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, **Plaintiff,** **v.** **N&C CLAIMS SERVICE, INC., NICHOLAS F. IERULLI, PAM IERULLI, and SEIBELS CLAIMS SOLUTIONS, INC.,** **Defendants.**	**Case No: 3:20-cv-04346-SAL**

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO CONDITIONALLY CERTIFY FLSA COLLECTIVE ACTION AND TO ISSUE NOTICE

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I. PLAINTIFFS ARE ENTITLED TO CONDITIONAL CERTIFICATION

A. The Court Should Apply the Two-Step FLSA Certification Process.

Defendants N&C Claims Service, Inc., Nicholas F. Ierulli, and Pam Ierulli (together, "N&C") concede that "district courts in the Fourth Circuit generally have applied" the two-step approach to FLSA certification, N&C Opp. 1-2 (ECF 58), which is articulated fully in Plaintiffs' Initial Brief 16-20 (ECF 49). Only Seibels argues against this well-established two-step process. In so doing, Seibels relies almost entirely on an out-of-circuit decision that runs contrary to existing authority in this District and throughout this Circuit. *See* Seibels Opp. (ECF 59 § II.A) (citing *Swales v. KLLM Transp. Servs., LLC*, 285 F.3d 430 (5th Cir. 2021)).

As set forth in Plaintiff's Initial Brief, (ECF 49 at 17), this Court should reject the *Swales* decision, as several courts have done. Instead, this Court should follow the established two-step approach, "which has proven to be an efficient means of resolution of this issue." *McCoy v. Elkhart Products Corp.*, 2021 WL 510626, at *2 (W.D. Ark. Feb. 11, 2021). Indeed, as one court noted in April, "no court outside the Fifth Circuit has followed the *Swales* opinion in the three months since it was issued," *Wright v. Waste Pro USA*, 2021 WL 1290299, at *3 (S.D. Fla. Apr. 6, 2021), and to date, Plaintiffs can find no case following *Swales* from outside the Fifth Circuit. *See Branson v. Alliance Coal, LLC*, 2021 WL 1550571, at *3-4 (W.D. Ky Apr. 20, 2021) (declining to follow *Swales*); *Brewer v. Alliance Coal, LLC*, 2021 WL 1307721, at *1 (E.D. Ky. Apr. 6, 2021) (declining to follow *Swales*, and instead following "the historical, two-stage approach most often utilized in this circuit"); *McColley v. Casey's General Stores, Inc.*, 2021 WL 1207564, at *3 (N.D. Ind. Mar. 31, 2021) (acknowledging *Swales*, but applying two-step process in granting conditional FLSA certification); *see also Droesch v. Wells Fargo Bank, N.A.*, 2021 WL 1817058, at *4 (N.D.

Cal. May 6, 2021) ("Defendant's reliance on the fifth circuit's recent decision [*Swales*] is likewise misplaced as this court is bound by the Ninth Circuit's [precedent].").

Seibels asks this Court to elide the FLSA conditional certification process with the Fed. R. Civ. P. 23 class certification process, when the two are "fundamentally different." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 74 (2013). After all, as the Supreme Court has held, "[t]he sole consequence of [FLSA] conditional certification is the sending of court-approved written notice to employees, who in turn become parties to a collective action only by filing written consent with the court, § 216(b)." *Genesis Healthcare Corp.*, 569 U.S. at 75 (citing *Hoffmann–La Roche Inc. v. Sperling*, 493 U.S. 165, 171-72 (1989). The sending of notice early in the FLSA litigation is crucial because unlike in Fed. R. Civ. P. 23 class actions, the statute of limitations on the claims of potential opt-ins to an FLSA case continues to run unless and until they file their written consent to sue in the case. Court-authorized notice allows potential opt-ins to make a timely, informed decision as to whether join a collective action suit before the statute of limitations renders their claims inactionable.

