UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

BAMIDELE AIYEKUSIBE, MISCHELE HIGGINSON and SHANTAL BROWN-WINN, Individually And on behalf of all others Similarly Situated,

Plaintiffs, **Case No.: 2:18-CV-816-FtM-99MRM**

v.

THE HERTZ CORPORATION and DTG OPERATIONS INC.

Defendants.
_____/

PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION TO PROCEED AS A COLLECTIVE ACTION AND FOR COURT SUPERVISED ISSUANCE OF NOTICE TO THE PUTATIVE CLASS AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs, BAMIDELE AIYEKUSIBE, MISCHELE HIGGINSON, and SHANTAL BROWN-WINN, individually and on behalf of all others similarly situated who consent to their inclusion in a collective action, moves this Honorable Court for an ORDER: (1) conditionally certifying this action as a national collective action pursuant to Section 216(b) of the FLSA; (2) requiring the Defendants, THE HERTZ CORPORATION and DTG OPERATIONS INC., to produce the name, address, telephone number and email address of each putative class member; and (3) authorizing Plaintiffs to send Notice of this action to each similarly situated person currently employed or who was formerly employed by Defendants within the preceding three (3) years of the date of this ORDER.

I. INTRODUCTION

Plaintiff Bamidele Aiyekusibe (hereinafter "Aiyekusibe"), filed his collective action complaint against Defendant, The Hertz Corporation (hereinafter "Hertz"), alleging that Hertz willfully misclassified its "Location Manager," "Functional Manager," and "Function Manager" (hereinafter "Manager(s)") as exempt employees and failed to pay them overtime compensation for any hours worked over forty (40) in a workweek and in violation of the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* (hereinafter "FLSA") (DE #1). Plaintiff Mischele Higginson (Higginson) became a named representative plaintiff in Plaintiffs' Second Amended Complaint. (DE #26). Like Aiyekusibe, Higginson alleges Defendants willfully misclassified her as an exempt employee when she worked for Defendants as a Manager. Subsequently, Dollar Thrifty Automotive Group (hereinafter "DTAG") was added as a Defendant on March 13, 2019 . (DE #35). In the Fourth Amended Complaint, DTAG was substituted with DTG Operations Inc. (hereinafter "DTG" and collectively with Hertz, "Defendants") as a Defendant and Shantal Brown-Winn (hereinafter "Brown-Winn" and collectively with Aiyekusibe and Higginson as "Plaintiffs") was added as a named Plaintiff. (DE #38). Like Aiyekusibe and Higginson, Brown-Winn alleges Defendants willfully misclassified her as an exempt employee when she worked for Defendants as a Manager. Plaintiffs are joined by twenty-21 (21) current and former Managers who worked in various geographic regions across the United States and its territories. (DE #s 7, 10, 13, 16, 17, 18, 19, 20, 23, 24, 25, 29, 30, 33, 34, 43, and 47). The twenty-one (21) Opt-In Plaintiffs worked in twelve (12) different states and territories throughout the country: AL, CA, GA, MD, MO, NC, NV, OK, PR, TX, USVI, VA. Plaintiffs Aiyekusibe, Higginson, and Brown-Winn were each employed as both a Function or Functional Manager and a Location

Manager and bring their claims on behalf of all other similarly situated persons who are now or have previously been employed by Defendants for the three (3) years preceding the filing of this Collective Action Complaint pursuant to 29 U.S.C. §216(b). Plaintiffs allege that they and the putative class of similarly situated were willfully misclassified as exempt employees because, among other reasons, they spent the majority of their time performing menial, laborious and well known non-exempt job duties, such as renting cars, cleaning and fueling cars, checking in or returning cars, and working the exit gate, all of which are part of production and the flow of rental cars in and out of the airport locations, and that they did not supervise other employees or use their discretion and independent judgment with respect to matters of significance such that they are not exempt from the overtime provisions of the FLSA. The Plaintiffs further allege the following key facts:

1. Defendants operate more than 1,600 franchise and corporate owned locations nationally, including in Puerto Rico and the US Virgin Islands, which are uniform in management, training models, career paths, job titles and hierarchy and as directed by Defendants' corporate headquarters in Estero, Florida.

2. Defendants' job duties and responsibilities primarily involved the performance of manual labor and other hands-on work well known to be recognized as non-exempt job duties such as cleaning cars, moving cars, fueling cars, inspecting cars, and getting the cars ready for rental by customers or other customer service responsibilities.

3. As further explained below, Plaintiffs, and the similarly situated Opt-In Plaintiffs, performed job duties which are structured and determined according to a unified corporate policy applicable to all class members. Defendants have uniformity in job requirements and

compensation plans applicable to all putative class members through the implementation of nationalized job descriptions and company policies and procedures, such that Managers at Baltimore Washington International Airport (BWI) in Maryland are subject to the same company policies and procedures and compensation plans as any Managers working at all of the Defendants' Airport location in the U.S. and its territories.

4. The Manager job position is uniform across all regions as there is one job description for the Manager position.

5. Managers do not have the authority or discretion to make any decisions affecting the rental location. Managers merely carry out orders issued by Hertz General Managers.

6. The Class of Managers is, without doubt, similarly situated, subject to a common, uniform scheme to misclassify them as exempt employees and are owed payment of overtime wages. Defendants have acted or refused to act on grounds applicable to the proposed class in a uniform and common application of pay practices, thereby making the identical relief appropriate with respect to its current and former employees. Moreover, common questions of law and fact predominate over any questions affecting only the Plaintiffs, and a collective action is superior to other available methods for a fair and equitable adjudication of the controversies between the Plaintiffs and Defendants. Although the Class of current and former Managers are identified and certain, the individual members of the classes cannot be completely identified and notified of their right to join this action absent access to Defendants' records. Further, as shown by the Declarations, Plaintiffs estimate that the size of the class to be upwards of 2,000 employees, based upon turnover over in the preceding three (3) years. For each week that goes by more employees lose their rights to opt-in, thereby losing wages which they earned and will

never be able to capture. As such, Plaintiffs respectfully appeal to the Court to expeditiously grant this Motion and allow putative class members to be notified of this action so that they have the opportunity to opt-in and claim their unpaid wages.

7. Plaintiffs have met the lenient and modest showing necessary to proceed collectively pursuant to Section 216(b) of the FLSA and the 2 stage Similarly Situated analysis used by the Eleventh Circuit. Thus, Plaintiffs seek to deliver the proposed Notice of the Right to Join this action and Consent to Join (CTJ) forms (Exhibits 1 and 2) to the following Class or Classes of Similarly Situated persons in one (1) of two (2) alternatives: 1) a Single Class comprised of all Hertz and DTG present and former employees; or 2) two classes as follows: Class A: for those who were paid by the Hertz Corporation and Class B: those who were paid by DTG. The proposed classes are as follows:

ONE SINGLE CLASS:

All persons employed by HERTZ Corporation, including through its wholly owned subsidiary, DTG OPERATIONS INC., as Function Managers, Functional Managers, or Location Managers, and any other job titles previously or currently used to describe the same position at any Airport locations in the United States and its territories, at any time within the three (3) years preceding this lawsuit to the day of trial pursuant to FLSA, 29 U.S.C. § 216(b).

TWO CLASSES:

CLASS A: All persons employed by HERTZ Corporation as Function Managers, Functional Managers, or Location Managers, and any other job titles previously or currently used to describe the same position at any Airport locations in the United States and its territories, at any time within the three (3) years preceding this lawsuit to the day of trial pursuant to FLSA, 29 U.S.C. § 216(b).

CLASS B: All persons employed by DTG OPERATIONS INC. as Function Managers, Functional Managers, or Location Managers, and any other job titles previously or currently used to describe the same position at any Airport locations in the United States

and its territories, at any time within the three (3) years preceding this lawsuit to the day of trial pursuant to FLSA, 29 U.S.C. § 216(b).

