**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Anessia Amoko, individually and on behalf of all others similarly situated, Plaintiffs, v. N&C Claims Service, Inc., Nicholas F. Ierulli, Pam Ierulli, and Seibels Claims Solutions, Inc., Defendants.	)	C.A. No. 3:20-cv-04346-SAL **DEFENDANTS N&C CLAIMS SERVICE, INC., NICHOLAS F. IERULLI, AND PAM IERULLI'S RESPONSE TO PLAINTIFF'S MOTION TO CONDITIONALLY CERTIFY FLSA COLLECTIVE ACTION AND TO ISSUE NOTICE**

Defendants N&C Claims Service, Inc., Nicholas F. Ierulli, and Pam Ierulli (collectively "Defendants") respectfully submit the following response to Plaintiff's Motion to Conditionally Certify FLSA Collective Action and to Issue Notice (ECF No. 48).

I. PLAINTIFF'S ARGUMENT FOR CONDITIONAL CERTIFICATION

Plaintiff first argues that conditional certification in this matter is appropriate. Plaintiff asserts that the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq* ("FLSA"), is a remedial statute and that many courts use a lenient two-step process requiring minimal evidence that the named plaintiff is similarly situated to the proposed collective class for certification. Defendants do not agree with the approach courts have taken with this lenient two-step process that allows for conditional certification based simply off the named plaintiff's pleadings and conclusory allegations in declarations that the named plaintiff and any potential opt-in plaintiffs are similarly situated. Defendants maintain that the proper course for certification under 29 U.S.C. § 216(b) is to follow the procedures set forth in Federal Rule of Civil Procedure 23. That being noted, and also pointing out that neither the Supreme Court nor the Fourth Circuit has specifically required or endorsed the two-step approach, Defendants are aware that district courts in the Fourth Circuit

generally have applied it. In the interest of respecting the Court's time, Defendants will not argue against the two-step approach in this particular matter and instead will focus on the inappropriateness of Plaintiff's proposed notice. Defendants do not concede that Plaintiff, those plaintiffs who have filed notices of joinder in this matter, or any potential members of the collective class are similarly situated. Furthermore, Defendants explicitly reserve their right to later seek decertification of the collective class after further development of the record.

II. PLAINTIFF'S PROPOSED NOTICE IS INAPPROPRIATE AND THE COURT SHOULD INSTEAD ADOPT DEFENDANTS' PROPOSED NOTICE

Plaintiff's proposed Mail notice (ECF No. 48-1) lacks neutrality, omits critical information, and is unnecessarily convoluted in form.[1] Courts facilitate notice to potential plaintiffs in order to ensure information is timely, accurate, and informative and to guard against abuse by misleading communications. *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 172 (1989). Plaintiff's Mail notice (hereinafter "Plaintiff's Notice" or "Plaintiff's proposed Notice") fails to meet these goals and should be rejected. Management of FLSA collective actions is left to the sound discretion of the district court, including determination of the appropriate scope and content of the notice if the court conditionally certifies a class. *See Regan v. City of Charleston*, C.A. No. 2:13–cv–3046–PMD, 2014 WL 3530135, at *7 (D.S.C. 2014) (citing *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170-72 (1989)). This discretion is not unfettered—courts should limit notice to ensure that similarly-situated employees receive "accurate and timely notice concerning the pendency of

[1] Plaintiff attached to her motion as Exhibit B her proposed Text Message notice and as Exhibit C her proposed Reminder Postcard. For the reasons noted below, notice via text message and any reminder is not necessary in this matter and Defendants focus their arguments regarding the form and content of notice entirely against Plaintiff's Mail notice attached as Exhibit A to her motion. If the Court is inclined to allow notice via text message and/or any type of reminder notice, Defendants request the opportunity to confer with Plaintiff's counsel on the appropriate content of any such notices to ensure they are neutral in tone and substance and then submit any differences of the parties on the content to the Court to resolve.

the collective action, so that they can make informed decisions about whether to participate." *Hoffman-La Roc*he, 493 U.S. at 170. "By monitoring preparation and distribution of the notice, a court can ensure that it is timely, accurate, and informative." *Id.* at 172. Further, plaintiffs have "the burden of demonstrating that notice is 'appropriate.'" *D'Anna v. M/A–COM, Inc.*, 903 F. Supp. 889, 894 (D. Md. 1995). As noted above, Plaintiff attached to her motion her proposed Mail notice as Exhibit A. To avoid any doubt regarding the Defendants' specific objections to Plaintiff's Mail notice, Defendants also submit a proposed notice attached to this Memorandum at Exhibit 1 (hereinafter "Defendants' Notice").