Seibels, and the *Swales* court, seem primarily concerned with the two-step process resulting in a "cacophony of individual actions" should the Court later decertify the collective action at the second stage of the process. Seibels Opp. 6 (ECF 59). However, Seibels ignores the fact that the *Swales* approach will do nothing to avoid such a problem here. First, as described in Plaintiffs' initial brief and declarations attached thereto, Claims Adjusters are similarly situated to Plaintiff Amoko in that they were all subject to the same policy, pattern, or practice of being classified as independent contractors and the same pay policies and practices; they were all performing the same job duties; they were all scheduled to work more than 40 hours a week; and were all denied

overtime premium pay for hours worked over 40 in a workweek. Initial Brief 9-15, 20-22 (ECF 49); *see also* Decls. in support (ECF Nos. 49-1 – 49-7).

Additionally, as a court in the Western District of Kentucky notes, the *Swales* court "considered court-authorized notice the sole method of 'alerting' prospective plaintiffs," and *Swales* "assumed" that "without notice . . . opt-in plaintiffs would remain out of the litigation." *Branson v. Alliance Coal, LLC*, 2021 WL 1550571, at *4 (W.D. Ky. Apr. 20, 2021). Here, however, as in *Branson*, many Claims Adjusters already have filed their written consent to join the action. Approximately 30 have filed their consent to sue forms, and N&C represented that the total number of potential opt-in plaintiffs to be approximately 53. In this case, as in *Branson*, the *Swales* approach would do nothing to avoid "a cacophony of individual actions"—regardless of whether the Court authorizes Notice to the remaining potential opt-in plaintiffs now and later decertifies the action.

Moreover, the two-step process for FLSA certification allows the court to better manage a collective action. In authorizing Notice to Claims Adjusters, the Court upholds its "managerial responsibility to oversee the joinder of additional parties to assure that the task is accomplished in an efficient and proper way." *Hoffmann-La Roche*, 493 U.S. at 170-71; *see also Branson*, 2021 WL 1550571, at *4. '"A trial court can better manage a major [FLSA] action if it ascertains the contours of the action at the outset.' Two-step certification is the best method for the Court to exert some control over the process by which opt-in plaintiffs join this litigation." *Branson*, 2021 WL 1550571, at *4 (quoting *Hoffman-La Roche*, 493 U.S. at 171–72). Once the "contours of the action" are established, the parties may engage in discovery, and if appropriate, Defendants may move to decertify the collective action later in the litigation.

For these reasons and those set forth in Plaintiffs' Initial Brief (ECF 49), the Court should reject Seibels' invitation to apply the *Swales* approach, and should instead apply the two-step approach to FLSA conditional certification.

B. Plaintiffs Have Met Their "Fairly Lenient" Burden for Conditional Certification.

Defendants do not deny that Plaintiffs meet their "fairly lenient" burden at the conditional certification stage to make "only a modest showing that members of the proposed [collective] are 'victims of a common policy or plan that violated the law,'" as articulated in *Turner v. BFI Waste Servs., LLC*, 268 F. Supp. 3d 831, 841 (D.S.C. 2017), and other authority Plaintiffs cite in their Initial Brief (ECF 49 at 18-20). Not only does N&C "not argue against the two-step approach," but also neither N&C nor Seibels denies that Plaintiffs' burden is lenient at the first stage, and neither Defendant denies that Plaintiffs meet or exceed this burden. N&C Opp. 1-2 (ECF 58). For the reasons set forth in Plaintiffs' Initial Brief, Plaintiffs have made at least a "modest showing" that they are similarly situated, and accordingly, the Court should grant conditional certification of the FLSA collective action and should authorize dissemination of the Notice.

C. Pre-Conditional Certification Discovery Is Not Necessary or Appropriate.

"At the notice stage, plaintiffs must simply demonstrate that there is 'some identifiable factual nexus which binds the named plaintiff[] and the potential [collective] members together.'" *Turner*, 268 F. Supp. 3d at 841 (citation omitted). In evaluating whether Plaintiffs have met that burden, the court "reviews the pleadings and affidavits." *Schmidt v. Charleston Collision Holdings Corp.*, 2:14 Civ. 01094 (PMD), 2015 WL 3767436, at *3 (D.S.C. June 17, 2015).

