worked more than 40 hours a week, Bloomberg did not pay Global Data Analysts overtime pay.[32]

III. ARGUMENT

POINT I: THE FLSA CLASS IS SIMILARLY SITUATED

A. The FLSA Is a Remedial Statute

To protect against excessive hours of work, the FLSA requires that employers pay employees for hours in excess of 40 in a week "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. §207(a)(1). The FLSA was designed "'to extend the frontiers of social progress' by 'insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.'" *A.H. Phillips v. Walling,* 324 U.S. 490, 493 (1945). The FLSA's collective action provisions are an important aspect of achieving the statute's remedial purpose. Section 216(b) of FLSA authorizes any one or more employees to sue an employer for unpaid overtime compensation and liquidated damages on behalf of himself and other employees similarly situated. The collective action procedure "allows . . . plaintiffs the advantage of lower individual costs to vindicate rights by the pooling of resources." *Hoffman-LaRoche v. Sperling*, 493 U.S. 165, 170-71 (1989). Sending notice to notify all similarly situated employees of the action comports with the broad remedial purpose of the Act. *See, Ornelas v. Hooper Holmes,*

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[30] *See, Roseman v. Bloomberg*, 14CV2657 (DLC) (S.D.N.Y. Oct. 16, 2018)(Order Granting Final Approval).
[31] Doe 1 Dec. at ¶ 28; Vagle Dec. at ¶ 30.
[32] Doe 1 Dec. at ¶ 29-31; Doe 2 Dec. at ¶ 28-30; Vagle Dec. at ¶ 31-33; Bell Dec. at ¶ 30-32.

Inc., 12-CV-3106 JAP, 2014 WL 7051868, at *3 (D.N.J. Dec. 12, 2014) (authorizing collective action notice by email and mail in furtherance of the broad remedial purpose of the FLSA).

B. The Lenient Standard Under the FLSA Favors Granting Conditional Certification At This Early Stage.

At the initial conditional certification stage, Plaintiffs' burden of showing that the class is similarly situated is minimal. *Purnamasidi v. Ichiban Japanese Rest.,* 10-CV-1549 DMC JAD, 2010 WL 3825707, at *4 (D.N.J. Sept. 24, 2010). This is because the conditional certification stage is simply "a preliminary inquiry into whether the plaintiff's proposed class is constituted of similarly situated employees." *Herring v. Hewitt Associates, Inc.*, CIV. 06-267 (GEB), 2007 WL 2121693, at *3 (D.N.J. July 24, 2007). This preliminary stage is typically evaluated early in the litigation before discovery has been conducted. *Id.* At this stage, the Court does not need to evaluate the merits of the claims, and discovery does not need to be completed in order for notice to the class to be issued. *Ingram v. Coach USA, Inc.,* CIV.A. 06-3425KSH, 2008 WL 281224, at *5 (D.N.J. Jan. 28, 2008).

Plaintiffs can meet their minimal burden at the conditional certification stage by submitting sworn declarations. *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.,* CV178043FLWTJB, 2018 WL 5874094, at *3 (D.N.J. Nov. 9, 2018) (citing cases and granting conditional certification relying on two sworn declarations and the facts alleged in the complaint). Because the determination that plaintiffs are similarly situated is merely a preliminary one, courts generally grant conditional certification. *Id; also see, Ornelas v. Hooper Holmes, Inc.*, 12-CV-3106 JAP, 2014 WL 7051868, (D.N.J. Dec. 12, 2014); *Purnamasidi v. Ichiban Japanese Rest.,* 10-CV-1549 DMC JAD, 2010 WL 3825707, (D.N.J. Sept. 24, 2010); *Herring v. Hewitt Associates, Inc.,* CIV. 06-267 (GEB), 2007 WL 2121693, (D.N.J. July 24, 2007); *Ingram v. Coach USA, Inc.,* CIV.A. 06-3425KSH, 2008 WL 281224, (D.N.J. Jan. 28,

