UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMBER ADAM, individually and on behalf of all others similarly situated, **Plaintiffs,** **v.** **BLOOMBERG L.P.,** **Defendant.**	**Case No.: 21-cv-4775 (ER)(JC)**

BRIEF IN SUPPORT OF MOTION TO APPROVE COLLECTIVE ACTION NOTICE

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INTRODUCTION

Plaintiff brought this case as a collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. §216(b) on behalf of a class consisting of "all Help Desk Reps in the Bloomberg Analytics Department who were classified by Bloomberg as exempt from overtime and were not paid time and one half for hours over 40 worked in one or more weeks."[1]

It should be noted that Your Honor requires a pre-motion conference before making a motion, "except where a litigant believes that delay in filing the motion might result in the loss of a right." *See* Individual Practices of Judge Edgardo Ramos at 2.A.ii. Plaintiffs file this motion now because in an FLSA collective action, "the limitations period continues to run for each plaintiff until he or she files written consent with the court to join the lawsuit*." Jackson v. Bloomberg, L.P.*, 298 F.R.D. 152, 170 (S.D.N.Y. 2014) (citing: 29 U.S.C. § 256(b)). Delay in the filing of this motion will result in delay in notice to the putative FLSA class about their right to opt in and, as notice is delayed, their claims expire daily as well.

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 Help Desk Reps[2] 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 Help Desk Reps, Bloomberg's Help Desk Rep job description, Bloomberg's admissions in its answer, and evidence from prior Bloomberg FLSA cases, there is more than sufficient evidence to

[1] Not included in this definition of the class are any individuals who, by virtue of their compensation, would be considered exempt under the "highly compensated employee" exemption. 29 C.F.R. § 541.601.

[2] Help Desk Representatives and Specialists may work in different teams including Fixed Income Trading, and Front Line TOMS. These titles will be collectively referred to herein as Help Desk Reps.

establish that the Plaintiffs are similarly situated to the class of Help Desk Reps. Indeed, in five different cases in this District on behalf of tech workers against Bloomberg, courts conditionally certified collective actions based on the same facts for employees who worked in different departments but performed similar duties as the Plaintiffs here. Thus, conditional certification of an FLSA class is warranted.

FACTS

Defendant Bloomberg L.P. (hereafter "Bloomberg") is a multinational mass media tech corporation that offers technical tools and data services to users of the Bloomberg Terminal and subscribers of Bloomberg's Professional Service throughout the world.[3]

Bloomberg's Help Desk "Representatives" or "Specialists" (hereinafter "Help Desk Reps") work in Bloomberg's Analytics Department.[4] Plaintiff and other similarly situated employees work or have worked as Help Desk Reps, share the same primary job duty of help desk support, regularly work more than 40 hours a week and, -since they are classified as exempt from overtime,-Bloomberg failed to pay them the overtimes wages they are due.[5]

A. Help Desk Reps Share the Same Primary Job Duty

[3] "Bloomberg Professional Services connect decision makers to a dynamic network of information, people and ideas. At the core of this network is our ability to deliver data, news and analytics through innovative technology, quickly and accurately to individuals and across enterprises." *Bloomberg Professional Services*, BLOOMBERG FINANCE L.P., https://www.bloomberg.com/professional/ (last visited Aug. 16, 2021).

[4] The Analytics Department includes Trading Solutions and may be known by other names including Help Desk or Analytics. Help Desk Reps may be known by other names including Analysts, Representatives or Specialists. The case refers to these titles collectively as Help Desk Reps. *See Trade Desk Analyst, Analytics*, BLOOMBERG FINANCE L.P., https://careers.bloomberg.com/job/detail/91937 (last visited Aug. 28, 2021), attached hereto as Ex. 1; Declaration of Amber Adam ("Adam Decl.") at ¶ 5; Declaration of Camryn Clemens ("Clemens Decl.") at ¶ 5; *See* Defendant Bloomberg L.P.'s Answer and Defenses to Plaintiff's Class and Collective Action Complaint, (hereinafter "Bloomberg's Answer"); ECF No. 10, at ¶53.

[5] Adam Decl. at ¶ 8, 13, 20, 30; Clemens Decl. at ¶ 8, 13, 20, 32.