Applying a "fairly lenient standard," and requiring "only minimal evidence," is "[c]onsistent with the underlying purpose of the FLSA's collective action procedure." *Ridgeway v. Planet Pizza 2016*, 3:17 Civ. 3064 (MGL), 2019 WL 804883, at *2 (D.S.C. Feb. 21, 2019)

(citation omitted). Because Plaintiffs have met this standard and have put forth evidence that they are similarly situated, no additional discovery is warranted at this stage. The Court, therefore, should decline to adopt the higher, more burdensome standard Seibels proposes, for which it contends discovery is necessary before notice can issue. Seibels is correct that the economic realities test is a fact-intensive inquiry, but its logic is flawed to suggest that a fact-intensive inquiry equates to an individualized one. *See* Seibels Opp. 7-8 (ECF 59). Because Plaintiffs are similarly situated, the result of the fact-intensive inquiry at the merits stage will apply to the Claims Adjusters collectively.

In any event, Seibels' argument is a red herring. Plaintiffs have made factual allegations and submitted seven declarations, which include contracts and other documentary evidence, to show Plaintiff Amoko and the other Claims Adjusters are bound by a "factual nexus"—or similarly situated. (ECF Nos. 49, 49-1 – 49-7). In so doing, Plaintiffs have made at least a modest showing that Claims Adjusters were all subject to the same illegal policy or practice—i.e., were all classified as independent contractors pursuant to the same form contract; all performed the same job duties; and were all subject to the same pay policies and practices, including the denial of overtime premium pay for hours worked over 40 in a workweek. Because Plaintiffs already have met their burden and made such a showing, pre-conditional certification discovery is neither needed nor appropriate. *See Schmidt*, 2015 WL 3767436, at *3.

Accordingly, the Court should grant Plaintiff's motion without first requiring discovery, and should authorize notice to the approximately 23 remaining potential opt-in plaintiffs.

II. THE COURT SHOULD APPROVE PLAINTIFFS' AMENDED NOTICE

As this Court has held, "[a]bsent reasonable objections by either the defendant or the Court, plaintiffs should be allowed to use the language of their choice in drafting the notice." *Frykenberg*,

2020 WL 5757678 at *4 (citation omitted) (emphasis added). Plaintiffs maintain that their proposed Notice and process is proper, particularly because Plaintiffs' Notice form is based on one this Court has previously approved. *See Frykenberg v. Captain George's of S.C.*, LP, 4:19 Civ. 02971 (SAL) (D.S.C. Oct. 29, 2020). However, in the interest of judicial economy, Plaintiffs amend their proposed Notice to address some of Defendants' concerns and narrow the issues for the Court. Because Plaintiffs have addressed and cured all reasonable objections from Defendants, the Court should deny Defendants' request to use Defendants' proposed notice, and should instead approve Plaintiffs' Amended Notice attached as Exhibit F.

A. Structure of the Notice

Plaintiffs' Amended Notice (Ex. F)[1] addresses some of the formatting issues Defendants raise by restructuring their Notice such that the table now appears on a single page of the Notice. Defendants' remaining arguments against using Plaintiffs' proposed Notice are without merit.

First, contrary to Defendants' contentions, Plaintiffs' proposed Notice, which is based on the Court's previously approved notice from *Frykenberg v. Captain George's of S.C., LP*, 4:19 Civ. 02971 (SAL) (D.S.C. Oct. 29, 2020), informs the approximately 23 remaining Claims Adjusters in neutral language of the nature of this action, their right to participate in the action by filing a consent to sue form with the Court, and the consequences of their joining or not joining the action. Unlike Defendants' proposed five-page notice, Plaintiffs' concise, two-page Notice informs Claims Adjusters of the above-mentioned information in a clear and concise format.

Beyond its wordiness, Defendants' proposed notice is improper in that it invites Claims Adjusters to contact defense counsel and provides defense counsel's telephone numbers and email addresses. There is no need for any of the Claims Adjusters to contact defense counsel. To provide

[1] A redlined version of Plaintiffs' Amended Notice is attached as Exhibit F-1.

defense counsel's contact information is unnecessary and likely would serve only to confuse or intimidate Claims Adjusters.

Because Plaintiffs' Amended Notice is simple, clear, and easy to read, the Court should approve it and authorize Plaintiffs to disseminate Notice to the remaining potential opt-in plaintiffs.

B. Class Definition and Period

Plaintiffs' Amended Notice addresses Defendants' issues with the definition of the collective, which claim Plaintiffs' original definition was too broad and take issue with Plaintiffs' use of the term "worked for." Defendants also objected to the applicable time period. Defendants propose their own definition of the collective:

> 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.