2008). Indeed, Courts have regularly approved the mailing of collective action and class action notices to Bloomberg tech workers on precisely the same facts as exist here. *Martinez v. Bloomberg L.P.,* 17 CV. 4555 (RMB), 2017 WL 6988039, (S.D.N.Y. Dec. 7, 2017) (granting conditional certification to a group of Installations Representatives); *Michael v. Bloomberg L.P.,* 14 Civ. 2657, 2015 WL 1810157 (S.D.N.Y. Apr. 17, 2015) (granting conditional certification to New York and California Analytics Representatives who helped customers with questions about the functions of the Bloomberg Terminal); *Enea v Bloomberg, L.P.,* 12 CIV. 4656, 2014 WL 1044027 (S.D.N.Y. Mar. 17, 2014) (conditionally certifying class of Technical Support Reps who helped Bloomberg customers with problems with the Bloomberg terminal hardware); *Siegel v Bloomberg L.P.,* 13 CIV. 1351, 2013 WL 4407097 (SDNY Aug. 16, 2013) (granting conditional certification to a group of Service Desk Reps who handled hardware and software tickets for Bloomberg employees); *Jackson v. Bloomberg, LP,* 298 F.R.D. 152 (SDNY 2014) (granting conditional certification to a class of Customer Support Reps helping Bloomberg customers); *see also, De Oca v. Bloomberg, LP,* 13-cv-00076-SN, (SDNY Mar. 11, 2014) (Netburn, J) (stipulation by Bloomberg to a class settlement for more than thirty job titles paid salary without overtime). For the same reasons as were found by the Courts in each of these cases, Plaintiffs are similarly situated here, and a collective action notice should be issued.

If the plaintiffs meet their light burden to show similarly situated status, the court conditionally certifies the class and authorizes the plaintiffs to send notice to potential collective action members. *See, Barrios v. Suburban Disposal, Inc.,* 2:12-CV-03663 WJM, 2013 WL 6498086, at *3 (D.N.J. Dec. 11, 2013); *Ornelas v. Hooper Holmes, Inc.,* 12-CV-3106 JAP, 2014 WL 7051868, at *3 (D.N.J. Dec. 12, 2014); *Afsur v. Riya Chutney Manor LLC*, CIV.A. 12-03832 JAP, 2013 WL 3509620, at *3 (D.N.J. July 11, 2013). These potential plaintiffs may then opt in pursuant to § 216(b) by filing Consent to Sue forms with the Court. *Id.* In granting preliminary

certification to a collective action, court-authorized notice is preferred because "[b]oth the parties and the court benefit from settling disputes about the content of the notice before it is distributed" and because such notice "serves the legitimate goal of avoiding a multiplicity of duplicative suits and setting cutoff dates to expedite disposition of the action." *Hoffmann–La Roche, Inc. v. Sperling,* 493 U.S. 165, 172, 110 S.Ct. 482, 107 L.Ed.2d 480 (1989).

It should be noted that the requirements of Fed. R. Civ. P. Rule 23 do not apply to FLSA "collective actions." 29 U.S.C. §216(b). Under §216(b) collective actions, numerosity, typicality, commonality and representativeness are not at issue. Rather, there is only a threshold issue of whether the group is "similarly situated." 29 U.S.C. §216(b)*; see e.g., Hoffman v. Sbarro, Inc.*, 982 F. Supp. 249 (S.D.N.Y. 1997) (Sotomayor, J.) ("the prevailing view among federal courts, including courts in this Circuit, is that § 216(b) collective actions are not subject to Rule 23's strict requirements, particularly at the notice stage."). The question is only whether there is a "factual nexus between [a named plaintiff's] situation and the situation of other employees sufficient to determine that they are similarly situated." *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.,* CV178043FLWTJB, 2018 WL 5874094, at *3 (D.N.J. Nov. 9, 2018). Further, notice should be sent early because, unlike a Rule 23 class action, the statute of limitations continues to run on class members until they opt into the case. 29 U.S.C. §255. As notice is delayed, claims die daily. *Depalma v. Scotts Co. LLC*, CV137740KMJAD, 2017 WL 1243134, at *2 (D.N.J. Jan. 20, 2017) ("[D]elay potentially creates a trap for opt-in plaintiffs: an opt-in's FLSA claim may become untimely prior to her having received court-authorized notice, because the filing of the collective action complaint has no tolling effect as to her claims.").