During the period covered by the proposed New York and FLSA classes, all exempt Help Desk Reps, regardless of where they work, have been subject to the same job performance requirements and employment policies as described below.[6] The primary job duty of Help Desk Reps is to provide customer service and technical assistance to Bloomberg's customers regarding how to use proprietary Bloomberg software.[7] Bloomberg's customers primarily reach out to Help Desk Reps via the "Instant Bloomberg" chat system.[8] Help Desk Reps handle multiple chats, phone calls, and emails (collectively "inquiries") with Bloomberg customers simultaneously, while also maintaining an ongoing "floor chat" (a conversation with all other on-duty representatives and supervisors).[9]

In responding to inquiries, Help Desk Reps assist Bloomberg's customers with the functionality of Bloomberg's proprietary software, including resolving bugs in the customer's Bloomberg Terminal, assisting customers set up a new Bloomberg Terminal user or deactivate an old user, and responding to login requests.[10] The majority of Help Desk Reps work in Bloomberg's New York City office, located at 731 Lexington Avenue, while a smaller number of Help Desk Reps work in Bloomberg's office in San Francisco, California.[11] Many Help Desk Reps work on the same floor of Bloomberg's New York City office and work on projects together.[12] The floor

[6] Adam Decl. at ¶ 11; Clemens Decl. at ¶ 11.
[7] Adam Decl. at ¶ 13; Clemens Decl. at ¶ 13.
[8] Adam Decl. at ¶ 14; Clemens Decl. at ¶ 14; *See* Ex. 1 ("We provide 24/7 support for Bloomberg Professional Service users all over the world and across multiple industries. Reaching us via our 'Instant Bloomberg' chat system, clients access unparalleled customer service where we answer their questions and help them maximize the value of Bloomberg.").
[9] Adam Decl. at ¶ 15; Clemens Decl. at ¶ 15; *See* Bloomberg's Answer at ¶ 29.
[10] Adam Decl. at ¶ 16; Clemens Decl. at ¶ 16.
[11] Adam Decl. at ¶ 9; Clemens Decl. at ¶ 9.
[12] Adam Decl. at ¶ 10; Clemens Decl. at ¶ 10.

that Help Desk Reps work on is designed as an open-air concept, allowing Help Desk Reps to see one another while working.[13]

Bloomberg evaluates Help Desk Reps based on their performance handling inquiries.[14] The metrics Bloomberg uses to evaluate Help Desk Reps focus largely on their work responding and completing inquiries, including the number of inquiries resolved, the time it took the Help Desk Rep to respond to an inquiry, the number of inquiries a specific Help Desk Rep resolved as compared to their peers, and feedback received from clients and peers.[15]

B. Bloomberg Classifies this Class of Help Desk Reps as Overtime Exempt

The Help Desk Reps in this case perform similar customer support duties as the class of Representatives who worked in Bloomberg's Analytics department in *Michael v. Bloomberg L.P.*, 14-cv-02657 (S.D.N.Y.).[16] However, Bloomberg continues to classify Help Desk Reps as exempt, even though Bloomberg reclassified Analytics Representatives as non-exempt and eligible for overtime in June 2018, as a result of the *Michael v. Bloomberg L.P.* action.[17] Bloomberg pays Help Desk Reps a salary intended to cover a 40-hour work week, five eight-hour work shifts.[18]

C. Help Desk Reps Work Over 40 Hours a Week

Bloomberg schedules Help Desk Reps to five eight-hour shifts (nine hours with an unpaid lunch hour during the workday), Monday through Friday.[19] However, Help Desk Reps regularly work for Bloomberg for more than 40 hours per week.[20] Bloomberg requires Help Desk Reps to work

[13] Adam Decl. at ¶ 10; Clemens Decl. at ¶ 10.
[14] Adam Decl. at ¶ 19; Clemens Decl. at ¶ 19.
[15] Adam Decl. at ¶ 19; Clemens Decl. at ¶ 19.
[16] Adam Decl. at ¶ 8; Clemens Decl. at ¶ 8; Bloomberg's Answer at ¶ 53.
[17] *See* Bloomberg's Answer at ¶ 54 ("Bloomberg admits that, in 2018, Defendant reclassified certain Analytics Representatives roles as non-exempt and eligible for overtime.").
[18] Adam Decl. at ¶ 27; Clemens Decl. at ¶ 29.
[19] Adam Decl. at ¶ 12; Clemens Decl. at ¶ 12.
[20] Adam Decl. at ¶ 20; Clemens Decl. at ¶ 20.