In the interest of efficiency, Plaintiffs are willing to largely adopt Defendants' proposed class definition, with a few minor changes to improve clarity:

> All persons who worked as insurance claims adjusters for N&C Claims Service, Inc., were classified as independent contractors, and were assigned to Seibels Claims Solutions, Inc. (together, "Defendants") in Columbia, South Carolina any time from [4 years and 5 days from the date of notice] to the date of this notice.

See Ex. F. Plaintiffs' amended definition adopts Defendants' proposed adjustment to the applicable time period for the collective because the adjustment does not substantively alter the potential claim period for any Claims Adjuster. Plaintiffs also address Defendants' issue with the use of the phrase "worked for" as applied to Seibels by adopting Defendants' phrasing "were assigned to Seibels." However, Plaintiffs do not agree to adopt Defendants' proposed language "who contracted as independent contractors with N&C" because it is prejudicial in that it appears to endorse Defendants' argument that Claims Adjusters were properly classified as independent

contractors. Instead, the phrase "worked for" is far more neutral language as it relates to N&C because it is simply a factual statement that implies neither that Claims Adjusters were employed by N&C, nor that Claims Adjusters properly were classified as independent contractors.

Accordingly, Plaintiffs request that the Court approve Plaintiffs' definition of the collective as set forth above and in their Amended Notice.

C. Plaintiffs' Notice Language Is Neutral

Plaintiffs' Amended Notice addresses Defendants' issue with the heading in the Notice by adopting Defendants' proposal. Plaintiffs' Amended Notice heading now reads: "Notice of Lawsuit and Your Opportunity to Join."

Defendants also take issue with Plaintiffs' statement regarding the damages sought in this action, but Defendants neither explain how Plaintiffs' language is prejudicial nor cite any authority supporting their argument. Plaintiffs amend the language slightly to address only those damages sought for the FLSA claim, so the amended Notice reads: "This case seeks to compel Defendants to pay Plaintiff and other insurance claims adjusters an amount equal to two times their back wages." While Defendants may dislike the language, this accurately reflects the damages Plaintiffs seek under the FLSA and what the law requires if Defendants are found liable under the FLSA. 29 U.S.C. § 216(b) (an FLSA-violating employer must pay the unpaid wages and "an additional equal amount as liquidated damages"). For these reasons, and those discussed above regarding the phrase "worked for" as it relates to N&C, the language in Plaintiffs' Amended Notice is neutral and nonprejudicial. Accordingly, the Court should approve Plaintiffs' Amended Notice.

D. Plaintiffs' Notice Includes Sufficient Information Regarding Defendants' Defenses

Defendants' proposed notice includes a lengthy explanation of their defenses, which is excessive and inappropriate. Plaintiffs' original proposed Notice, modeled after the notice this Court approved in *Frykenberg*, already contained a brief description of Defendants' defenses. Defendants, however, arguing this language is insufficient, cite only to a single case, which held notice should "include a short summary of defendants' contentions as to why they are not liable under the FLSA." *Mondragon v. Scott Farms, Inc.*, 2019 WL 489117, at *11 (E.D.N.C. Feb. 7, 2019). But Plaintiffs' Notice (ECF 48-1) *does* contain a short summary of the defenses: "The Defendants do not agree that they violated the law and the Judge who will hear the case has not made any decision yet about who is right. Defendants deny the allegations above and maintain that their policies and practices comply with the FLSA." Defendants do not explain how, in their view, Plaintiffs' Notice, modeled after the *Frykenberg* notice, somehow falls short. N&C Opp. 6 (ECF 58).

Nevertheless, in the interest of judicial economy, Plaintiffs' Amended Notice includes additional language describing Defendants' defenses, which now reads:

> The Defendants do not agree that they violated the law, and the Judge who will hear the case has not made any decision yet about who is right. Defendants deny the allegations above and maintain that insurance claims adjusters were properly classified as independent contractors and that their policies and practices comply with the FLSA.

Ex. F. This language, including Plaintiffs' addition, more than satisfies even the standard set forth in Defendants' own authority. Accordingly, the Court should reject Defendants' lengthy description of the defenses, and instead should approve Plaintiffs' Amended Notice.