1. Notice to Putative Class Members should be clear, complete, and avoid confusing or misleading recipients.

a) The notice should not suggest court authorization or sponsorship.

At the top of Plaintiff's Notice in bold, central type-face it states that "A Federal Court authorized this Notice" and that "It is not a solicitation from a lawyer." These statements prejudicially suggest judicial sponsorship and should be omitted.

The Supreme Court cautioned that, "[i]n exercising the discretionary authority to oversee the notice-giving process, courts must be scrupulous to respect judicial neutrality. To that end, trial courts must take care to avoid *even the appearance of judicial endorsement* of the merits of the action." *Hoffmann-La Roche*, 493 U.S. at 174 (emphasis added). The above-referenced language from Plaintiff's Notice does precisely what the *Hoffman-La Roche* Court cautioned against: it gives recipients the impression that the Court directed Plaintiff to send the notice and to invite them personally to join the lawsuit. This language risks the appearance of judicial endorsement of the Plaintiff's allegations.

b) The notice should use the correct class period and potential class members.

Plaintiff's Notice sets the class period as "Any Time Between December 11, 2016 and the Date of Final Judgment in this Matter." Plaintiff states in Footnote 1 of her Memorandum of Law in Support of her motion that the parties agreed to a tolling period during pre-litigation discussions which added an additional year plus five days to the limitations period. (ECF No. 49). The applicable statute of limitations, however, runs backward from the date each opt-in plaintiff files consent to join the lawsuit. 29 U.S.C. §§ 255, 256. The appropriate and relevant time period for opt-in class members is therefore measured back from the date notice is issued by the Court. *See, e.g.*, *Mondragon v. Scott Farms, Inc.*, No. 5:17-CV-00356-FL, 2019 WL 489117, at *9 (E.D.N.C. Feb. 7, 2019) (class period measured from date of notice); *Houston v. URS Corp.*, 591 F. Supp. 2d 827, 835 (E.D. Va. 2008) (same); *see also Alderoty v. Maxim Healthcare Servs., Inc.*, No. CIV.A. TDC-14-2549, 2015 WL 5675527, at *15 (D. Md. Sept. 23, 2015) (class period measured from date of conditional certification order). Accordingly, Plaintiff's proposed class notice date is improper and should be rejected. Defendants' Notice uses the correct class period measured from the notice date and should be adopted instead.

Further, Plaintiff's Notice attempts to invite individuals who may be inappropriate class members to join the lawsuit. Plaintiff's Notice is addressed to "All Persons Who Worked for N&C Claims Service, Inc. and Seibels Claims Solutions, Inc. in South Carolina as Insurance Claims Adjusters . . .." This proposed class could thus capture individuals who should not be part of the lawsuit and outside the allegations in Plaintiff's First Amended Complaint. Defendants submit that a review of the parties' individual Local Rule 26.03 Responses indicates that the parties understand the relationship between Defendant N&C Claims Service, Inc. ("N&C") and Defendant Seibels Claims Solutions, Inc. ("Seibels."). To that end, Seibels contracted with N&C for N&C to provide

Insurance Claims Adjusters like Plaintiff to perform such services at Seibels' Columbia, South Carolina office. N&C then contracted with Plaintiff and other Insurance Claims adjusters and they were assigned to Seibels. (ECF Nos. 52, 54, 56). Thus, the proper potential class and proper class period is correctly defined in Defendants' Notice as "All persons who contracted as independent contractors with N&C Claims Service, Inc. and were assigned to Seibels Claims Solutions, Inc. [hereinafter "Defendants"] in Columbia, South Carolina as insurance claims adjusters any time from (4 years and 5 days from the date of notice) to the date of this notice."

c) The structure of the notice should convey accurate and complete information.