beyond their scheduled hours, including time before their shift begins. to log into Bloomberg's computer system, because Bloomberg requires Help Desk Reps to be ready to accept customer inquiries the minute their shift begins.[21] In order to be ready to accept customer inquiries, Help Desk Reps must log onto Bloomberg's computer, access computer services system, and review work emails.[22] Help Desk Reps regularly arrive to the office 10 to 15 minutes before the start of their scheduled shift in order to account for these preparatory logging-on activities.[23] Bloomberg tracks whether Help Desk Reps are ready to accept customer inquiries once their shift begins.[24] If Help Desk Reps are not ready to accept inquires once their shift begins, it could lead to a poor performance evaluation.[25]

Help Desk Reps regularly work through lunch and past the end of their shift to finish work on inquiries and projects.[26] Bloomberg expects Help Desk Reps who receive a customer inquiry before their scheduled lunch period or before the end of their shift to complete the customer inquiry until the interaction is complete, even if it results in Help Desk Reps working during their lunch break or after the end of the scheduled shift.[27] Bloomberg schedules Help Desk Reps' lunch breaks to ensure that there are always enough Help Desk Reps available to respond to customer inquiries.[28] In order to maintain this schedule, Bloomberg expects Help Desk Reps to adhere to their scheduled end of their lunch break, even if an on-going inquiry has delayed the start of their

[21] Adam Decl. at ¶ 20-1; Clemens Decl. at ¶ 20-1.
[22] Adam Decl. at ¶ 21; Clemens Decl. at ¶ 21; *See Roseman v. Bloomberg*, 14-CV-02657, (S.D.N.Y.), Dkt. 179-1, Deposition of Chris Saven, Bloomberg L.P.'s designated 30(b)(6) witness, at 155:13-156:18, attached as Ex. 2 ("[W]e want them to be ready to start working with customers at the start of their designated shift. I don't think it's humanly possible to, you know, walk into a building exactly at eight o'clock and do that, and get to your desk in time").
[23] Adam Decl. at ¶ 21; Clemens Decl. at ¶ 21.
[24] Adam Decl. at ¶ 22; Clemens Decl. at ¶ 22.
[25] Adam Decl. at ¶ 22; Clemens Decl. at ¶ 22.
[26] Adam Decl. at ¶ 23, 26; Clemens Decl. at ¶ 23, 28.
[27] Adam Decl. at ¶ 23; Clemens Decl. at ¶ 23.
[28] Adam Decl. at ¶ 24; Clemens Decl. at ¶ 24.

break.[29] Further, Bloomberg supervisors expect all Help Desk Reps to work through their entire lunch breaks when customer inquiry volumes are especially high.[30]

Help Desk Reps also work from home in the evenings after their scheduled shift and on weekends to study for various certification exams and learn new developments in Bloomberg's software products.[31] Bloomberg does not ask Help Desk Reps to record the hours they work at home, nor does it provide Help Desk Reps with a time-keeping system to record all the hours they work.[32]

D. Bloomberg has Failed to Pay Help Desk Reps Overtime Wages

Bloomberg fails to pay Help Desk Reps overtime compensation at the rate of time and one-half for all hours worked over 40 in a workweek.[33] In fact, Bloomberg fails to pay Help Desk Reps any compensation for their hours over 40 worked in a work week.[34]

ARGUMENT

I. CERTIFICATION OF AN FLSA COLLECTIVE ACTION IS APPROPRIATE

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 principal congressional purpose in enacting the [FLSA] was to protect all covered workers from

[29] Adam Decl. at ¶ 24; Clemens Decl. at ¶ 24.
[30] Adam Decl. at ¶ 24-5; Clemens Decl. at ¶ 24-5.
[31] Adam Decl. at ¶ 26; Clemens Decl. at ¶ 26-7.
[32] Adam Decl. at ¶ 28; Clemens Decl. at ¶ 30; *See* Bloomberg's Answer at ¶ 40-42.
[33] Adam Decl. at ¶ 30; Clemens Decl. at ¶ 32; *See* Bloomberg's Answer at ¶ 47.
[34] Adam Decl. at ¶ 30; Clemens Decl. at ¶ 32.

substandard wages and oppressive working hours, 'labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.'" *Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 402 (2d Cir. 2019) (quoting *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981) (quoting 29 U.S.C. § 202(a) (captioned "Congressional finding and declaration of policy")). The FLSA's collective action provisions are an important aspect of achieving the statute's remedial purpose. Section 216(b) authorizes 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.