E. Plaintiffs' Notice Does Not Suggest Judicial Endorsement

Plaintiffs' proposed Notice includes the following accurate and appropriate statement under the heading: "A Federal Court authorized this Notice. It is not a solicitation from a lawyer." Ex. F; *see also* ECF 48-1. Defendants object to the statement, arguing that it is misleading and

implies that the "Court directed Plaintiff to send the notice and invite them personally to join the lawsuit." Defendants cite no authority to support their argument that this language is inappropriate aside from the general directive from *Hoffmann-La Roche* to avoid the appearance of judicial endorsement. N&C Opp. 3 (quoting *Hoffmann-La Roche*, 493 U.S. at 174). Plaintiffs' language, however, is accurate and in no way misleading—at the time the Notice is disseminated, it will have been authorized by the Court—and Plaintiffs are ethically obligated to include language indicating that the notice is not a solicitation from a lawyer. Indeed, this Court approved identical language, located just under the Notice heading, in the *Frykenberg* notice. 4:19 Civ. 02971 (SAL) (ECF 52-1). Accordingly, Plaintiffs' Amended Notice is proper and the Court should approve it.

F. Plaintiffs' Notice Thoroughly Informs Claims Adjusters of Their Rights

Defendants inaccurately argue that Plaintiffs' Notice fails to inform Claims Adjusters of their rights in two respects. First, Defendants are mistaken when they contend that Plaintiffs' Notice fails to notify Claims Adjusters of their right to be represented by another attorney. In fact, just below the table on the second page, Plaintiffs' Notice states, "You also have the option to obtain your own counsel to advise you on your rights and file suit on your behalf should you choose to do so." ECF 48-1. Plaintiffs' Amended Notice includes the same language in the same location, Ex. F, just as the *Frykenberg* Notice did. 4:19 Civ. 02971 (SAL) (ECF 52-1).

Second, Defendants, without citing any authority to support their position, ask the Court to compel Plaintiffs to alter the language regarding Plaintiffs' Counsel's fees in such a way that misrepresents the law and assumes Plaintiffs' attorneys' fee agreement is a pure percentage of the recovery. Under the FLSA, however, Defendants are required to pay plaintiffs' reasonable attorneys' fees and costs if plaintiffs are successful, which could result in a lodestar fee award, and may or may not come out of Plaintiffs' recovery fund. 29 U.S.C. § 216(b). While Defendants

ignore this fact, Plaintiffs' Amended Notice accurately reflects this: "If the Plaintiffs are successful at trial or the case results in a settlement, then the Defendants will pay Class Counsel and Local Counsel either their hourly fees plus litigation costs as awarded by the Court, or one-third of the overall recovery in the case, whichever is greater." Ex. F. This language remains unchanged from Plaintiffs' initial proposed Notice. ECF 48-1.

Accordingly, the Court should approve the accurate explanation of the attorneys' fee agreement provided in Plaintiffs' Amended Notice.

G. Plaintiffs' Notice Accurately Informs Claims Adjusters of their Responsibilities as Opt-In Plaintiffs

Plaintiffs maintain that their initial proposed Notice is adequate and appropriate. In the interest of judicial economy and efficiency, however, and in light of this Court's ruling in *Frykenberg*, 2020 WL 5757678 at *5, Plaintiffs' Amended Notice incorporates Defendants' proposed language regarding potential opt-ins' potential liability: "If Defendants prevail in their defense, you could be liable for the costs they incur in defending your claims." As such, the Court need not address Defendants' argument on that issue.

Remaining before the Court, however, is Defendants' misleading argument that Plaintiffs' Notice should inform Claims Adjusters of their potential discovery obligations. Plaintiffs' initial proposed Notice (ECF 48-1) and Amended Notice, Ex. F, already inform Claims Adjusters of their discovery responsibilities, including that "[w]hile the suit is pending, you may be required to provide information regarding your work with Defendants." The additional language Defendants propose is unnecessary in this case. *See Frykenberg*, 2020 WL 5757678, at *5 (denying defendants' request to include language in the notice that the opt-ins may be required to participate in discovery and testify at trial). Because, like *Frykenberg*, this is not a nationwide case, and all potential opt-ins worked at a single location—Seibels' office in Columbia, South Carolina—the

Notice need not include Defendants' proposed additional language. *Id.* Accordingly, the Court should deny Defendants' request to include additional information regarding Claims Adjusters' potential discovery responsibilities, and should approve Plaintiffs' Amended Notice.