Plaintiff's Notice consists of several numbered paragraphs and a table that is cut off at the end of the page and runs to the next page in a somewhat awkward and confusing fashion. Defendants' Notice, on the other hand, is set out in a clear, organized manner of complete paragraphs with all the necessary information for a recipient to make an educated decision as to whether to opt-in to the action. It also includes a list of bullet points concisely explaining the next steps for a recipient of the notice and the related impact of joining or not joining the action.

A notice should summarize all key points about opting in or out or provide only specific information, such as key points about procedure or consequences of opting in and out. A better approach would be to use Defendant's Notice, including the short, bulleted summary attached to Defendants' Notice, and described above, which guides recipients through the decision-making process. Overall, Defendants' Notice follows the directive of the Supreme Court by providing a more accurate description of the relevant information with clear headings guiding recipients through its content. *See Hoffman-La Roche*, 493 U.S. at 172 (notice should be accurate and informative).

d) The notice should include key information regarding Defendants' defenses.

Plaintiffs' Notice omits any specifics regarding Defendants' defenses. The notice should include specific language relating to Defendants' particularized defenses and denial of liability in this case, specifically stating that the Defendants dispute liability based on the validity of the independent contractor agreements and that no overtime would be owed for any workweeks in which a plaintiff did not work over 40 hours. Omitting these key elements is misleading and lacks neutrality, fairness, and balance. *See, e.g., Mondragon*, 2019 WL 489117, at *11 (directing plaintiffs to amend proposed notice to include summary of defenses). Accordingly, Defendants request that the notice include the following language:

"Defendants vigorously deny Plaintiff's allegations and believe that the Plaintiff's claims are without merit. Defendants maintain that Plaintiff and other insurance claims adjusters who entered into independent contractor agreements with N&C Claims Service, Inc. and were assigned to Seibels Claims Solutions, Inc. were properly classified as independent contractors of N&C Claims Service, Inc. and properly compensated. Defendants additionally dispute liability because, even if Plaintiff and other insurance claims adjusters were held to be employees instead of independent contractors (which Defendants deny), Plaintiff and other insurance claims adjusters would still not be owed any overtime in any work week that they worked less than 40 hours per week."

e) The notice should inform potential class members of their rights.

Plaintiffs' Notice omits key information regarding the rights and responsibilities of opt-in class members. Defendants' Notice clearly explains opt-in plaintiffs' rights in its main body.

i. Putative class members have the right to obtain the counsel of their choice and to file a separate action.

Plaintiffs' Notice instructs potential class members that, in order to join the lawsuit, they must return the opt-in consent form to Named Plaintiff's counsel going so far as to bold the word "must." Further, the "Your Options and Legal Rights" table states that those who join the lawsuit will be represented by the Named Plaintiff through her attorneys as counsel for the class. Thus, Plaintiffs' Notice erroneously suggests that that potential class members must be represented by Named Plaintiff's counsel. Plaintiffs' Notice fails to notify potential class members of their right to counsel of their choice. *See Ratliff v. Pason Sys. USA Corp.*, 196 F. Supp. 3d 699, 702-03 (S.D. Tex. 2016) ("Courts have required that notice language inform potential opt-in plaintiffs of their right to have an outside attorney actually represent them, not merely advise them whether to join the class."); *Maddox v. Knowledge Learning Corp.*, 499 F.Supp.2d 1338, 1345 (N.D. Ga. 2007) (ordering revision of notice because it suggested opt-in plaintiffs must be represented by named plaintiffs' counsel). Omitting this information misleads recipients into believing that opting-in to this case in the manner described by Plaintiff is the sole way in which they may vindicate any rights they may have under the FLSA. Accordingly, the Court should include this important component as reflected in Defendants Notice.

ii. Putative class members have the right to be informed about the terms of Plaintiff's attorneys' fee agreement.