B. The Lenient Standard Under the FLSA Favors Granting Conditional Certification at this Early Stage

The Second Circuit has adopted a two-step approach to FLSA conditional certification. *Myers v. Hertz Corp.*, 624 F.3d 537, 554-55 (2d Cir. 2010); *see also Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 540 (2d Cir. 2016). At the initial conditional certification stage, plaintiff's burden of showing that the class is similarly situated is minimal. *Id*. The burden at the first stage of conditional certification is "low" because "the purpose of this first stage is merely to determine *whether* similarly situated plaintiffs do in fact exist." *Id.* at 555 (citations omitted; emphasis in original). Because the statute of limitations continues to run against workers until they affirmatively opt-into the action, the "step one" motion is usually filed at the beginning of the case before much, if any, discovery has been done. At this stage, the Court looks to the pleadings, and to any statements made by plaintiffs in submitted affidavits or declarations, to determine whether

the named plaintiffs have made the requisite initial showing that the proposed opt-in plaintiffs are "similarly situated" to them. *See Fernandez v. Catholic Guardian Services,* 17 CIV. 03161 (ER), 2018 WL 4519204, at *2 (S.D.N.Y. Sept. 20, 2018); *Alvarez v. Schnipper Restaurants LLC*, 16 CIV. 5779 (ER), 2017 WL 6375793, at *2 (S.D.N.Y. Dec. 12, 2017); *Hernandez v. City of New York*; *see also Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317, 321 (S.D.N.Y. 2007); *see also In re Penthouse Exec. Club Comp. Litig.*, No. 10cv01145 (NRB), 2010 WL 4340255 at *3 (S.D.N.Y. Oct. 27, 2010). At this initial stage, "the Court does not resolve factual disputes, decide substantive issues going to the ultimate merits, or make credibility determinations." *Fernandez*, 2018 WL 4519204, at *3 (citing *Lynch v. United Serv. Auto Assn.,* 491 F.Supp.2d 357, 368 (S.D.N.Y. 2007) ("Indeed, a court should not weigh the merits of the underlying claims in determining whether potential opt-in plaintiffs may be similarly situated.") (citations omitted). Plaintiffs can meet their minimal burden at the conditional certification stage by submitting sworn declarations. *See Alvarez*, 2017 WL 6375793, at *4; *see also Fasanelli,* 516 F. Supp. 2d at 321-322 (rejecting defendant's arguments that declarations provided by plaintiff should not be relied upon because they contained "inadmissible hearsay, speculation, personal beliefs and conclusions," and granting conditional certification); *see also Hernandez,* 2017 WL 2829816, at *4 ("When there are ambiguities in the papers seeking collective action status, the court must draw all inferences in favor of the plaintiff at the preliminary certification stage.") (internal citation omitted).

The Second Circuit recently held that "'similarly situated' simply means that named plaintiffs and opt-in plaintiffs are alike with regard to some material aspect of their litigation." *Scott v. Chipotle Mexican Grill, Inc.,* 954 F.3d 502, 515 (2d Cir. 2020). "That is, party plaintiffs are similarly situated, and may proceed in a collective, to the extent they share a similar issue of

law or fact material to the disposition of their FLSA claims." *Id*. If the named plaintiff and the members of the proposed collective share legal or factual similarities material to the disposition of their claims, then "dissimilarities in other respects should not defeat collective treatment." *Id*. (quoting *Campbell*, 903 F.3d at 1114); *see also*, *Hernandez,* 2017 WL 2829816, at *6 (finding that plaintiffs are similarly situated to proposed collective action members, even though some of the plaintiffs' responsibilities "vary to some degree"). Legal or factual similarities material to an FLSA claim most commonly exist when workers allege that they have been subjected to a common employer practice or policy that if proved would help demonstrate a violation of the FLSA. *See Myers*, 624 F.3d at 555 ("The court may send . . . notice after plaintiffs make a modest factual showing that they and potential opt-in plaintiffs 'together were victims of a common policy or plan that violated the law.'") (internal quotations omitted).