MEMORANDUM OF LAW AND LEGAL ARGUMENT

II. LEGAL STANDARD FOR COLLECTIVE ACTION AND CONDITIONAL CERTIFICATION PURSUANT TO SECTION 216(b) OF THE FLSA

A. Authority to Send Class Notice

The FLSA permits a plaintiff to bring a collective action on behalf of similarly situated persons subject to the requirements that prospective plaintiffs file a written consent in the court where the action is brought. 29 U.S.C. §216(b); *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1216 (11th Cir. 2001). Unlike a class action brought under Rule 23 of the Federal Rules of Civil Procedure, a collective action brought under the FLSA can include only those plaintiffs who affirmatively opt into the action by filing their consent in writing in the court in which the action is brought. 29 U.S.C. §216(b); *De Leon-Granados v. Eller & Sons Trees, Inc.*, 497 F.3d 1214, 1218–19 (11th Cir. 2007). Courts have endorsed the sending of notice early in the proceeding as a means of facilitating the FLSA's broad remedial purpose and promoting efficient class management. *See Braunstein v. Eastern Photographic Laboratories, Inc.*, 600 F.2d 335, 336 (2d Cir. 1978) (notice "comports with the broad remedial purpose of the Act, which should be given a liberal construction, as well as with the interest of the courts in avoiding multiplicity of suits").

Collective actions are favored under the law because they benefit the judicial system by enabling the "efficient resolution in one proceeding of common issues of law and fact," and provide plaintiffs with the opportunity to "lower individual costs to vindicate rights by the pooling of resources." *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989). Since the

substantial benefits of FLSA collective actions "depend on employees receiving accurate and timely notice concerning the pendency of the collective action," the FLSA grants the Court authority to manage the process of joining such employees in the action, including the power to authorize notice and monitor preparation and distribution of the notice. *Hoffman-La Roche*, 493 U.S. at 169–70 ("The broad remedial goal of the statute should be enforced to the full extent of its terms."). This authority arises from the Court's broad discretionary power to manage the process of joining multiple parties in an orderly manner. *Id.* "Court authorization of notice serves the legitimate goal of avoiding a multiplicity of duplicative suits and setting cutoff dates to expedite disposition of the action." *Hoffman-La Roche*, 493 U.S. at 172.

In addition, judicial intervention at an early stage ensures timely, accurate and informative disclosure to all similarly situated employees. *Hoffman-La Roche*, 493 U.S. at 172. Such notice will expedite the instant action by apprising Defendants as to the identity of all claimants at the earliest possible time. *Id.* Since the Court's involvement in the notification process is "inevitable," it should occur prior to the notification of class members and the filing of a significant number of notices of consent. *Id.* at 171. In the absence of a court-authorized notification to all similarly situated employees, these employees would in all likelihood (i) not receive timely, complete, and accurate information as to the pendency of this action, (ii) lack meaningful access to the court and (iii) have no practical or efficient method of vindicating their rights. *Riojas v. Seal Produce, Inc.*, 82 F.R.D. 613 (S.D. Tex. 1979) (finding that notice was required through notions of fundamental fairness). The Court is empowered and encouraged to issue notice to potential plaintiffs and should do so here for the reasons argued herein.

B. <u>The Eleventh Circuit Uses A Two-Tiered Approach To Decide Whether To Create An Opt In Class And Facilitate Notice</u>

In order to grant conditional collective action certification and issue notice to putative class members, the Court must satisfy itself that there are other employees who (1) are similarly situated with regard to their job requirements and pay provisions, and who (2) desire to opt into the case. *Dybach v. Fla. Dep't of Corr.*, 942 F.2d 1562, 1567–68 (11th Cir. 1991). Regarding the first requirement, the Plaintiffs bear the burden of proving that they, and the class they seek to represent, are similarly situated. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1096 (11th Cir. 1996). The standard for determining similarity, at this initial stage, is not particularly stringent; it is fairly lenient, flexible, not heavy, and less stringent than that for joinder under Fed. R. Civ. P. 20(a) or for separate trials under Fed. R. Civ. P. 42(b). *Morgan v. Family Dollar Stores*, 551 F.3d 1233, 1260–61 (11th Cir. 2008).

Courts in the 11th Circuit utilize a two-tiered procedure that recognizes distinct burdens at different stages of the litigation process. *See Cameron-Grant v. Maxim Healthcare Servs., Inc.*, 347 F.3d 1240, 1243 n.2, (11th Cir. 2003). The first tier – the one at issue in the present Motion – is referred to as the notice stage. *Id.* The primary question at this stage is whether Defendants' "employees are similarly situated with respect to their job requirements and with regard to their pay provisions" and whether these individuals desire to opt-in. *Rojas v. Garda CL Se., Inc.*, 297 F.R.D. 669, *3 (S.D. Fla. 2013); *Morgan v. Family Dollar Stores*, 551 F.3d 1233, 1259-60 (11th Cir 2008)(citing *Dybach*, 942 f.2d at 1568); *Kie v. IVox Solutions, LLC*, 2016 US Dist LEXIS 12223 (S.D. Fla. 2016); *Burgess v. Wesley Fin. Grp.*, LLC, 2017 US Dist LEXIS 37942 (M.D. Tenn. 2016); *Woods v. Vector Mktg Corp*, 2015 US DIST LEXIS 32370 (N.D. Cal. 2015); *Paxton v. Bluegreen Vacations Unlimited, Inc.*, 2017 US Dist LEXIS 138132 (E.D. Tenn. 2017); *Bitner v. Wyndham Vacation Resorts, Inc.*, 301 FRD 354, (W.D. Wis. 2014); *Palma v.*

Metropcs Wireless, Inc., 2013 US DIST LEXIS 175934 (M.D. Fla. 2003); *De Oca v. Gus Machado Ford of Kendall, LLC*, 2011 U.S. Dist. LEXIS 157506 (S.D. Fla. 2011).

The Court applies a "fairly lenient standard" at the notice stage in determining whether the class should be conditionally certified. *Hipp*, 252 F.3d at 1218. The rationale for this is that "at the early stages of litigation, plaintiffs have not had time to conduct discovery and marshal their best evidence." *Id.* At the notice stage, the district court makes a decision – **usually based only on the pleadings and any affidavits which have been submitted** – whether notice of the action should be given to potential class members. *Hipp,* 252 F.3d at 1218. Because the court has minimal evidence, this determination is made using a fairly lenient standard, and typically results in "conditional certification" of a representative class. *Id.* If the district court "conditionally certifies" the class, putative class members are given notice and the opportunity to "opt-in" and the action proceeds as a representative action through discovery. *Id.* The second determination is typically precipitated by a motion for "decertification" filed by the defendant usually after discovery is largely complete and the matter is ready for trial. *Id.*

C. Courts Focus on a Common Scheme or Plan In Determining Whether Employees Are "Similarly Situated"

Regarding the similarly situated requirement, courts commonly consider five factors at the conditional certification stage: (1) whether plaintiffs held the same job title; (2) whether they worked in the same geographic location; (3) whether the alleged violations occurred during the same time period; (4) whether plaintiffs were subjected to the same policies and practices, and whether the policies and practices were established in the same manner and by the same decision maker; and (5) the degree to which the actions constituting the claims violations are similar. *Rojas v. Garda CL Se., Inc.*, 297 F.R.D. at 6. No single factor is dispositive. *Id.* Plaintiffs need

"only demonstrate that their positions are similar, not identical, to the positions of the potential class plaintiffs." *Vondriska v. Premier Mortg. Funding, Inc.*, 564 F. Supp. 2d 1330, 1335 (M.D. Fla. 2007). "[V]ariations in specific duties, job locations, working hours, or the availability of various defenses are examples of factual issues that are not considered at [the notice] stage." *Id.*; *see also Peña v. Handy Wash, Inc.*, 2014 U.S. Dist. LEXIS 88879 (S.D. Fla. 2014) ("Variations among actual job title or some responsibilities does not preclude notice stage certification where all employees share general duties and the defendant denies overtime pay to all.").

Employer/Defendants' arguments that individual variances in the manner in which each plaintiff performs their day to day job duties/requirements is not accepted by the Courts at this stage as a basis to deny conditional certification; people are not robots so variances are expected in just about every job from secretary to grocery bagger. Here, the Plaintiff Managers are subject to Defendants' single national corporate policy and are primarily and generally performing the same job duties, namely, they are all cleaning, renting, washing, fueling, moving, checking cars in and out and acting as working supervisors without any delegation authority or discretion to hire, fire or discipline employees.