Despite insinuating that recipients have no choice but to choose Named Plaintiff's counsel if they wish to participate in this case, Plaintiff's Notice includes confusing information regarding the terms of the attorneys' fee agreement to which opt-in plaintiffs are binding themselves should they choose to be represented by Named Plaintiff's counsel. Lack of clear information regarding the Named Plaintiff's attorneys' fee agreement fails to adequately inform potential plaintiffs of the

consequences to their potential recovery if they choose to be represented by Named Plaintiff's counsel.

Defendants request that Plaintiff be compelled to insert a more accurate description of the nature of her fee arrangement with Plaintiff's Counsel into Defendants' Notice, including, at a minimum: (1) the method of calculation of attorneys' fees, including hourly rates and/or contingency fee percentage; (2) that plaintiffs will be required to pay a pro-rata share of fees from their recovery or settlement proceeds; and (3) any other matters related to fees and costs to which opt-in plaintiffs will be bound should they choose to join the lawsuit.

f) The notice should accurately inform potential class members of opt-in plaintiffs' responsibilities.

Plaintiff's Notice also fails to fully apprise recipients of the potential obligations and consequences associated with opting-in, including their potential liability for costs and responsibility to participate in discovery. Defendants' Notice accurately describes opt-in plaintiffs' responsibilities.

i. Opt-in plaintiffs share potential liability for costs.

Plaintiff's Notice makes no mention of opt-in plaintiffs' potential liability for Defendants' costs should Defendants prevail in this case. Without such an advisory, "the proposed notice form is not completely accurate as to the potential liabilities for those who join the lawsuit." *Behnken v. Luminant Min. Co., LLC*, 997 F. Supp. 2d 511, 524 (N.D. Tex. 2014). Accordingly, the proposed notice should advise prospective opt-in plaintiffs that they could be liable for Defendants' costs of defending the case if Defendants ultimately prevail, as set forth in Defendants' Notice. *See Frykenberg v. Captain George's of South Carolina, LP* 2020 WL 575678, at *5 (D.S.C. Sept. 28, 2020) (citing *Turner v. BFI Waste Servs.*, LLC, 268 F.Supp.3d 831, 842 (D.S.C. 2017)).

ii. Opt-in Plaintiffs have discovery obligations.

Plaintiff's Notice fails to inform recipients of opt-in plaintiffs' responsibility to participate in discovery. "[C]ourts routinely accept text notifying potential plaintiffs of the possibility that they will be required to participate in discovery and testify at trial." *Schmidt v. Charleston Collision Holdings Corp.*, 2015 WL 3767436, at *9 (D.S.C. June 17, 2015); *see also Laney, et al. v. South Carolina Farm Bureau Insurance Co. et al.*, 3:18-cv-02730-TLW, ECF No. 65, p.14 ("The Court concludes that it is appropriate to notify potential opt-in plaintiffs of their possible discovery and trial obligations, as this furthers the goal of giving accurate notice to potential plaintiffs."); *Lockwood v. CIS Services, LLC, et al.*, 2017 WL 6335955, at *4 (M.D.Fla Sept. 26, 2017) (Court directs Plaintiff to add to notice "If the potential class members opt-in, they may be required to appear in the Middle District of Florida, Jacksonville Division.").

The notice should notify recipients that opt-in plaintiffs may be required by the court, at Defendants' request, to produce documents, respond to written interrogatories, testify under oath at a deposition, and testify at trial in Columbia, South Carolina. *See Regan*, 2014 WL 3530135, at *9 (collecting cases and sustaining defendants' request to add reference to opt-in plaintiffs' potential obligation "to produce documents, respond to written interrogatories, appear for a deposition under oath, and testify at trial"); *see also Schmidt*, 2015 WL 3767436, at *9 (granting defendant's request to amend notice to include sentence stating that "[i]f you elect to join this lawsuit, you may be required to provide information, give a deposition under oath, produce documents, respond to written interrogatories, and/or testify in Court, including trial").

Further, Plaintiff states in her First Amended Complaint that she currently resides in Frisco, Texas. (ECF No. 15, ¶ 8). Defendants are under information and belief that many of the remaining members of the potential class live outside of South Carolina. Such recipients certainly need to

know of their potential discovery obligations to make an informed decision regarding whether to opt-in to the action. Defendants' Notice includes this important information regarding opt-in plaintiffs' responsibilities.

g) The notice should inform potential plaintiffs that they may later be excluded.