The Second Circuit has emphasized that meeting this "similarly situated" standard, whether at the initial stage or the second stage, "imposes a lower bar than Rule 23, [and] it imposes a bar lower in some sense even than Rules 20 and 42, which set forth the relatively loose requirements for permissive joinder and consolidation at trial." *Scott,* 954 F.3d at 520 (quoting *Campbell,* 903 F.3d at 1112). "[T]he requirements for certifying a class under Rule 23 are unrelated to and more stringent than the requirements for "similarly situated" employees to proceed in a collective action under §216(b)." *Id*. And, while Rules 20 and 42 allow district courts discretion regarding joinder and consolidation, the FLSA, "which declares a right to proceed collectively on satisfaction of certain conditions, does not." *Id.* Because the determination that plaintiffs are similarly situated is merely a preliminary one, courts have "typically grant[ed] conditional certification," and authorized notice to issue to the putative collective action members. *Amador,* 2013 WL 494020 at

*3 (alteration omitted) (quoting *Malloy v. Richard Fleischman & Assocs., Inc.*, No. 09cv332 (CM), 2009 WL 1585979 at *2 (S.D.N.Y. June 3, 2009).

C. Plaintiff and the Proposed Collective are Similarly Situated

Here, applying the lenient standard of the notice stage, Plaintiff Adam has demonstrated that she is similarly situated to the other Help Desk Reps, because they are all victims of the same unlawful policies—i.e., Defendant's policy of misclassifying them as exempt and failing to pay them overtime for all hours worked over 40 in a workweek. Plaintiff Adam alleges and has supplied more than sufficient testimony that Defendant: (1) misclassified all Help Desk Reps as overtime exempt; (2) scheduled all Help Desk Reps for 40 hours per week; however, required all Help Desk Reps to work before and after their shift, including during their lunch hour, to complete jobs; (3) knew or should have known that all Help Desk Reps worked beyond their scheduled shift hours and that Help Desk Reps regularly worked more than 40 hours in a workweek; (4) failed to set up a time-keeping system that would record all the hours all Help Desk Reps worked; and (5) failed to pay all Help Desk Reps overtime compensation at the rate of time and one-half for all hours worked over 40 in a workweek.

Plaintiff Adam and Help Desk Reps worked on the same floor of the building, visible to one another from their desks, and performed the same primary job duty—to provide customer service and technical assistance to Bloomberg's customers regarding how to use proprietary Bloomberg software. Any variation that may exist among them is not dispositive to the "similarly situated" analysis at the notice stage, because Plaintiff Adam and Help Desk Reps were all misclassified as exempt and subject to the same illegal pay policy. *See Alvarez* 2017 WL 6375793, at *5 ("In the Second Circuit, courts routinely find employees similarly situated despite not occupying the same positions or performing the same job functions and in the same locations,

provided that they are subject to a common unlawful policy or practice.") (internal citation omitted).

Although the Court does not need to entertain merits arguments at this stage,[35] it should be noted that the primary job duty is all that matters when examining the applicability of a FLSA overtime exemption[36] and the Department of Labor and federal courts, including this Court, have held that "help desk" support of the type that Plaintiffs provided here, is not exempt from overtime. *See 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"); *see e.g. Martin v. Indiana Michigan Power Co.*, 381 F.3d 574 (6th Cir. 2004) (directing summary judgment for help-desk IT employee on administrative and computer professional exemptions); *Decker v. Smithville Communications, Inc.*, No. 1:11-CV-0005, 2012 WL 4116996 (S.D. Ind. Jul 18, 2012) (denying summary judgment because help desk functions are not computer exempt); *Hunter v. Sprint Corp.*, 453 F. Supp. 2d 44, 52 (D.D.C. 2006) (finding that a technically proficient help-desk employee whose primary duty was customer service was not exempt from overtime under the computer exemption); *see*

[35] *See Martinez v. Zero Otto Nove Inc.*, 15 CIV. 899 (ER), 2016 WL 3554992, at *4 (S.D.N.Y. June 23, 2016) (finding defendants' efforts to claim plaintiffs were properly classified as exempt were "futile" . . . . "It is well-established that 'the merits of plaintiff[s'] claims need not be resolved at this stage.'" (internal citation omitted).