In determining whether to grant notice of a collective action, courts focus on whether Plaintiffs were victims of a common scheme or plan that violated the law. The Plaintiffs' burden at the conditional class certification stage requires only "a modest factual showing sufficient to demonstrate that they, and the potential plaintiffs together, were victims of a common policy or plan that violated the law." *See Longcrier v. HL-A Co., Inc.*, 2008 U.S. Dist. LEXIS 100183 (S.D. Ala. 2008); *see also Thiessen v. General Electric Capital Corp.*, 267 F.3d 1095, 1102 (10th Cir. 2001) (first-round "similarly situated" determination "requires nothing more than substantial

allegations that the putative class members were together the victims of a single decision, policy, or plan"). Moreover, "it would be inappropriate … to require plaintiff to meet a more stringent standard than that typically applied at the early stages of litigation" before discovery is complete. *Chowdhury v. Duane Reade, Inc.*, 2007 U.S. Dist. LEXIS 73853 at *10-*11 (S.D.N.Y. 2007); *Lytle v. Lowe's Home Ctrs., Inc.*, 2014 U.S. Dist. LEXIS 3227 (M.D. Fla. Jan. 10, 2014); *Torres-Roman v. Burger King*, 2015 U.S. Dist. LEXIS 188963; *Espanol v. Avis Budget Car Rental, LLC*, 2011 U.S. Dist. LEXIS 120485 (M.D. Fla. Oct. 18, 2011); *Bradford v. CVS*, 2013 U.S. Dist. LEXIS 14403.

D. Plaintiffs Have Met The Lenient Standard Of Showing That They Are Similarly Situated

When weighing each of the five factors which this Court must consider in determining to conditionally certify the Class of Managers, it is clear that this action should be conditionally certified as a collective action. First, all of the Opt-in Plaintiffs held the same job titles (LOCATION MANAGERS AND/OR FUNCTION OR FUNCTIONAL MANAGERS (AFTER 2018 DEFENDANTS HAVE CHANGED THE TITLES TO FUNCTION(AL) MANAGERS)). The three (3) named representative Plaintiffs are joined by twenty-one (21) Opt-ins and Plaintiffs present herein Declarations of two (2) currently employed Managers and nineteen (19) former Managers of Defendants, including those being paid by both Defendants. *See* Declarations of twenty-two (22) former Managers and two (2) current employees, including those of the named Plaintiffs, attached as Exhibits 3-26.

Additionally, Defendants demonstrate that they utilize the same basic job description, and often nearly identical job descriptions, over time, between the different job titles of Location Manager, Function Manager, or Functional Manager Positions, across different locations, and

between the different brands. See Exhibit 27, job descriptions of Location Manager from March 2017 and Location Manager from March 2019, evidencing that the wording has changed over time but that the job description is basically the same. See Exhibit 28, job descriptions of Location Manager, Function Manager, and Functional Manager, evidencing that the job descriptions are nearly identical and verbatim across the different job titles. See Exhibit 29, containing job descriptions of Location Manager I in Baton Rouge, Louisiana, Function Manager in St. Paul, Minnesota, Function Manager in Boston, Massachusetts, Location Manager I in Monterrey, California, and Functional Manager in New York, New York, and evidencing that the job descriptions are nearly identical at Defendants' positions across the United States. See Exhibit 30, job descriptions of Hertz Function Manager and Dollar Thrifty Function Manager, evidencing that if one replaces the word Hertz for Dollar Thrifty, and vice versa, the job descriptions between Function Manager at Hertz and Function Manager at Dollar Thrifty are exactly the same. Furthermore, Defendants seem to use the titles Function and Functional Managers interchangeably, so much so that both titles are used in the same job descriptions. See Exhibit 31, job description of Function Manager, where the title states "Function" Manager, the first paragraph states "Function" Manager," and the second paragraph states "Functional" Manager. Uniformity of job postings support a similarly situated analysis. *Sealy v. Keiser Sch., Inc.*, 2011 U.S. Dist. LEXIS 152369 (S.D. Fla. Nov. 8, 2011).

With regard to the second factor, although a similar geographic location weighs in favor of conditional certification, this factor by itself is "not conclusive." *Hipp*, 252 F.3d at 1219. The Eleventh Circuit courts have GRANTED conditional certification of nationwide classes or classes whose members spanned several states. *See Morgan v. Family Dollar Stores*, 551 F.3d

1233, 1261 (11th Cir. 2008) (upholding nationwide class of chain store managers); *Lytle v. Lowe's Home Ctrs. Inc.*, 2014 U.S. Dist. LEXIS 3227 (M.D. Fla. Jan. 10, 2014) (conditionally certifying nationwide class of human resource managers); *Espanol v. Avis Budget Car Rental, LLC*, 2011 U.S. Dist. LEXIS 120485 (M.D. Fla. Oct. 18, 2011) (certifying nationwide class of shift managers); *Hipp*, 252 F.3d at 1219; *Grayson*, 79 F.3d at 1091; *Torres-Roman v. Burger King*, 2015 U.S. Dist. LEXIS 188963, DE 066 (2015)(ORDER conditionally certifying national classes of Coaches and Trainees), and *Bradford v. CVS*, 2013 U.S. Dist. LEXIS 14403 *(DE 061)(*certifying collective action of national class of Regional Loss Prevention Managers). As courts of other circuits have also noted, "[T]here is no indication that Congress intended section 216 to only allow small collective actions involving unpaid overtime to proceed," *Falcon v. Starbucks Corp.*, 580 F. Supp. 2d 528, 540 (S.D. Tex. 2008), and limiting FLSA class actions in this way "would lead to the absurd result that employers could escape FLSA liability by making sure to underpay vast numbers of their employees." *Donohue v. Francis Services, Inc.*, 2004 U.S. Dist. LEXIS 11525, *1 (E.D. La. June 22, 2004).

With regard to the third factor, whether the alleged violations occurred during the same time period, the FLSA violations all occurred during the same time period. The Plaintiffs' employment with Defendants spans from February 2010 to the present and they claim they were willfully misclassified as exempt and not paid overtime wages and that Defendants' unlawful pay practice continues to the present. As such, Plaintiffs and Opt-In Plaintiffs seek to recover overtime wages for themselves and the class or classes of similarly situated for the three (3) years prior to the filing of the Complaint to the present. Courts of this District have previously certified FLSA collective actions with three (3) year statute of limitations class periods. *See*

Peralta v. Greco Intern. Corp., 2011 U.S. Dist. LEXIS 125612 (S.D. Fla. Oct. 31, 2011) (approving collective action for work performed over a three (3) year period); *Lytle v. Lowe's Home Ctrs., Inc.,* 2014 U.S. Dist. LEXIS 3227 (M.D. Fla. Jan. 10, 2014)*, supra.* (approving collective action for three-year statute of limitations period contrary to various defense arguments).

The Declarations submitted by Plaintiffs show a common practice or scheme that is applied by the Defendants to all of its Managers, thereby satisfying the fourth and fifth factors for the Court to consider in determining the "similarly situated" requirement. As previously stated, the three (3) Named Plaintiffs are joined by twenty-one (21) Opt-In Plaintiffs who all worked in ten (10) different US States and two (2) US territories. They all allege the same common unlawful pay practice or scheme that they, as Managers and a class were all treated and classified by Defendants as salaried exempt, (and without any single assessment or individualized analysis); they all had to work a mandatory overtime schedule, and were not paid overtime wages. *See, e.g,* Fourth Amended Complaint, Dkt 35 at ¶¶ 5-8, 44, 54, 57, 90, 100, 139, 143 (classified as exempt employee and not paid overtime wages as a Manager); Declaration of Bamidele Aiyekusibe at ¶11 (same); Declaration of Mischele Higginson at ¶6 (same); Declaration of Shantal Brown-Winn ¶4; Declaration of Muhammad Khan at ¶8 (same); Declaration of Elisa Alvarado at ¶8 (same); Declaration of Damika Black at ¶5 (same); Declaration of Juliana Buadu at ¶9 (same); Declaration of Annette Faddis at ¶5 (same); Declaration of Gerrell Roddey at ¶5 (same). It is undisputed that Defendants classified all Managers as salaried, non-exempt employees and did not pay them overtime pay for any hours worked in excess of forty (40) in a workweek.