As noted above, Defendants do not concede that Plaintiff, those plaintiffs who have filed notices of joinder in this matter, or any potential members of the collective class are similarly situated and explicitly reserve their right to later seek decertification of the collective after further development of the record. Plaintiff's Notice glosses over the key fact that in conditionally certifying the class, the court has not ultimately determined whether the individuals receiving Plaintiff's Notice are sufficiently similarly situated to the named plaintiffs to proceed as a class. Because the class has been only conditionally certified, the court may later determine those who opt in should not be included. *See Curtis v. Time Warner Entm't-Advance/Newhouse P'ship*, C/A No. 3:12–cv–2370–JFA, 2013 WL 1874848, at *3 (D.S.C. May 3, 2013) (quoting *Myers v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010). Accordingly, the notice should inform recipients that opt-in plaintiffs may later be excluded, as set forth in Defendants' Notice.

h) The notice should use non-prejudicial language.

At the very top of Plaintiff's Notice in bold and the largest font in the notice it informs of the opportunity to join an "Unpaid Wage" lawsuit. This language is prejudicial to Defendants in that it implies there has been a determination that the classification of Plaintiff and other Insurance Claims Adjusters was improper. The same is true for how Plaintiff's Notice uses the term "worked for" several times in the address block. Additionally, Plaintiff's Notice states that the lawsuit seeks to compel Defendants to pay "an amount equal to three times [plaintiffs'] back wages." Like with

"Unpaid Wage" in the heading, this information implies liability has already been determined and that monetary recovery is currently, or will be, available.

i) The opt-in notice should not mention retaliation.

On Page 2 of the Plaintiff's Notice, the penultimate paragraph indicates that any employer, and presuming Defendant N&C Claims Service, Inc. to the extent it employs any potential class members, is prohibited from retaliating against putative class members for joining the lawsuit. This statement inappropriately suggests that any employer is likely to retaliate against opt-in plaintiffs even though Plaintiff has made no allegation of retaliation in this case. Under these circumstances, to permit these references to retaliation amounts to the unnecessary "'stirring up' of litigation through unwarranted solicitation" that courts must avoid in crafting notice to putative class members. *See D'Anna*, 903 F.Supp. at 894; *see also Maddox*, 499 F. Supp. 2d at 1345 (rejecting language of proposed notice inviting recipients to contact plaintiffs' counsel to report alleged retaliation). As such, Defendants' Notice contains no references to retaliation.

2. The opt-in consent form should reflect these changes to Plaintiff's Notice.

Plaintiff's Notice includes a proposed "Consent to Sue" form which potential class members are instructed to complete should they wish to opt-in to the class. The form should be revised to conform to relevant revisions in Defendants' Notice as described above.[2]

3. The notice should be administrated and delivered fairly.

a) The opt-in period should be 30 days.

Plaintiff's Notice includes a 60-day opt-in period. In managing conditional certification, the district court has the duty to set a reasonable cutoff date for opt-in plaintiffs in order to ensure that the lawsuit will proceed in a "diligent fashion." *Hoffman La-Roche*, 493 U.S. at 173. District

[2] Defendants' proposed consent form is included in Exhibit 1.

courts in the Fourth Circuit regularly authorize opt-in periods between thirty and sixty days. *Regan v. City of Charleston*, 2014 WL 3530135, at *10 (D.S.C. Jul. 16, 2014). Defendants submit that a 30-day opt-in period provides ample opportunity for this putative class of professional insurance claims adjusters to receive notice and determine whether they wish to participate in the lawsuit, while not unnecessarily delaying proceedings in this case. Further, approximately thirty individuals have already filed notices of joinder for this action and Defendants submit the total class, including those who have already joined, is approximately 53 individuals. Thus, over half the potential class is already a party to this action. Nothing suggests that those few remaining will need more than 30 days to consider their options in joining the class. Accordingly, Defendants' Notice uses a 30-day opt-in period.

b) Defendants should be required to provide only names and addresses of potential class members.