[36] *See* 29 CFR 541.700 ("To qualify for an exemption under this part, an employee's 'primary duty' must be the performance of exempt work. The term 'primary duty' means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.")

also, U.S Dept. of Labor Wage Hour Opinion Letter, FLSA 2006-42, 2006 WL 3406603 (finding that an IT Support Specialist working at a help desk who conducts problem analysis and research, troubleshoots, and resolves complex problems either in person or by using remote control software as requested by employees, physicians, and contractors of the employer is neither administratively exempt nor an exempt computer professional).

These allegations and evidence are sufficient to show that Plaintiff Adam and Help Desk Reps were subject to a common pay policy—one which is illegal. By challenging a uniform policy applicable to all putative collective action members, Plaintiff Adam necessarily satisfies the "similarly situated" standard. *See Alvarez*, 2017 WL 6375793, at *2 ("[Plaintiff] must only make "a 'modest factual showing' that [he] and potential opt-in plaintiffs 'together were victims of a common policy or plan that violated the law.'") (citing *Myers*, 624 F.3d at 555). In fact, Courts in this District have found certification to be appropriate for similar claims on behalf of Bloomberg's tech workers. *See 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 at *4 (S.D.N.Y. Apr. 17, 2015) (conditionally certifying a collective of "representatives in [Bloomberg's] Analytics department who were not paid time and one half for hours over 40 worked in one or more week," and who alleged they were misclassified as exempt); *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); *see also Jackson*, 298 F.R.D. at 160 (S.D.N.Y. 2014) (granting

conditional certification of a collective action for a class of "Global Customer Support (GCUS) Representatives in the U.S. who worked more than 40 hours in a pay week without payment of overtime at the rate of time and one-half," who alleged they were misclassified as exempt).

The evidence Plaintiff submitted in support of her claims, including two declarations, is more than sufficient to satisfy Plaintiff's "modest" burden of showing that Bloomberg's Help Desk Reps are similarly situated. *See Alvarez*, 2017 WL 6375793, at *4 ("[C]ourts in this district 'routinely certif[y] conditional collective actions based on the plaintiff's affidavit declaring they have personal knowledge that other coworkers were subjected to similar employer practices.'") (citing *Guo Qing Wang v. H.B. Rest. Group, Inc.*, 14-CV-813 CM, 2014 WL 5055813, at *5 (S.D.N.Y. Oct. 7, 2014)); *see also Mata v. Foodbridge LLC*, 14 CIV. 8754 ER, 2015 WL 3457293, at *3 (S.D.N.Y. June 1, 2015) ("[C]ourts in this circuit have routinely granted conditional collective certification based solely on the personal observations of one plaintiff's affidavit.") (citing *Hernandez v. Bare Burger Dio Inc.*, 12 CIV. 7794 RWS, 2013 WL 3199292, at *3 (S.D.N.Y. June 25, 2013)) (collecting cases).

Taken together, Plaintiff's substantive allegations of Bloomberg's misclassification of Help Desk Reps as exempt, requirement of Help Desk Reps to work beyond their scheduled 40 hours per week, knowledge that Help Desk Reps did in fact regularly work more than 40 hours in a workweek, and failure to pay overtime wages are sufficient to meet the lenient standard for this first stage of certification. Plaintiff has more than satisfied her modest burden of showing that the putative collective of Help Desk Reps are similarly situated. Accordingly, the putative collective should be conditionally certified, and notice of this action should be issued to the collective.