Further, Defendants treated function and location managers and other employees of Hertz and DTG interchangeably, operated as a single business enterprise, and HERTZ CORP was a Joint Employer for the DTG employees. All function and location managers were subjected to the same company policies and rules for all brands at all airport locations, regardless of which entity paid their salary. See Exhibit 32, the PTO and Holiday Policy applicable to Hertz and Dollar Thrifty Rent A Car, or DTG employees. See Exhibit 33, an email from Hertz thanking Nancy Bond for applying to a job at DTG. See Exhibit 34, an email from Malisa Amado whose title is "RAC Operations: Hertz/Dollar/Thrifty" and contains the logos of all three (3) brands. See Exhibit 35, a DTG Manager using the Hertz website to view her quarterly bonus. See Exhibit 36, an internal summary combining the performance results of Hertz and DTG into a single total and across several metrics. Also, regardless of the employer, Managers performed work for both Hertz and DTG. See Declarations of named Plaintiffs Mischele Higginson ¶¶10-11 and Shantal Brown-Winn ¶4, 7, 24-25, 27-28. See also Declarations of Andrea Jackson ¶28; Nancy Bond ¶¶5-6, 8-9, 19; Rickey Redfern ¶24; Juliana Buadu ¶¶18-20; Elisa Alvarado ¶¶7, 15; Annette Faddis ¶11; Gerrell Roddey ¶¶28-29; Hope Ball ¶8; Sean Reid ¶¶6, 31; Brian Duschel ¶¶7, 10; and Brittany White ¶6, 16, 19. Managers of Hertz and DTG even attended the same meetings where rules, guidelines, and policies were discussed and implemented for all employees in attendance. See named Plaintiff Shantal Brown-Winn ¶7. See also Declarations of Brian Duschel ¶9 and Brittney White ¶18.

The Defendants' decision to classify all Location and Function(al) Managers as exempt from overtime under the same FLSA exemption(s) without any individualized analysis strongly supports a finding that they are similarly situated. *See Simpkins v. Pulte Home Corp.*, 2008 U.S.

Dist. LEXIS 64270 (M.D. Fla. Aug. 21, 2008) (noting that defendant's decision to classify all employees with same title as exempt from overtime under the same FLSA exemption lent credence to plaintiff's affidavits at conditional certification stage); *Hoffman v. Sbarro, Inc.*, 982 F. Supp. 249, 261 (S.D.N.Y. 1997) (holding there is "no question, therefore, that plaintiffs have shown a factual nexus between their situation and the situation of other current and former" employees where defendant admitted it has a uniform policy regarding them all); *Reyes v. AT&T Corp.*, 801 F. Supp. 2d 1350, 1361 (S.D. Fla. 2011) (opining that the uniform classification of the class as exempt from the FLSA weighs in favor of the argument that the class is similarly situated); *Pendlebury v. Starbucks Coffee Co.*, 518 F. Supp. 2d 1345, 1362 (S.D. Fla. 2007) ("every class under § 216(b) will have differences; however, class members need only be similar, not identical"); *Page v. Hertz Corp.*, No. 1:12-cv-1965-WSD, 2013 U.S. Dist. LEXIS 75387, at *5 (N.D. Ga. May 29, 2013) (plaintiffs are "required only to show that he and the potential class-members are similarly, not identically, situated."); and *Roman v. Burger King Corp.*, No. 15-cv-20455-KMM, 2015 U.S. Dist. LEXIS 188963, at *10-11 (S.D. Fla. June 2, 2015) ("At the conditional certification stage, the Court finds that Defendant's decision to classify all Trainees and Coaches as exempt from overtime under the same FLSA exemption supports a finding that they [*11] are similarly situated.)

Further evidence and facts demonstrating similarity among the Plaintiffs and opt-ins Managers include the following:

- All Managers worked a mandatory overtime work schedule of more than forty (40) hours per week and were not paid overtime wages. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶9; Mischele Higginson ¶16; and Shantal Brown-Winn ¶12. *See also* Declarations of Kribbe Perryman ¶12; Damika Black ¶10; Andrea Jackson ¶14; Jason Heinly ¶12; Colin Gresham ¶12; Muhammad Khan ¶14; Nancy Bond ¶21; Rickey Redfern ¶18; Tyrone Harrell ¶15; Cleophus Atkins, Jr. ¶12; Roberto Valdes ¶14; Juliana

Buadu ¶11; Annette Faddis ¶18; Sean Reid ¶40; Brian Duschel ¶13 and Brittany White ¶7.

- The Managers spent the majority of their work hours performing the repetitive and traditionally accepted non-exempt job duties such as, customer service, renting cars, handling returns and check ins, working the exit gate and gold booth, as well as performing hands on, manual labor such as cleaning/washing cars, moving or transporting cars and parking them in stalls, delivering cars or picking up customers, fueling cars and data entry or filling information in databases and standardized report forms/spreadsheets. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶¶6-8, 34; Mischele Higginson ¶¶13, 14, 26, 30, 33, 38, 42; and Shantal Brown-Winn ¶¶9-11, 39. *See also* Declarations of Marian Young ¶¶18-20, 23; Kribbe Perryman ¶¶24, 24, 27; Damika Black ¶¶8, 20, 21, 24, 27; Andrea Jackson ¶¶11, 12, 26, 27, 29; Jason Heinly ¶¶9, 10, 24, 25, 30; Colin Gresham ¶¶11, 20, 26, 27, 28, 29, 32; Muhammad Khan ¶¶5, 7, 13, 24, 30-32, 34, 37; Nancy Bond ¶¶5, 16, 17,18, 38, 42, 46; Rodney Figueroa ¶¶4-7, 9, 10, 26, 30, 32; Rickey Redfern ¶¶15, 16, 30, 31, 35-37; Tyrone Harrell ¶¶13, 14, 26, 27, 31, 33, 35, 40; Cleophus Atkins, Jr. ¶¶9, 22-24; Roberto Valdes ¶¶10, 11, 12, 21, 22, 34, 37; Juliana Buadu ¶¶21, 28, 33, 34; 40, 46, 56; Elisa Alvarado ¶¶17, 24, 29, 34, 44 45; Annette Faddis ¶¶9, 14, 16, 30, 36, 44, 45; Gerrell Roddey ¶¶11, 12, 24, 26, 36, 44; Hope Ball ¶¶8, 17, 24, 25, 30, 33; Sean Reid ¶¶4, 8, 9, 30, 31; Brian Duschel ¶¶ 5,11 and Brittany White ¶¶12-13, 20-21.

- All Managers routinely worked through the allotted one (1) hour meal break, and primarily took at most a few minutes just to grab something to eat or eat on the run, without taking even a thirty (30) minute uninterrupted meal break. They also could not simply use their discretion to break for an hour and go to an airport restaurant. If the Managers wanted to eat during their shift, which at a minimum was nine (9) hours long, they had to eat on the run or while simultaneously working. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶10; Mischele Higginson ¶17; and Shantal Brown-Winn ¶14. *See also* Declarations of Marian Young ¶8; Kribbe Perryman ¶13; Damika Black ¶13; Andrea Jackson ¶19; Jason Heinly ¶15; Muhammad Khan ¶17; Nancy Bond ¶22; Rodney Figueroa ¶14; Rickey Redfern ¶21; Tyrone Harrell ¶19; Cleophus Atkins, Jr. ¶15; Roberto Valdes ¶24; Juliana Buadu ¶27; Elisa Alvarado ¶21; Annette Faddis ¶¶20, 21; Gerrell Roddey ¶17; Hope Ball ¶14; Sean Reid ¶11; Brian Duschel ¶15 and Brittany White ¶¶24-26.