C. Global Data Analysts Are Similarly Situated

Here, Plaintiffs are "similarly situated." They all work in the same department (Global Data). They all had the same primary job duty of providing properly formatted data to

Bloomberg's platforms.[33] They all carried out their primary job by following protocols to collect large amounts of data, maintain the data to ensure that it is free of errors, and update the format of the data so that it can be used in Bloomberg's platforms.[34] All had their on-site hours recorded through Bloomberg's badge data system.[35] All typically worked beyond scheduled shift hours to complete work assignments.[36] Prior to reclassification, none received overtime premium pay for the overtime hours they worked.[37] Plaintiffs are similarly situated within the meaning of the FLSA. *See*, *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.*, CV178043FLWTJB, 2018 WL 5874094, at *3 (D.N.J. Nov. 9, 2018) ("two sworn declarations attesting to the universality of Defendant's overtime practices…provided the requisite factual nexus between [plaintiffs''] situation and the situation of other employees sufficient to determine that they are similarly situated."); *see also, Michael v. Bloomberg L.P.,* 2015 WL 1810157, at *2 (S.D.N.Y. Apr. 17, 2015) ("At this point in the litigation, plaintiff has satisfied his minimal burden of showing that he is 'similarly situated' to the proposed collective members. In addition to the allegations in the Complaint, the affidavit submitted by plaintiff in support of his motion demonstrates that he is similarly situated to other ADSK Reps."). This class should be conditionally certified so that Global Data Analysts can receive notice of their opportunity to join.

D. Notice Should Be Sent to Similarly Situated Employees.

Issuing Notice of the case, along with a Consent to Sue form, is an important component to providing the best notice practicable. In this modern electronic age, Courts in this district and throughout the country regularly authorize plaintiffs' counsel to mail and email a court approved

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[33] Doe 1 Dec. at ¶ 15; Doe 2 Dec. at ¶ 15; Vagle Dec. at ¶ 15; Bell Dec. at ¶ 15.
[34] Doe 1 Dec. at ¶ 14; Doe 2 Dec. at ¶ 14; Vagle Dec. at ¶ 14; Bell Dec. at ¶ 14.
[35] Doe 1 Dec. at ¶ 18; Doe 2 Dec. at ¶ 18; Vagle Dec. at ¶ 20; Bell Dec. at ¶ 20.
[36] Doe 1 Dec. at ¶ 20; Doe 2 Dec. at ¶ 20; Vagle Dec. at ¶ 22; Bell Dec. at ¶ 22.
[37] Doe 1 Dec. at ¶ 29; Doe 2 Dec. at ¶ 28; Vagle Dec. at ¶ 31; Bell Dec. at ¶ 30.

notice. *See, Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.*, CV178043FLWTJB, 2018 WL 5874094, at *5 (D.N.J. Nov. 9, 2018)("Plaintiff will be permitted to mail and email the notice to prospective plaintiffs, and may send a reminder notice by the same methods halfway through the notice period."); *Ornelas v. Hooper Holmes, Inc.,* 12-CV-3106 JAP, 2014 WL 7051868, at *3 (D.N.J. Dec. 12, 2014) (granting plaintiffs' request to distribute notice by mail and email); *see also, Michael,* 2015 WL 1810157, at *4 (S.D.N.Y. Apr. 17, 2015) (granting plaintiff's request to distribute notice by mail and email to Bloomberg employees); *Jackson v. Bloomberg, L.P.*, 13 Civ. 2001 JPO, 2014 WL 1088001, *17 (S.D. N.Y. March 19, 2014) (same).

The statute of limitations on FLSA claims allows claims going back two years from commencing an action, or three years if the employer acted willfully. 29 C.F.R. §255(a). Plaintiffs' complaint alleges that defendant acted willfully. FLSA class notices are routinely delivered to all class members who are within the broader three year limitation period.[38] *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.*, CV178043FLWTJB, 2018 WL 5874094, at *4 (D.N.J. Nov. 9, 2018) (establishing the notice period to the three years preceding the order conditionally certifying the collective action); *Gervasio v. Wawa, Inc.,* No. 17-245, 2018 WL 385189, at *5 (D.N.J. Jan. 11, 2018) (same); *Adami v. Cardo Windows, Inc.*, 299 F.R.D. 68, 82 (D.N.J. 2014) (same).