II. PLAINTIFF'S PROPOSED NOTICE PROCEDURES SHOULD BE APPROVED

Issuing Notice of the case, along with a Consent to Sue form, is an important component to providing the best notice practicable. The district court has the discretion to facilitate notice to potential plaintiffs of their right to opt-into the action. *See Hoffman-La Roche,* 493 U.S. at 172. To facilitate notice, this Court should direct Bloomberg to provide to Plaintiff's counsel, in an electronic spreadsheet format such as Excel, the following information, each contained in a separate column, for each of the individuals described in the collective action definition who worked for Bloomberg within the last three years[37] preceding the filing of the complaint: first name, last name, street address, city, state, zip, email address, and employee number. Bloomberg alone is in possession of the information necessary to provide notice to potential class members, and courts uniformly require defendants to supply the names, addresses, and unique employee identifiers for the administration of notice. *Hoffman-LaRoche,* 493 U.S. at 170; *Garcia v. Chipotle Mexican Grill, Inc.*, 16 CIV. 601 (ER), 2016 WL 6561302, at *9 (S.D.N.Y. Nov. 4, 2016) (ordering defendants to "produce the names, titles, compensation rates, dates of employment, last known mailing addresses, known email addresses, and known telephone numbers" for putative class members); *Alvarez*, 2017 WL 6375793, at *6; *Fernandez*, 2018 WL 4519204, at *5; ; *Rashid*, 2013 WL 11319388, at *4; *Michael*, 2015 WL 1810157 at *4 (directing Bloomberg to provide "the names, dates of employment, last known addresses, employee numbers, and email addresses of all potential plaintiffs"); *Siegel*, 2013 WL 4407097, at *4 (same).

Additionally, in this modern electronic age, Courts in this district and throughout the country regularly authorize plaintiffs' counsel to mail and email a court approved notice. *Vecchio*

[37] Under the FLSA, the statute of limitations is three years (or potentially two years if the violation is ultimately determined not to be willful). 29 U.S.C. § 255(a).

v. Quest Diagnostics Inc., 16 CIV. 05165 (ER), 2018 WL 2021615, at *8 (S.D.N.Y. Apr. 30, 2018) ("[T]he Court concludes that the 90-day opt-in period, email notice, and phone calls where mail and email addresses are invalid, is appropriate."); *Benavides v. Serenity Spa NY Inc.*, 166 F. Supp. 3d 474, 488 (S.D.N.Y. 2016) (citing *Martin v. Sprint/United Mgmt. Co.*, No. 15 Civ. 5237 (PAE), 2016 WL 30334, at *19–20 (S.D.N.Y. Jan. 4, 2016)("Courts in this District commonly grant requests for the production of names, mailing addresses, email addresses, telephone numbers, and dates of employment in connection with the conditional certification of a[n] FLSA collective action."); *See also*, *Michael*, 2015 WL 1810157, at *4 (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 Overtime Litig.*, 11 Civ. 2461(RMB)(THK), 2012 WL 340114, *2 (S.D. N.Y. Jan. 17, 2012) ("communication through email is [now] the norm.")

Furthermore, for FLSA collective members whose notice is returned as undeliverable, this Court should direct Bloomberg to promptly supply telephone numbers, dates of birth, and the last four digits of social security numbers to assist with location efforts, including calling those FLSA collective members whose notice is returned as undeliverable, or a skip trace to find the current address for such individual within the time period provided for by this notice, so that notice can then be re-mailed. *See Jacob v. Duane Reade, Inc.*, 11civ0160 (JPO), 2012 WL 260230, at *10 (S.D.N.Y. Jan. 27, 2012) (ordering defendant to "produce names, last known mailing addresses, last known telephone numbers, last known email addresses, work locations, and dates of employment"); *Varghese v. JP Morgan Chase & Co.*, No. 14 CIV. 1718 (PGG), 2016 WL 4718413, at *9 (S.D.N.Y. Sept. 9, 2016) (ordering Defendants to produce telephone numbers for potential opt-in plaintiffs). Courts routinely order defendants to provide this information in similar

cases for the purpose of locating putative class members. *See, e.g., Gomez v. Terri Vegetarian LLC*, 17 Civ. 213 (JMF), 2017 WL 2628880, at *2 (S.D.N.Y. June 16, 2017); *Davis v. Abercrombie & Fitch Co.*, 08 Civ. 1859(PKC), 2008 WL 4702840, *12 (S.D.N.Y. 2008); *Lynch*, 491 F. Supp. 2d at 371-72; *Patton v. Thomson Corp.*, 364 F. Supp. 2d 263, 268 (E.D.N.Y. 2005) (ordering defendant to produce the "names, addresses, social security numbers, and employment dates of all putative class members"). This information would only be used to assist in "skip tracing."