In *Hoffman-La Roche*, the Court approved a district court order compelling discovery of the names and addresses of putative class members at the notice stage, based on a finding that such discovery was relevant to the orderly provision of notice. 493 U.S. at 170. Based on that authority, district courts retain the "discretion, in appropriate cases, to facilitate notice to potential class members by allowing discovery of the names and addresses of potential plaintiffs or by some other appropriate action." *Earl v. Norfolk State Univ.*, Civil No.: 2:13CV148, 2014 WL 6608769, at *5 (E.D. Va. Nov. 18, 2014) (*citing Houston*, 591 F.Supp.2d at 832) (internal citations omitted). Plaintiff, however, additionally requests that the court order Defendants to provide the current or last known telephone numbers, current email addresses, and a unique identification number, as well as dates of birth and the last four digits of social security numbers for "skip tracing" purposes to locate potential opt-ins whose notices are returned undeliverable. This Court, however, orders production of information *beyond* names and addresses, such as email addresses, telephone

numbers, or other identifiable information only when the plaintiffs have shown a "special need" for such information to ensure potential class members are notified of their rights to join the lawsuit. *See, e.g.*, *Regan*, 2014 WL 3530135 at *6 (collecting cases and denying plaintiffs' request for telephone numbers and email addresses in the absence of evidence of a special need for such information); *Lynch v. Dining Concepts Grp., LLC*, C.A.: 2:15-cv-580-PMD, 2015 WL 5916212, at *5 (D.S.C. Oct. 8, 2015) ("Courts in this circuit require a showing of a 'special need' before requiring the disclosure of telephone numbers"); *Schmidt*, 2015 WL 3767436, at *7 (D.S.C. June 17, 2015) (rejecting plaintiffs' request for disclosure of telephone numbers, and ordering only the production of names and addresses, because "[c]ourts in this Circuit have required plaintiffs to show a 'special need' for the disclosure of telephone numbers").

The necessity of showing a "special need" for additional information reflects the Court's interest both in preserving the privacy of putative class members, and in retaining judicial control over the dissemination of information related to the lawsuit, which is precisely the purpose of involving the Court in managing notice during the conditional certification stage. *See Regan*, 2014 WL 3530135, at *6. Courts require the plaintiff to demonstrate a "special need," based on the particular facts and circumstances relevant to the class members at issue, for duplicating notice in forms other than mail or otherwise requiring the disclosure of personal information. *See, e.g.*, *Cedillos-Guevara v. Mayflower Textile Servs., Co.*, Civil Action No. GLR–14–196, 2014 WL 7146968, at *4 (D. Md. Dec. 12, 2014) (rejecting plaintiff's request for disclosure of email addresses, phone numbers, social security numbers, and dates of birth because "they have not demonstrated an inability to contact the members through written notice," and mere speculation of recipients' potential illiteracy "is insufficient to justify the exposure of such personal information."). Plaintiffs have not alleged, let alone demonstrated, a "special need" for contacting

potential class members by email or text, or to engage in "skip tracing," to ensure they receive notice of their right to participate in this case. Indeed, if Plaintiffs were permitted to duplicate notice in multiple formats and engage in "skip tracing," the "special need" requirement would be meaningless, and email and text notice and "skip tracing" would be the norm in every case.

Because Plaintiffs have identified no factual basis to contend the potential class members' email addresses, phone numbers, social security numbers, or dates of birth are necessary to ensure that notice is effective, Defendants' obligation to facilitate notice, if any, should be limited to providing names and addresses of those insurance claims adjusters that Defendant N&C Claims Service, Inc. contracted with and were assigned to Defendant Seibels Claims Solutions, Inc. during the relevant time period, and notice should be accomplished exclusively in the form of a single mailing.

c) Plaintiff should be limited to one mailing of the notice.