Plaintiffs have proposed a FLSA collective class notice that follows the standard notice forms that have been issued in class and collective action wage cases in this and other districts. Ex. A.[39] Accordingly, notice should be disseminated to all Global Data Analysts that worked for

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[38] Otherwise the statute of limitation would operate to bar claims well before the question of willfulness was decided by the Court.

[39] The proposed notice provides for a 60 day period to opt into the case. Courts in this district consistently approve opt-in periods of 60 days or longer. *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.,* CV178043FLWTJB, 2018 WL 5874094, at *5 (D.N.J. Nov. 9, 2018) (approving

Bloomberg within three years of the date the Court approves issuance of notice to the class.

POINT II: DEFENDANT SHOULD BE DIRECTED TO SUPPLY NAMES AND CONTACT INFORMATION TO FACILITATE PROMPT AND EFFECTIVE NOTICE TO PUTATIVE CLASS MEMBERS

Defendant should be directed to provide names, addresses, email addresses, dates of birth, telephone numbers, and any employee number or unique identifier[40] of the class members in an electronic format to facilitate mailing and re-mailing of the notice. Further, to enable skip tracing of individuals whose notice is ultimately returned as undeliverable, Bloomberg should supply the last four digits of social security numbers. Federal Rule of Civil Procedure 23(c)(2)(B) provides that "the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." While Rule 23 is not directly applicable, the principle of notice being "the best practicable" makes logical sense. As the defendant has the contact information for its current and former employees, the Court should order the defendant to provide the information for sending class notice. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978). The Supreme Court similarly has directed that defendants should provide names and addresses of class members in collective action cases. *Hoffmann-LaRoche, Inc.*, 493 U.S. at 171. The names should be supplied promptly in an electronic format so that notice is most easily accomplished.

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60 day opt-in period); *Manning v. Gold Belt Falcon*, LLC, 817 F. Supp. 2d 451, 453 (D.N.J. 2011)(noting that the opt-in period was 120 days).

[40] Unique identifiers are used to maintain database integrity in producing payroll. Providing the company's unique identifiers will allow Plaintiffs to synch the resulting database of clients with the Defendant's databases for determining merits and damages issues. Without this ability to synch, for example, it will be unknown whether the Robert Doe in a given record refers to Robert Doe Jr, Robert Doe, Sr. Rob Doe, Rob Don, etc. Unique identifiers remove many of the database management issues that make handling a case of this type more complex and time consuming than necessary.

Plaintiffs request that the Court order Defendant to provide Plaintiffs' counsel with putative class members' names, last known addresses, email addresses, and any employee number or unique identifier. Plaintiffs also request telephone numbers, dates of birth, and the last four digits of each putative class members' social security number in order to assist with the re-issuance of the notice for those notices that are returned as undeliverable. This additional information to facilitate notice is routinely ordered to be produced in FLSA collective actions. *See, Afsur v. Riya Chutney Manor LLC,* CIV.A. 12-03832 JAP, 2013 WL 3509620, at *3 (D.N.J. July 11, 2013) (ordering defendants to produce the names, addresses, phone numbers, and dates of employment of the putative class members and noting that "[c]ourts generally release social security numbers only after notification via first class mail proves insufficient.") (internal citations omitted). The last four digits of the social security numbers will assist with location efforts or a skip trace to find the current address for those individuals whose notice is returned within the time called for this notice, so that notice can then be re-mailed. *Id., see, e.g., Swarthout v. Ryla Teleservices, Inc.,* 11 Civ. 21, 2011 WL 6152347, *5 (N.D. Ind. Dec. 12, 2011) (defendant ordered to produce the name, last known address, telephone number, dates of employment, location of employment, last four digits of their social security number, and date of birth for each class member);*Kelly v. Bank of America, N.A.,* 10 Civ. 5332, 2011 WL 7718421 (N.D. Ill. Sept. 23, 2011) (plaintiff received the names, addresses, social security numbers, telephone numbers, and email addresses); *Thompson v. K.R. Denth Trucking, Inc.,* 10 Civ. 0135, 2011 WL 4760393 (S.D. Ind. June 15, 2011) (defendant ordered to produce the names, addresses, telephone numbers, dates of employment, location of employment, and dates of birth of all potential plaintiffs); *Anyere v. Wells Fargo, Co., Inc.,* 09 Civ. 2769, 2010 WL 1542180 (N.D. Ill. Apr. 12, 2010) (defendant ordered to produce names, addresses, e-mail addresses, telephone numbers, and social security numbers); *Blake v. Colonial Savings*, 2004 WL 1925535, at * 2 (S.D. Tex. Aug. 16, 2004) (ordering production of telephone