- Managers were on always on call. They were required to use a personal cell phone to answer and respond to text messages, emails, and telephone calls on their days off and while not working at the airport. *See* Declaration of named Plaintiff Bamidele

Aiyekusibe ¶36 and Shantal Brown-Winn ¶41. *See also* Declarations of Damika Black ¶15; Andrea Jackson ¶22; Jason Heinly ¶18; Colin Gresham ¶17; Muhammad Khan ¶19; Rodney Figueroa ¶34; Tyrone Harrell ¶22; Cleophus Atkins, Jr. ¶18; Roberto Valdes ¶¶16, 26; Juliana Buadu ¶¶29-31; Elisa Alvarado ¶¶22, 23; Annette Faddis ¶19; Gerrell Roddey ¶20; Hope Ball ¶18; Sean Reid ¶¶10, 32; Brian Duschel ¶36 and Brittany White ¶9.

- Managers were not involved with decisions regarding staffing needs of the Airport or any part thereof, nor in making decisions on compensation rates, raises or promotions or involved with making decisions on airport or company policies and procedures. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶¶28, 31; Mischele Higginson ¶¶31, 38; and Shantal Brown-Winn ¶¶33, 36. *See also* Declarations of Marian Young ¶18; Kribbe Perryman ¶24; Damika Black ¶¶27, 28; Andrea Jackson ¶¶34, 35; Jason Heinly ¶¶30, 31; Colin Gresham ¶35; Muhammad Khan ¶40; Nancy Bond ¶42; Rodney Figueroa ¶30; Rickey Redfern ¶¶29, 39; Tyrone Harrell ¶¶16, 40; Cleophus Atkins, Jr. ¶¶29, 30; Roberto Valdes ¶¶12, 37; Juliana Buadu ¶52; Elisa Alvarado ¶41; Annette Faddis ¶41; Gerrell Roddey ¶¶25, 38, 39; Hope Ball ¶¶30, 31; Sean Reid ¶27; Brian Duschel ¶30 and Brittany White ¶¶10, 40.

- Managers did not have the discretion to discipline other employees. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶25; Mischele Higginson ¶20; and Shantal Brown-Winn ¶30. *See also* Declarations of Marian Young ¶13; Kribbe Perryman ¶¶18, 20; Damika Black ¶18; Andrea Jackson ¶25; Jason Heinly ¶22; Colin Gresham ¶24; Muhammad Khan ¶28; Nancy Bond ¶37; Rodney Figueroa ¶24; Rickey Redfern ¶27; Tyrone Harrell ¶¶24, 29; Cleophus Atkins, Jr. ¶21; Roberto Valdes ¶¶18, 29; Juliana Buadu ¶¶48, 49; Elisa Alvarado ¶37; Annette Faddis ¶38; Gerrell Roddey ¶23; Hope Ball ¶¶21, 22; Sean Reid ¶24; Brian Duschel ¶27 and Brittany White ¶36.

- Managers did not have the discretion to make hiring or firing decisions. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶25; Mischele Higginson ¶¶20, 34, 34; and Shantal Brown-Winn ¶¶30, 31. *See also* Declarations of Marian Young ¶¶12, 13; Kribbe Perryman ¶¶17-20; Damika Black ¶17; Andrea Jackson ¶24; Jason Heinly ¶¶20, 21; Colin Gresham ¶¶19, 21-23; Muhammad Khan ¶¶21-23, 25-27; Nancy Bond ¶¶36, 37, 39; Rodney Figueroa ¶¶25, 27; Rickey Redfern ¶26; Tyrone Harrell ¶¶25, 32; Cleophus Atkins, Jr. ¶20; Roberto Valdes ¶¶18, 28; Juliana Buadu ¶¶47, 48; Elisa Alvarado ¶¶35-37; Annette Faddis ¶¶37, 38; Gerrell Roddey ¶¶22, 42 43; Hope Ball ¶¶20, 21; Sean Reid ¶¶21, 22, 24; Brian Duschel ¶¶26-27 and Brittany White ¶35.

- Managers did not perform annual job reviews of other employees. *See* Declaration of named Plaintiff Mischele Higginson ¶21. *See also* Declarations of Marian Young ¶11; Kribbe Perryman ¶16; Damika Black ¶16; Andrea Jackson ¶23; Jason Heinly ¶19; Colin Gresham ¶18; Muhammad Khan ¶20; Nancy Bond ¶35; Rickey Redfern ¶25; Tyrone Harrell ¶23; Cleophus Atkins, Jr. ¶19; Roberto Valdes ¶27; Juliana Buadu ¶37; Elisa Alvarado ¶26; Gerrell Roddey ¶21; and Hope Ball ¶19.

- Managers worked side by side the hourly, non-exempt employees, performing the same work as those they were alleged to be supervising. Managers were at most working supervisors. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶32; Mischele Higginson ¶32; and Shantal Brown-Winn ¶37. *See also* Declarations of Damika Black ¶19; Andrea Jackson ¶26; Jason Heinly ¶23; Colin Gresham ¶25; Muhammad Khan ¶29; Rodney Figueroa ¶12; Rickey Redfern ¶28; Tyrone Harrell ¶¶30, 36; Cleophus Atkins, Jr. ¶22; Roberto Valdes ¶¶13, 30; Juliana Buadu ¶45; Annette Faddis ¶35; Gerrell Roddey ¶24; and Hope Ball ¶23.

- Managers did not have the discretion to assign or delegate work or tasks to others, including the hourly employees. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶30; Mischele Higginson ¶39; and Shantal Brown-Winn ¶35. *See also* Declarations of Rodney Figueroa ¶11; Rickey Redfern ¶38; Juliana Buadu ¶¶35, 53; Elisa Alvarado ¶25; Annette Faddis ¶42; Brian Duschel ¶14 and Brittany White ¶34.

- When hourly staff missed work, or if there was simply a manual labor shortage, Managers would fill in and perform the same duties as the hourly employees. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶¶28, 31; Mischele Higginson ¶¶31, 38; and Shantal Brown-Winn ¶¶33, 36. *See also* Declarations of Marian Young ¶18; Kribbe Perryman ¶24; Damika Black ¶¶27, 28; Andrea Jackson ¶¶34, 35; Jason Heinly ¶¶30, 31; Colin Gresham ¶35; Muhammad Khan ¶40; Nancy Bond ¶42; Rodney Figueroa ¶30; Rickey Redfern ¶¶29, 39; Tyrone Harrell ¶¶16, 40; Cleophus Atkins, Jr. ¶¶29, 30; Roberto Valdes ¶¶12, 37; Juliana Buadu ¶52; Elisa Alvarado ¶41; Annette Faddis ¶41; Gerrell Roddey ¶¶25, 38, 39; Hope Ball ¶¶30, 31; Sean Reid ¶27; Brian Duschel ¶30 and Brittany White ¶¶10, 40.

- All Managers were paid a salary and were eligible for a quarterly bonus based upon performance metrics and percentage of goals achieved. *See* Declarations of named Plaintiffs Bamidele Aiyekusibe ¶27; Mischele Higginson ¶37; and Shantal Brown-Winn ¶2. *See also* Declarations of Marian Young ¶3; Kribbe Perryman ¶23; Damika Black ¶5; Andrea Jackson ¶6; Jason Heinly ¶5; Colin Gresham ¶6; Nancy Bond ¶41; Rodney Figueroa ¶29; Rickey Redfern ¶9; Tyrone Harrell ¶5; Cleophus Atkins, Jr. ¶5; Roberto

Valdes ¶5; Juliana Buadu ¶51; Elisa Alvarado ¶40; Annette Faddis ¶40; Gerrell Roddey ¶5; Hope Ball ¶3; Sean Reid ¶26; Brian Duschel ¶29 and Brittany White ¶¶5, 39.

- Managers could not use their discretion to vary their daily or weekly work schedules or vary their hours as they saw fit. Managers' schedules were assigned to them and they were subject to disciplinary action if they were late or left for any reason. *See* Declaration of named Plaintiff Bamidele Aiyekusibe ¶15 and Shantal Brown-Winn ¶19. *See also* Declarations of Kribbe Perryman ¶10; Damika Black ¶11; Andrea Jackson ¶16; Jason Heinly ¶13; Colin Gresham ¶13; Muhammad Khan ¶15; Nancy Bond ¶30; Rodney Figueroa ¶19; Rickey Redfern ¶18; Tyrone Harrell ¶17; Roberto Valdes ¶15; Juliana Buadu ¶42; Annette Faddis ¶31; Gerrell Roddey ¶15; Hope Ball ¶12; Sean Reid ¶17; Brian Duschel ¶22 and Brittany White ¶31.