Plaintiff requests that the Court authorize notice via U.S. Mail, email, and text message. Such authorization would mean, of course, that putative plaintiffs would receive *three separate notices*. Clearly, that many notices are overkill and would certainly prejudice Defendants as that many notices is sheer encouragement to join this action. Plaintiff has provided no reason why she needs to notify a putative class, half of which have already filed notices of joinder, three separate times about this lawsuit and invite them three separate times to join her. There is nothing to suggest that a single mailing of the notice is insufficient to provide the putative class with the necessary information one would need to evaluate whether to join the action. Again, Defendants maintain that notice should be accomplished exclusively in the form of a single mailing.

d) No Reminder should be permitted.

Plaintiff requests that, after notice is initially distributed, Plaintiff's counsel should be authorized to contact recipients halfway through the notice period with a reminder notice in the form of a postcard, email, and text message sent to all recipients who have not yet opted in to the action. There is no reason to believe that anyone would receive the reminder notices but not the original notice, so the reminder notice goes beyond what is necessary to provide fair, accurate, and unbiased information. And Plaintiff is asking for *three separate reminder notices*. Thus, if the Court grants Plaintiff's requests regarding the notices it will mean practically that three separate notices will be distributed at the start of the notice period and then 30 days later three more notices will be sent such that *six total notices* are provided to the putative class. This approach completely blows opens the door to encouraging participation. Therefore, Plaintiff's request for reminder notices should be rejected, and the Court should limit notice to a single distribution by U.S. Mail.[3]

Courts generally find that "a reminder notice would be unnecessary and could potentially be perceived as encouragement by the court to join the lawsuit." *Rodgers v. Abbster Enterprises, LLC*, 2017 WL 402055, at *4 (N.D.W. Va. Jan. 30, 2017) (internal quotation marks omitted), citing *Witteman v. Wis. Bell, Inc.*, 2010 WL 446033, at *3 (W.D. Wis. Feb. 2, 2010) ("The purpose of notice is simply to inform potential class members of their rights. Once they receive that information, it is their responsibility to act as they see fit."). Thus, district courts routinely reject plaintiffs' requests for authorization to send follow-up "reminder" notices after notice has been distributed to potential class members. *See, e.g.*, *Regan*, 2014 WL 3530135, at *10 (rejecting

[3] If the Court is inclined to allow any type of reminder notices, Defendants request the opportunity to confer with Plaintiff's counsel on the appropriate content of any such notice to ensure it is neutral in tone and substance and then submit any differences of the parties on the content to the Court to resolve.

plaintiffs' request to send reminder notice and ruling that "the Authorized Notice is sufficient to advise putative plaintiffs of their right to opt-in to the lawsuit"); *Peterson v. Universal Med. Equip. & Res., Inc.*, Civil Action No. RDB-16-59, 2017 WL 679200, at *4 (D. Md. Feb. 21, 2017) ("Plaintiffs are not authorized to issue a reminder Notice").

In the absence of any evidence presented by Plaintiff to demonstrate why additional follow-up communications with potential class members are necessary to accomplish notice in this matter, "a single notice … is more than sufficient to provide notice to the potential opt-in plaintiffs who may choose to participate." *Calderon v. Geico Gen. Ins. Co.*, No. RWT 10cv1958, 2011 WL 98197, at *8 (D. Md. Jan. 12, 2011) (rejecting requests for authorization for follow-up notice communications).

III. CONCLUSION

For the reasons stated above, Defendants request that the Court reject Plaintiff's Notice and require use of Defendants' Notice and corresponding Consent to Join Collective Action form.

Respectfully submitted,

s/ T. Foster Haselden .
Christopher W. Johnson (FID 7581)
T. Foster Haselden (FID 11461)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Ave., Suite 100
Columbia, SC 29201
Tel.: (803) 799-9311
Fax: (803) 254-6951
cjohnson@gsblaw.net
fhaselden@gsblaw.net

Charles F. Johnson
Anne W. Chapman
BLALOCK WALTERS
802 11th Street, West
Bradenton, FL 34205
Tel.: (941) 748-0100
Fax: (941) 745-2093
cjohnson@blalockwalters.com
achapman@blalockwalters.com

ATTORNEYS FOR DEFENDANTS N&C CLAIMS SERVICE, INC., NICHOLAS F. IERURLLI AND PAM IERULLI

May 27, 2021

Columbia, South Carolina