numbers and social security numbers); *Patton v. Thomson Corp.*, 364 F. Supp. 2d 263, 268 (E.D.N.Y. 2005) (telephone numbers and social security numbers). Plaintiffs also propose that they be permitted to call any individual whose notice is returned as undeliverable, solely to obtain a current address for the re-mailing of notice. Given the short window for opting into this case (60 days), a quick telephone call to find the current address is the most expeditious way of ensuring "the best practicable notice."

POINT III: PLAINTIFFS' PROPOSED NOTICE (AND REMINDER POST-CARD) SHOULD BE MAILED, EMAILED AND POSTED

Plaintiff asks the court to authorize Plaintiff to disseminate the Notice by: 1) requiring Defendant to post the notice on the employee notice board or alternatively in a prominent location where class members congregate, 2) sending it also by e-mail to workers for whom Defendant can provide personal e-mail addresses, and 3) sending it by mail to class members' last known addresses, with permission to re-mail if the notice is returned as undeliverable. A copy of the notice Plaintiffs propose to mail, email, and post to class members is attached to this motion as Exhibit A, the postcard reminder as Exhibit B, and the Consent to Sue as Exhibit C. This notice informs class members in neutral language of the nature of the action, of their right to assert FLSA claims by filing a consent to sue form with the Court, and the consequences of their joining or not joining the action. The form of this notice is consistent with numerous other notices issued by this Court.

A. Posting

Mailing of notice is generally considered to be the primary part of the best notice practicable, and that is the routine method for delivering notice. However, this means is not foolproof, particularly with a class period extending over many years. Mailed notice does not reach every class member for a wide variety of reasons. First, workers move and forwarding

addresses are often not provided to the post office (and forwarding orders only last a year even when they are filled out). Yet the limitation period here is far longer than one year. Second, some workers may not be home during the notice period (traveling, out of state work assignments, military service, etc.). Third, important mail is hard to distinguish from junk mail and many notices are simply thrown out without ever being opened. Fourth, mail intended for a class member may be inadvertently misplaced or discarded by others who bring the mail in, such as kids or others living at the same address. Fifth, mail can be mis-delivered. Mail notice is an important component of the "best practicable notice," but it is hardly foolproof and there is no reason to limit delivery to a single means. Emailed notice and posting are important adjuncts to a comprehensive notice delivery scheme.

District courts in New Jersey and around the country have recognized posting (in addition to mailing) as an efficient, non-burdensome method of notice that courts regularly employ. *See, Gervasio v. Wawa Inc.,* 17-CV-245 (PGS), 2018 WL 385189, at *7 (D.N.J. Jan. 11, 2018) (authorizing posting of notice in the "break room"); *Ornelas v. Hooper Holmes, Inc.,* 12-CV-3106 JAP, 2014 WL 7051868, at *9 (D.N.J. Dec. 12, 2014)("the Court recommends that notice be posted at each of Defendants' branch locations at which Examiners are employed"); *see also, Sherrill v. Sutherland Global Servs. Inc.,* 487 F. Supp. 2d 344, 351 (W.D.N.Y. 2007) (allowing notice to be posted at defendant's places of business for 90 days and mailed to all class members); *Castillo v. P & R Enterprises, Inc.,* 517 F. Supp. 2d 440, 449 (D.D.C. 2007) (ordering notice posted in "(1) Defendant's offices, or (2) office spaces designated for Defendant's use in third-party buildings"); *Romero v. Producers Dairy Foods, Inc.,* 235 F.R.D. 474, 492-93 (E.D. Cal. 2006) (finding that posting of notice in workplace and mailing is appropriate and not punitive); *Veliz v. Cintas,* No. C 03-1180 SBA, 2004 WL 2623909 at *2 (N.D. Cal. 2004) (citing court order to post notice in all workplaces where similarly situated persons are employed);