- The majority of Managers do not have a four (4) year college degree and the same was not required for the Location Manager and Function Manager positions. *See* Declaration of named Plaintiff Mischele Higginson ¶5. *See also* Declarations of Kribbe Perryman ¶4; Damika Black ¶; Muhammad Khan ¶9; Rodney Figueroa ¶35; Rickey Redfern ¶3; Tyrone Harrell ¶7; Juliana Buadu ¶7; and Annette Faddis ¶4.

Arguments by Defendants that collective actions involving managers can never be similarly situated because of individualized management styles is routinely rejected in all conditional certification orders. *Lytle v. Lowe's Home Ctrs., Inc*., 2014 U.S. Dist. LEXIS 3227 (M.D. Fla. Jan. 10, 2014) (HR Managers) *Bradford v. CVS*, 2013 U.S. Dist. LEXIS 14403 (Loss Prevention Managers), *Espanol v. Avis Budget Car Rental, LLC*, 2011 U.S. Dist. LEXIS 120485 (M.D. Fla. Oct. 18, 2011) (shift managers) *Torres-Roman v. Burger King*, 2015 U.S. Dist. LEXIS 188963(argument by Burger King that coaches variances in coaching styles preclude similarly situated rejected by the court). This is not a case where evidentiary support for Plaintiffs' position can only be found in "identical" declarations. Rather, Plaintiffs provide substantial evidence to meet the lenient burden of showing a "reasonable basis" to support their claim that "there are other similarly situated employees." *Morgan*, 551 F.3d at 1260. The Similarly situated

standard requires only a common unlawful pay practice and similar job requirements for all. Thus, as the Judge in *Roman v. Burger King*, concluded: Burger King's decision to classify all coaches and trainees as exempt supports a finding at stage 1 that all are similarly situated. 2015 U.S. Dist. LEXIS 188963, at *10 (S.D. Fla. June 2, 2015).

The preceding facts and evidence amply demonstrate that Plaintiffs and Opt-In Plaintiffs are similarly situated. As the Eleventh Circuit has emphasized, the Court is to analyze whether employees are similarly situated and "not whether their positions are identical." *Id.* Plaintiffs and Opt-In Plaintiffs all allege they were employed with Defendants, held similar job titles, had the same job duties, were misclassified as salaried exempt employees, and allege the same violations of law – failure to pay overtime compensation in violation of the FLSA. Therefore, Plaintiffs move to conditionally certify the putative class of similarly situated Managers,

E. Plaintiffs Have Sufficiently Shown That Other Employees Wish To Opt-Into This Action

In addition to showing that they are similarly situated with the group of employees they wish to represent, the Plaintiffs must establish a reasonable basis for the existence of other potential opt-in plaintiffs to justify certifying a conditional class. *Peña v. Handy Wash, Inc.*, 2014 U.S. Dist. LEXIS 88879 (S.D. Fla. 2014); *Mackenzie v. Kindred Hosps. E.*, 276 F. Supp. 2d 1211, 1220 (M.D. Fla. 2003) ("[A] showing that others desire to opt-in must be made before notice is authorized."). This burden is not onerous. *Rojas,* 297 F.R.D. at *5. "[T]he existence of just one other co-worker who desires to join is sufficient to raise the Plaintiff's contention beyond one of pure speculation … Courts in this District have conditionally certified classes with as few as two affidavits from potential plaintiffs." *Id.*; *Ackley v. City of Fort Lauderdale*, Case No.: 0-:07-cv-60960, at Doc. 45 (S.D. Fla. Jan. 24, 2008) (granting conditional certification with

only **two (2)** opt-in plaintiffs); *Beck v. Desoto Health and Rehab*, Case No.: 2:06-CV-226-FTM-34DNF, at Docs. 23, 34 (M.D. Fla. Jan. 24, 2004) (granting conditional certification with only **one (1)** opt-in plaintiff); *Titre v. Platinum Partners, LLC et al.*, Case No.: 0-08-cv-61254 at Doc. 42 (S.D. Fla. Oct. 16, 2008) (granting conditional certification with **eleven (11)** opt-in plaintiffs); *Larry Guerra v. Big Johnson Concrete Pumping, Inc.*, Case No.: 05-14237 (S.D. Fla. May 17, 2006) (granting conditional certification with only **one (1)** opt-in plaintiff).

The fact that **twenty-one (21) people have Opted into this Case from ten (10) states and two (2) US territories since this lawsuit was commenced** evidences the fact that Plaintiffs have demonstrated there are others interested in joining this suit and thereby satisfying the sufficient interest requirement. In addition, numerous Opt-In Plaintiffs have stated they believe that if other Managers are provided notice of their right to opt-into this suit that they will likely exercise those rights. *See* Declaration of Hope Ball at ¶35 (knows another Manager that has already opted in). *See also* Rodney Figueroa at ¶36 (believes that if other Managers are provided notice of their rights to opt-in they will do so); Declaration of Elisa Alvarado at ¶47 (same); Declaration of Sean Reid at ¶34 (same). Such declarations have been found to be sufficient to demonstrate interest in the lawsuit and to conditionally certify the class. *Stuven v. Tex. De Braz. Tampa Corp.*, 2013 U.S. Dist. LEXIS 22240 (M.D. Fla. Feb. 19, 2013). In *Stuven*, the court certified a class of servers and bartenders throughout Florida based upon only three (3) Opt-In Plaintiffs. "Even a single affidavit or consent to join submitted by another individual stating that they are similarly situated and wish to join the suit is enough to bring the Plaintiff's contentions above pure speculation." *Robbins-Pagel v. WM F. Puckett, Inc.*, 2006 U.S. Dist. LEXIS 85253,

*6 (M.D. Fla. Nov. 22, 2006). By providing twenty-one (21) Opt-In Plaintiffs, Plaintiffs have demonstrated enough interest in this lawsuit to warrant conditional certification of the collective classes.

Based upon the allegations in the Complaint and the above-referenced Declarations, Plaintiffs have satisfied the applicable burden of persuasion and there is no doubt that a colorable basis exists for determining that other similarly situated employees exist and will seek to opt-in. Plaintiffs respectfully believe that they have met the lenient standard for the Court to approve sending notice to the putative class or classes they seek to represent.

F. Numerous Courts Have Granted Conditional CERTIFICATION to PROCEED AS Collective Actions in Similar Cases

Courts routinely grant conditional certification of FLSA collective actions based upon a defendant's policy of misclassifying a category of employees. *Stuven v. Tex. De Braz. Tampa Corp.,* 2013 U.S. Dist. LEXIS 22240 (M.D. Fla. Feb. 19, 2013), is highly instructive and factually important as to the threshold necessary to meet the lenient standard to obtain conditional class certification. In *Stuven*, the court found that a nationwide class of servers and bartenders' supporting declarations, and the number of opt-in plaintiffs from across the United States, offered an equally compelling basis to conditionally certify a national class. The court found that the declarations supported a finding that the bartenders and servers' job duties were similar, and that they were similarly paid, thereby making a sufficient showing that the servers and bartenders were similarly situated for purposes of certifying the national class. *Id.* at 12. Other courts have also granted conditional certification in cases where defendants had a policy of misclassifying a category of employees. *See Lytle v. Lowe's Home Ctrs. Inc.*, 2014 U.S. Dist. LEXIS 3227 (M.D. Fla. Jan. 10, 2014) (conditionally certifying nationwide class of human

resource managers); *Espanol v. Avis Budget Car Rental, LLC*, 2011 U.S. Dist. LEXIS 120485 (M.D. Fla. Oct. 18, 2011) (certifying nationwide class of shift managers); *In re Wells Fargo Home Mortgage Overtime Pay Litigation*, 527 F. Supp. 2d 1053, 1071 (N.C. Ca. 2007) (conditionally certifying nationwide FLSA class where plaintiffs established defendant's classification policy was "uniform for all putative class members."); *Shakib v. Back Bay Rest. Group, Inc.,* 2011 U.S. Dist. LEXIS 124143 (D.N.J. Oct. 26, 2011) (conditionally certifying class of restaurant workers based on showing that defendants engaged in a common plan or scheme not to pay employees for all hours worked); *Lujan v. Cabana Mgmt.*, 2011 U.S. Dist. LEXIS 9542 (E.D.N.Y. Feb. 1, 2011) (granting conditional certification where the proposed putative class included "servers, hosts(esses), bartenders, bar-backs, busboys, runners, dishwashers, and other restaurant related tasks," and both tipped and non-tipped employees); *Realite v. Ark Restaurants Corp.*, 7 F. Supp. 2d 303, 303, 306–07 (S.D.N.Y. 1998) (granting conditional certification to employees at multiple restaurant locations, who collectively held positions as waiters, porters, dishwashers, cooks, bartenders, runners, busboys, and security guards); *See also Torres-Roman v. Burger King*, 2015 U.S. Dist. LEXIS 188963 Dkt. 66 (SD FL 2016)[1] and *Bradford v. CVS*, 2013 U.S. Dist. LEXIS 14403.