H. The Notice Should Not Include Language That Claims Adjusters May Later Be Excluded

Defendants argue that the notice should inform Claims Adjusters that the Court may later exclude Claims Adjusters who join the case, but such language is unnecessary, and Defendants cite no authority to support their position. While Defendants are correct that they may later move for decertification, which could result in opt-ins being excluded from the case, including such language in the Notice will only deter the approximately 23 remaining potential opt-ins from participating. Individuals are in no way prejudiced if they opt into the case and are later excluded as a result of decertification. Rather, those individuals toll the FLSA statute of limitations on their claims for the time between when they file their consent to sue and any subsequent decertification, which makes Defendants' proposed language misleading, or at least confusing for potential opt-in plaintiffs. The *Frykenberg* notice did not include Defendants' requested language, 4:19 Civ. 02971 (SAL) (ECF 52-1), and the Court should not compel Plaintiffs to include such language here.

I. Language Regarding Retaliation in Plaintiffs' Notice Is Appropriate

Courts in this District regularly approve notices that include language informing putative collective members that it is unlawful for employers to retaliate, like that which Plaintiffs include in their Notice. *See Frykenberg*, 2020 WL 5757678, at *2; *Curtis v. Time Warner Ent.-Adv./Newhouse Partn.*, 3:12 Civ. -CV-2370 (JFA), 2013 WL 1874848, at *11 (D.S.C. May 3, 2013). Contrary to this existing authority, Defendants argue that the language "inappropriately suggests that any employer is likely to retaliate against opt-in plaintiffs[.]" N&C Opp. 11. In support, Defendants cite only two cases, both from outside this district, one of which is from

outside the Fourth Circuit, and neither of which supports Defendants' argument. In *D'Anna v. M/A-COM, Inc.*, 903 F. Supp. 889, 894 (D. Md. 1995), the court denied plaintiffs' motion to proceed as a collective action, and never addressed any of the language in plaintiffs' proposed notice, much less language regarding relation. The court in *Maddox v. Knowledge Learning Corp.* ordered plaintiffs to remove language from their *website* indicating that, "[e]ven if KLC were to take any action against you, the lawyers in the case stand ready to combat any retaliation on your behalf[,]" and to replace it with a statement very similar to that included in Plaintiffs' notice here. 499 F. Supp. 2d 1338, 1345 (N.D. Ga. 2007) (ordering plaintiffs to replace the language on their website with: "KLC is prohibited by law from taking any action against you for participating in this lawsuit").

Because language regarding the illegality of retaliation in FLSA notices is commonplace, and is included in the *Frykenberg* notice, the language regarding retaliation is appropriate. Accordingly, Plaintiffs request the Court approve Plaintiffs' Amended Notice in its entirety.

III. THE COURT SHOULD APPROVE PLAINTIFFS' AMENDED NOTICE PROCEDURES

A. The Notice Should Issue Via Email with a Reminder Via Text Message

Plaintiffs maintain that the Notice procedures outlined in their Initial Brief are appropriate; however, in the interest of judicial economy and efficiency, Plaintiffs amend their proposed Notice procedures. Defendants argue that Plaintiffs' Notice should issue only by U.S. Mail. But neither N&C nor Seibels cite any authority to support such a position, nor do they address the multiple decisions Plaintiffs cited from this District approving multiple forms of notice. *See* ECF. No. 49.

Nevertheless, given the large number of Claims Adjusters who already have filed a consent to sue form, and because there are only approximately 23 additional potential opt-in plaintiffs, Plaintiffs are willing to limit their request to issue one notice via email, coupled with a reminder

text message[2] notice half-way through the notice period via text. Plaintiffs' Amended Reminder Text Message Notice is attached as Exhibit G.[3] As courts in this district have found, email is "an effective means of distribution that furthers the FLSA's broad remedial purpose." *Hansen v. Waste Pro of S.C., Inc.*, 2:17 Civ. 02654 (DCN), 2020 WL 1892243, at *6 (D.S.C. Apr. 16, 2020); *Regan v. City of Hanahan*, 2:16 Civ. 1077 (RMG), 2017 WL 1386334, at *3 (D.S.C. Apr. 18, 2017) (granting plaintiffs' request to send notice via text message and noting that "in today's mobile society, individuals are likely to retain their mobile numbers and email addresses even when they move").