Garza v. Chicago Transit Authority, No. 00 C 0438, 2001 WL 503036 *4 (N.D. Ill. May 8, 2001) (ordering defendant to post notice in all of its terminals); *Johnson v. American Airlines,* 531 F. Supp. 957, 961 (S.D. Tex. 1982) (finding that sending notice by mail, "posting on company bulletin boards at flight bases and publishing the notice without comment in American's The Flight Deck, are both reasonable and in accordance with prior authority"); *Frank v. Capital Cities Communications, Inc.,* 88 F.R.D. 674, 679 (S.D.N.Y. 1981) (requiring defendant to "permit the posting of copies of public bulletin boards at FP offices"); *Soler v. G&U, Inc.,* 86 F.R.D. 524, 532-532 (S.D.N.Y. 1980) (authorizing plaintiffs to "post and mail the proposed notice of pendency of action and consent to sue forms").

The Court should direct Bloomberg to post notice in the "Bloomberg Pantry[41]" and other areas where Global Data Analysts congregate.

B. Email

Courts in this district and around the country have recognized that sending notice by e-mail is also an appropriate adjunct to mailed notice in this age of ubiquitous electronic communication. *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.,* CV178043FLWTJB, 2018 WL 5874094, at *5 (D.N.J. Nov. 9, 2018)(permitting plaintiff to mail and email the notice to prospective plaintiffs); *Ornelas v. Hooper Holmes, Inc.,* 12-CV-3106 JAP, 2014 WL 7051868, at *3 (D.N.J. Dec. 12, 2014) (authorizing collective action notice by email and mail); *Michael,* 2015 WL 1810157, at *4 (S.D.N.Y. Apr. 17, 2015) (granting plaintiff's request to distribute notice by mail and email to Bloomberg employees); *Jackson v. Bloomberg, L.P.*, 13 Civ. 2001 JPO, 2014 WL 1088001, *17 (S.D. N.Y. March 19, 2014) (same); *In re Deloitte & Touche, LLP*

[41] *See, Siegel v. Bloomberg L.P.,* 13CV1351 DLC, 2015 WL 223781, at *1 (S.D.N.Y. Jan. 16, 2015) (describing how tech workers congregate in the Bloomberg pantry to get food and socialize).

Overtime Litig., 2012 WL 340114, *2 (S.D. N.Y. Jan. 17, 2012) ("communication through email is [now] the norm."); *see also, Ritz v. Mike Rory Corp.*, 2013 WL 1799974, *5 (E.D. N.Y. Apr. 30, 2013); *Thomas v. Kellogg Co.*, 13 Civ. 5136 RBL, 2014 WL 716152 (W.D. Wash. Jan. 9, 2014); *Snodgrass v. Bob Evans Farms, LLC*, 2:12 Civ. 768, 2013 WL 6388558, *5-*6 (S.D. Ohio Dec. 5, 2013); *Alequin v. Darden Rests., Inc.*, 12 Civ. 61742, 2013 WL 3945919, *2 (S.D. Fla. July 31, 2013); *Rehberg v. Flowers Foods, Inc.*, 3:12 Civ. 596, 2013 WL 1190290, *3 (W.D. N.C. Mar. 22, 2013).

Issuing notice is not just about making sure that the envelope containing the notice arrives in the class members' mailboxes, but also ensuring that class members read the notice and make an informed decision about whether or not to join the case. Emailing the notice, including the consent to sue form, offers class members another mechanism to receive and review the information.[42] Today, in this electronic age, people increasingly rely on electronic mail as opposed to "snail" mail. By issuing notice via email, class members can quickly search their in-box for the notice, instead of searching piles of paper scattered throughout their home or a recycling container for the mailing. Issuing notice by email ensures that class members will promptly receive the notice, as opposed to the delay as a result of mailing and remailing the notice to addresses throughout the country. The Court should authorize Plaintiffs to distribute the proposed notice by e-mail.