Defendants operate approximately 1600 locations throughout the United States and its territories and has employed approximately 2000 Managers whose job duties are uniform, standardized and dictated by Defendants' corporate headquarters, all of whom were uniformly misclassified as Exempt, and without individualized analysis. Plaintiffs, and those similarly situated who have joined this action, all paint a clear picture of similar work duties and

[1] "At the conditional certification stage, the Court finds that Defendant's decision to classify all Trainees and Coaches as exempt from overtime under the same FLSA exemption supports a finding that they are similarly situated." (certifying national class of coaches and trainees both classified as exempt similar to Managers here).

responsibilities performed across the country, all of which is under the direction and control of Defendants, and primarily HERTZ CORP as a business enterprise. The Manager positions at issue are uniform and identical in all Defendants' locations across the United States and its territories. The Managers are all hired to purportedly "manage" some part or section of the airport rental location and are nominally referred to as "managers," but in reality, their job requirements primarily consist mostly of standardized, routine and repetitive work activities including: moving, fueling, cleaning, and washing cars, renting cars, checking in cars (returns), working exit gates, and data entry or standardized data entry or reporting.

As such, Plaintiffs have shown that Managers from across the United States are similar in most respects and, most importantly, in pay practices. They are all scheduled to work over forty (40) hours each week on a uniform and standardized, which included weekends, and all had to perform similar job duties and responsibilities which were enforced across all of Defendants' airport rental locations across the United States.

Furthermore, Plaintiffs allege that all Managers were subject to a common national compensation plan and unlawful pay practice, of being treated and misclassified by Defendants as salaried, exempt employees and were not paid overtime compensation. They also were all eligible for quarterly bonuses. Defendants' pay practice and overtime policy violates the law and adversely affects the rights of each Plaintiff in this collective action and the putative class or classes the Plaintiffs seek to notify. *See Ayers v. SGS Control Servs., Inc.*, 2004 U.S. Dist. LEXIS 25646 at *4 (S.D.N.Y. 2004); *see also Scholtisek v. Eldre Corp.*, 229 F.R.D. 381, 390 (W.D.N.Y. 2005) ("[w]hat is important is that these employees were allegedly subject to a common practice or scheme on [their employer's] part"). Therefore, Plaintiffs seek certification

as a class and this Court's authorization to facilitate notice to Defendants' current and former Managers subjected to the illegal practices described above for the three (3) years preceding the filing of the Complaint to present.

III. THE "MERITS" OF THE CASE ARE NOT CONSIDERED AT THIS STAGE

The Court is facing step one (1) of the two (2) step certification process. In other words, this is the "notice stage," not the decertification stage, where the burden would be on the Defendants. [2] Plaintiffs anticipate that the Defendant will argue that the Managers were properly classified as exempt employees, supervised subordinate employees and did or had the discretion to make important decisions. Although Plaintiffs believe the Defendants exemption arguments will ultimately fail based upon the facts that will emerge during discovery, such arguments regarding the factual nature of Plaintiffs' claims and Defendants' defenses thereto are *irrelevant* at this stage of the notification process. At this "conditional certification" stage, courts *do not weigh the merits* of the underlying claims in determining whether potential opt-in plaintiffs may be "similarly situated." *See Kreher v. City of Atlanta*, 2006 WL 739572, at *4 (N.D. Ga. Mar. 20, 2006) (holding that once a plaintiff demonstrates a class of employees was subject to the same common policy which allegedly violated the FLSA, the question of whether individual differences between class members makes their claims ill-suited for a collective action will be considered during the second stage decertification analysis); *Pendlebury v. Starbucks Coffee Co.*, 2005 U.S. Dist. LEXIS 574, *3–*4 (S.D. Fla. Jan. 3, 2005) (granting conditional certification and refusing to consider factual dispute raised by defendant at the conditional certification stage where plaintiff offered affidavits establishing a similarly situated class); *Gjurovich v. Emmanuel's*

[2] *Baldridge v. SBC Commc'ns, Inc.*, 404 F.3d 930, 932 (5th Cir. 2005).

Marketplace, Inc., 282 F. Supp. 2d 91, 96 (S.D.N.Y. 2003) ("Once the Plaintiff makes a colorable claim for relief, the ***only*** inquiry necessary is whether the potential plaintiffs to be notified are similarly situated to the named plaintiff…"); *Goldman v. Radioshack Corp.*, No. Civ.A. 2:03-CV-032, 2003 WL 21250571, at *8 (E.D. Pa. Apr. 16, 2003) ("A fact-specific inquiry is conducted only after discovery and a formal motion to decertify the class is brought by the defendant."); *Felix De Asencio v. Tyson Foods, Inc.*, 130 F.Supp. 2d 660, 663 (E.D. Pa. 2001) ("While this information [submitted by Defendant] may play a more significant role after discovery … Plaintiffs have advanced sufficient evidence to meet their low burden at this first tier of the similarly situated question."); *Devries v. Morgan Stanley & Co. LLC*, 2014 U.S. Dist. LEXIS 15862 (S.D. Fla. Feb. 6, 2014) (refusing to decide substantive issues going to the ultimate merits and granting conditional certification).

Simply stated, if the Defendants argue that the Managers are exempt employees they are putting the cart before the horse because to get to the "decertification stage" this Court must first conditionally certify a class. As the Eleventh Circuit stated in *Morgan v. Family Dollar Stores*, "[t]he second stage is triggered by an employer's motion for decertification." 551 F.3d 1233, 1261 (11th Cir. 2008). At this early stage, the Court does not determine questions of fact created by competing declarations. In addition to ignoring any of the Defendant's arguments related to the merits of the case, the Court should decide whether Plaintiff has met his burden based upon the pleadings and affidavits he has submitted. *Simpkins v. Pulte Home Corp.*, 2008 U.S. Dist. LEXIS 64270 (M.D. Fla. Aug. 21, 2008). In *Simpkins*, the court granted conditional certification even though the defendant presented "masses of sworn testimony" that "indicates a need for individual factual analyses…" *Id.* at 16. The court stated that it considered "…this experience to

be powerful anecdotal evidence that the first stage of certification is best conducted with a lenient standard of review based on a limited factual record." *Id.* at 18.

This Court must not fall into the trap of analyzing the factual variance in the day-to-day job performance by each Manager, or the declarations which may be submitted by Defendants in opposition to this motion. Following the *Hipp* two (2) stage analysis, the Court is at the first stage, prior to discovery being commenced in this action, should only assess the submissions of the Plaintiffs by reviewing the Plaintiffs declarations and supporting evidence, along with the Complaint in deciding whether Plaintiffs have made the requisite showing to conditionally certify the classes. Thus, any declarations and evidence presented in opposition by the Defendants should be rejected and left for argument on any subsequently filed Motion for Decertification at stage two (2), which comes after the close of discovery. The primary purpose of the court making the determination on whether to conditionally certify this action as a collective action is strictly to locate other similarly situated employees who may wish to bring their claims to the court's attention before this litigation is resolved. *Alexander v. Cydcor, Inc.*, 2012 U.S. Dist. LEXIS 187258, *5 (N.D. Ga. Apr. 5, 2012). As such, the Court need only consider the declarations provided by Plaintiffs in the conditional certification stage, not those who are class members not opting in. *Carmody v. Fla. Ctr. for Recovery, Inc.*, 2006 U.S. Dist. LEXIS 81640 (S.D. Fla. 2006) (granting conditional certification and refusing to indulge in a fact finding investigation where the plaintiffs met their burden for conditional certification by making substantial allegations supported by affidavits which successfully engaged defendant's affidavits to the contrary). Any analysis of factual variances is contrary to the inquiry followed by most courts at this stage. *IBEA v. Rite Aid Corp.*, 2012 U.S. Dist. LEXIS 4682, *8 (S.D.N.Y.