Further, as Plaintiffs addressed in their Initial Brief (ECF 49), notice via email is especially important in a case such as this, where the FLSA Collective is comprised of members who work in an industry with a high turnover rate, who regularly change their mailing addresses, and who are away from home for long periods. ECF 49-1 ¶ 26; ECF 49-5 ¶ 26; ECF 49-2 ¶ 25. And a text message reminder notice is appropriate here to ensure that Claims Adjusters receive effective notice, especially where Claims Adjusters' email providers may classify the Notice as junk or spam.

Accordingly, Plaintiffs request that the Court permit notice to issue via email, coupled with and a reminder text notice. Should the Court require Plaintiffs to disseminate the notice using only a single method or deny Plaintiffs' request to send a reminder Notice, Plaintiffs request the Court allow the Notice to issue via text message.

B. The Court Should Grant a Reduced 45 Day Notice Period

[2] The Court should deny Defendants the opportunity to meet and confer with Plaintiffs on the content of any reminder notice. Defendants had the opportunity to address the content of Plaintiff's reminder notice(s) in their opposition briefs, but they both chose not to do so.

[3] The Amended Reminder Text Message Notice reflects the amended collective definition discussed herein above. A redlined version of the changes is attached as Ex. G-1.

Defendants object to Plaintiffs' request for a 60-day notice period, but do not argue that a 60-day notice period is excessive or inappropriate; rather, they simply assert that 30 days is an adequate amount of time for the notice period. In fact, defendants acknowledge that courts in this District regularly approve opt-in periods between thirty and sixty days. ECF 58 at 11-12; *see, e.g.*, *Frykenberg*, 2020 WL 5757678, at *3 (60 days); *Weckesser v. Knight Enterprises S.E., LLC*, 2018 WL 4087931, at *4 (D.S.C. Aug. 27, 2018) (60 days); *Curtis*, 2013 WL 1874848, at *8 (60 days). Because there are only approximately 23 remaining class members and because of Plaintiffs' request to issue notice via email and text, Plaintiffs reduce their request to 45 days.

C. Defendants Must Provide the Necessary Information to Facilitate Notice

Despite Defendants' arguments to the contrary, the Court should direct Defendants to provide Plaintiffs' Counsel, in an electronic spreadsheet format such as Excel, the following information so they may facilitate the dissemination of the Notice, each contained in a separate column, for each of the individuals described in the collective action definition who worked for Defendants since [4 years and 5 days from the date of notice]: first name, last name, street address, city, state, zip, email address, phone numbers, and unique identification number.

CONCLUSION

For all the foregoing reasons and those articulated in Plaintiffs' Initial Brief, the Court should: (1) grant Plaintiffs' motion for conditional certification; (2) approve the amended proposed Notice, attached hereto as Exhibit F; (3) authorize Notice to issue using via email and a reminder text message, attached hereto as Exhibit G; (4) approve a 45-day notice period; and (5) direct Defendants to provide the information set forth above necessary for Plaintiffs to disseminate Notice.

Dated: June 10, 2021

Respectfully submitted,

/s/ Blaney A. Coskrey, III

Blaney A. Coskrey, III (Fed. ID No. 05421)
Coskrey Law Office
1201 Main Street, Suite 1980
Columbia, SC 29201
Telephone: (803) 748-1202
Fax: (803) 748-1302
coskrey@coskreylaw.com

Local Counsel for Plaintiff
and the Putative Collective and Classes

and

Meagan M. Rafferty (*PHV*)
Rebecca King (*PHV*)
Matt Dunn (*PHV*)
GETMAN, SWEENEY& DUNN, PLLC
260 Fair Street
Kingston, New York 12401
Telephone: (845) 255-9370
Fax (845) 255-8649
mrafferty@getmansweeney.com

Attorneys for Plaintiff
and the Putative Collective and Class