C. Post Card Reminders

In addition to mailing the notice, a post-card reminder is generally sent shortly before the end of the opt-in period. Such follow-up mailing contributes to dissemination among similarly

[42] Of course emailing is an adjunct and not a substitute for mail. Emails may be stripped by automated spam and junk mail filters. However, some such notices can be expected to arrive and be read.

situated employees and serves what the Supreme Court in *Hoffmann-La Roche v. Sperling* recognizes as section 216(b)'s "legitimate goal of avoiding a multiplicity of duplicative suits and setting cutoff dates to expedite disposition of the action." 493 U.S. at 172.

Courts in this district and around the country have routinely approved the sending of a follow-up postcard reminder notice by the same methods halfway through the notice period. *Gervasio v. Wawa Inc.,* 17-CV-245 (PGS), 2018 WL 385189, at *7 (D.N.J. Jan. 11, 2018)(authorizing plaintiffs to mail a reminder postcard half-way through the completion of the notice period); *Porter v. Merrill Lynch Pierce Fenner & Smith, Inc.,* CV178043FLWTJB, 2018 WL 5874094, at *5 (D.N.J. Nov. 9, 2018)(authorizing reminder notice by mail and email); *Graham v. Overland Solutions, Inc.*, 10 Civ. 672 BEN (BLM), 2011 WL 1769737, *4 (S.D. Cal. May 9, 2011); *Chhab v. Darden Restaurants, Inc.*, 2013 WL 5308004 at *16 (approving reminder letter); *Guzelgurgenli v. Prime Time Specials Inc.*, 883 F. Supp. 2d 340, 357-8 (E.D.N.Y. 2012) (listing cases); *Helton v. Factor 5, Inc.*, 10 Civ. 04927, 2012 WL 2428219, *7 (N.D. Cal. June 26, 2012) (approving post card reminder); *In re Janney Montgomery Scott LLC Financial Consultant Litigation*, 06 Civ. 3202, 2009 WL 2137224 (E.D. Pa. July 16, 2009) (same); *Hart v. U.S. Bank NA*, CV 12-2471-PHX-JAT, 2013 WL 5965637 (D. Ariz. Nov. 8, 2013); *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."); *Sanchez v. Sephora USA, Inc.*, No. 11–CV–3396, 2012 WL 2945753, at *6 (N.D. Cal. July 18, 2012) ("courts have recognized that a second notice or reminder is appropriate in an FLSA action since the individual is not part of the class unless he or she opts-in"); *Gee v. SunTrust Mortg., Inc.*, No. 10–CV–1509, 2011 WL 722111, at *4 (N.D. Cal. Feb. 18, 2011); *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 847 (N.D. Cal. 2010) ("Particularly since the FLSA requires an opt-in procedure, the sending of a postcard is

appropriate."). The reminder post card here, Ex. B, is appropriate. The Court should authorize Plaintiffs to distribute the reminder notice before the end of the opt-in period.

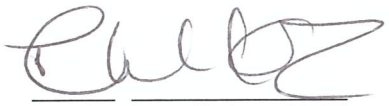
IV. CONCLUSION

For all of the foregoing reasons, this Court should enter an Order:

1) requiring Defendant to provide Plaintiffs, in electronically readable form, the names, addresses, e-mail addresses, any employee number or unique identifier, telephone numbers, dates of birth, and the last four digits of the social security numbers of all class members;
2) conditionally certifying this action as an FLSA collective action for the class defined as "all Global Data employees who worked as Data Analysts, Data Specialists, or related titles, who were not paid time and one-half for hours over 40 worked in one or more weeks" within the three years preceding the filing of a consent to sue by such individual and the date of final judgment in this matter.
3) authorizing Plaintiffs to issue the notice attached as Ex. A by mail, and e-mail;
4) requiring Defendant to post the notice in the Bloomberg Pantry in the offices where Plaintiffs are employed;
5) authorizing class counsel to re-mail notices that are returned as undeliverable for those individuals for whom counsel can find better addresses;
6) permitting class counsel to call any individual whose notice is returned as undeliverable for the purpose of obtaining a current address for re-mailing of the notice;
7) permitting the mailing of the reminder postcard attached as Ex. B, 21 days before the expiration of the opt-in period.

Date: August 1, 2019

Respectfully submitted,



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