Additionally, courts have routinely approved the sending of follow-up postcard reminders. Such follow-up postcards serve the purpose to inform as many potential plaintiffs as possible of the collective action and their right to opt-in and avoid a multiplicity of duplicative suits. *Chhab v. Darden Restaurants, Inc.*, 11-cv-8345(NRB), 2013 WL 5308004, *16 (S.D.N.Y. Sept. 20, 2013); *see also 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."). Accordingly, courts have regularly approved the sending of a reminder notice to class members who have not responded after the mailing of the initial notice. *See Lopez v. JVA Industries, Inc*., 14-cv-9988 KPF, 2015 WL 5052575, at *5 (S.D.N.Y. Aug. 27, 2015) (authorizing plaintiffs to send reminder notices halfway through opt-in period); *See Michael.*, 2015 WL 1810157, at *4 (granting plaintiff's request for reminder notice); *Agerbrink v. Model Serv. LLC*, 14 Civ. 7841, 2016 WL 406385, at *8 (S.D.N.Y. Feb. 2, 2016) ("In light of the salutary purpose of notice in collective actions, I see some benefit and no harm in sending a reminder notice."); *Sanchez v. Salsa Con Fuego, Inc.*, 16 Civ. 473(RJS)(BCM), 2016 WL 4533574, at *8 (S.D.N.Y. Aug. 24, 2016);

Varghese v. JP Morgan Chase & Co., 14 Civ. 1718 (PGG), 2016 WL 4718413, at *10 (S.D.N.Y. Sept. 9, 2016).

Plaintiffs request that Class Members have 90 days to return their Consent to Sue form. Notice periods of 60 to 90 days are routinely accepted by Courts. *Vecchio*, 2018 WL 2021615, at *8 (90 days); *Michael*, 2015 WL 1810157, at *4 (60 days); *In re Milos Litig.*, 08 Civ. 6666 (LBS), 2010 WL 199688, at *2 (S.D.N.Y. Jan. 11, 2010) (90 days); *Fang v. Zhuang*, 10 Civ. 1290 RRM JMA, 2010 WL 5261197, at *1 (E.D.N.Y. Dec. 1, 2010) (90 days). The Court should grant the Plaintiff a 90 day notice period.

III. THE COURT SHOULD APPROVE THE PLAINTIFF'S PROPOSED NOTICE

Copies of the notice and reminder postcard the Plaintiff proposes to send to the class members are attached to his motion as Exhibits 3 and 4, respectively. This notice informs Class Members in simple but neutral language of the nature of this action, of their right to participate in the case by filing a Consent to Sue form with the Court and the consequences of their joining or not joining the action. The same form of notice was previously approved by this District Court in another FLSA case against Bloomberg and is comparable to the notices that have been approved by courts in this district in similar FLSA cases against Bloomberg. *See Michael*, 2015 WL 1810157, at *3 ("As plaintiff rightly points out, plaintiff's proposed notice is comparable to the notices that have been approved by courts in this district in similar FLSA cases against Bloomberg. *See, e.g.*, *Siegel v. Bloomberg*, No. 13 Civ. 1351 (Cote, J.) (Dkt. No. 26); *Jackson v. Bloomberg*, No. 13 Civ.2001 (Oetken, J.) (Dkt. No. 31). The court sees no reason to depart from these precedents here. The court approves plaintiff's proposed notice."). The reminder postcard succinctly reminds putative FLSA collective members of the case and the deadline for returning

the consent to sue. Plaintiff's counsel will bear the cost of mailing, emailing, and re-mailing the notices, as well as the cost of mailing and emailing the reminder postcard.

CONCLUSION

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

1) requiring Defendant to provide Plaintiff, in computer 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 Help Desk Representatives in the Bloomberg Analytics Department who were classified by Bloomberg as exempt from overtime and were not paid time and one half for hours over 40 worked in one or more week" 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. 3 by mail and e-mail;
4) authorizing class counsel to re-mail notices that are returned as undeliverable for those individuals for whom counsel can find better addresses;
5) 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;
6) permitting the mailing of the reminder postcard attached as Ex. 4, 21 days before the expiration of the opt-in period to those Help Desk Reps that have not responded.

Dated: August 20, 2021

Respectfully submitted,

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