Jan. 6, 2012) ("courts do not address whether a plaintiff is similarly situated to a class until the second stage of the certification inquiry…"). In *Evans v. Lowe's Home Ctrs., Inc.*, 2004 U.S. Dist. LEXIS 15716, *7 (M.D. Pa. June 17, 2004), the court stated "to require conclusive findings of 'similar situations' before providing notice [under § 216(b)] to absent class members 'would condemn any large class claim…to a chicken and egg limbo in which the class could only notify all its members to gather after it had gathered together all its members…"). *Evans*, 2004 U.S. Dist. LEXIS at *7. Unless and until the Plaintiffs know, after discovery, who the potential opt-in plaintiffs are, the Court cannot determine whether the plaintiffs are similarly situated. *Id.* "A fact-specific inquiry is conducted only after discovery and a formal motion to decertify the class is brought by the defendant." *Goldman v. RadioShack Corp.*, 2003 U.S. Dist. LEXIS 7611, at *27 (E.D. Pa. Apr. 16, 2003), cited by *Russell v. Life Win, Inc.*, No. 8:11-cv-2802-T-26TBM, 2012 U.S. Dist. LEXIS 190807, at *11 (M.D. Fla. Apr. 23, 2012). Instead, as this stage, an initial determination is "based solely upon the pleadings and any affidavits whether the notice of the action should be given to potential class members." *Russell v. Life Win, Inc.*,, 2012 U.S. Dist. LEXIS 190807, at *6 (M.D. Fla. Apr. 23, 2012). Following ***Evans***, ***Lytle, Torres- Roman, Bradford, supra***, this Court should grant "conditional certification" and facilitate notice to the rest of the class of their rights to opt in without delay.[3] As the Court in *Lytle* stated after rejecting all of defendant's arguments against conditional certification:

> "Defendants' contentions pinpointing variations in the performance of Human Resources Managers duties depending on the particular store, store manager, Area Human Resources Manager, Human Resources Manager's personal experience, or when the particular duties were performed do not convince the Court that conditional certification is unwarranted. Instead, "Defendant[s'] arguments appear to be relevant to the application of various exemptions from the FLSA, which is more properly addressed after discovery is completed." Vondriska, 564 F. Supp.

[3] "whether the requested class is actually similarly situated is a question more appropriately addressed at the decert stage when more specific info will be available. *BRADFORD, ID*, citing *Reyes*, 801 F.supp.2d at 1360.

> 2d at 1335-36; see Morgan, 551 F.3d at 1261-62 (courts should consider at the second stage "the various defenses available to defendant[s] [that] appear to be individual to each plaintiff.").

Lytle v. Lowe's Home Centers, Inc., Case No. 8:12-cv-1848-T-33TBM. (January 10, 2014).

A determination of whether the alleged payment plan took place or whether the plaintiffs are similarly situated is not proper at this stage. Nor is a fact intensive inquiry into the merits of the case applicable at this stage. Instead, a court should look at the pleadings, affidavits, and declarations. Here, together with the pleadings and a total of twenty-four (24) declarations all stating similar facts of similar job duties and all alleging Defendants' intentional misclassification of Managers to avoid paying overtime wages, this Court should grant conditional certification of the requested class.

IV. THIS COURT SHOULD APPROVE THE NOTICE AND REQUIRE DEFENDANTS TO PRODUCE THE NAMES, PHYSICAL AND EMAIL ADDRESSES, AND TELEPHONE NUMBERS OF THE PUTATIVE CLASS

The opt-in provisions of the FLSA require a procedure for identifying and notifying potential class members. *Morden v. T-Mobile USA, Inc.*, 2006 WL 1727987, at *3 (W.D. Wash. June 22, 2006) (compelling the defendant to produce the names and addresses of potentially similarly situated employees despite the fact that no conditional class certification motion was pending before the court). "The first step is to identify those employees who may be similarly situated and who may therefore ultimately seek to opt in to the action." *Id.* As such, early discovery of a mailing list is routinely disclosed in FLSA collective actions because the lists are necessary to facilitate notice. *See Hoffman-La Roche*, 493 U.S. at 165. Moreover, courts in this Circuit commonly compel defendants to produce the names, last known addresses, email addresses, and telephone numbers of putative class members in FLSA cases. *See Lopez v. Valls*

Groups, Inc., 2008 U.S. Dist. LEXIS 124218 (S.D. Fla. July 14, 2008) (granting conditional certification and compelling last known addresses, email addresses and social security numbers within 15 days); *Stuven v. Tex. De Braz. Tampa Corp.*, 2013 U.S. Dist. LEXIS 22240 (M.D. Fla. Feb. 19, 2013) (granting conditional certification and holding that email and U.S. mail are proper forms of notice); *Cooper v. E. Coast Assemblers, Inc.*, 2013 U.S. Dist. LEXIS 10435 (S.D. Fla. Jan. 25, 2013) (approving notice by email and mail); *Abdul-Rasheed v. Kablelink Communs., LLC*, 2013 U.S. Dist. LEXIS 159632 (M.D. Fla. Nov. 7, 2013) (granting conditional certification and directing defendants to produce to plaintiff's counsel a list containing the names, last known addresses, telephone numbers, and email addresses of putative class members). Likewise, if Plaintiffs' Motion is granted, the Defendants should be ordered to provide to Plaintiffs a list of all putative class members' names, last known addresses, email addresses and telephone numbers.

The Notice proposed by Plaintiffs (*see* notice as Exhibit 1**)**, is typical of Notices approved many times in this Circuit and is almost identical to the form approved by Judge Presnell in *Parrilla v. Allcom*, Case No.: 6:08-cv-01967-GAP-GJK at Doc. 69; s*ee also Simpkins v. Pulte Home Corp.*, 2008 WL 3927275 at p. 9 (M.D. Fla. 2008); *citing Cox v. Appliance Direct, Inc.*, 6:08-cv-216-ACC-DAB, docs 66 and 69; *Gutescu v. Carey Intern, Inc.*, 2003 WL 25586749 at p. 18 (S.D. Fla. 2003) (similar notice form issued).

"Absent reasonable objections by either the defendant or the Court, plaintiffs should be allowed to use the language of their choice in drafting the notice." *Sylvester v. Wintrust Fin. Corp.,* No. 12 C 01899, 2013 U.S. Dist. LEXIS 140381, 2013 WL 5433593, at *6 (N.D. Ill. Sept. 30, 2013). In other words, Plaintiffs' proposed notice should be used unless it is found to be

unreasonable. A court has discretionary authority over the notice process for FLSA collective actions. *Hoffmann-La Roche, Inc. v. Sperling,* 493 U.S. 165, 174, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989). "In exercising this authority, a court must scrupulously avoid the appearance of judicial partiality." *Alexander v. Cydcor, Inc.,* No. 1:11-CV-01578-SCJ, 2012 U.S. Dist. LEXIS 187258 (N.D. Ga. Apr. 5, 2012). "Under the FLSA, the Court has the power and duty to ensure that the notice is fair and accurate, but it should not alter a plaintiff's proposed notice unless such alteration is necessary." *Creten-Miller v. Westlake Hardware, Inc.,* No. 08-2351-KHV, 2009 U.S. Dist. LEXIS 60393, at *5 (D. Kan. July 15, 2009). "[W]hile reasonable amendments may be considered, those that are 'unduly argumentative, meant to discourage participation in the lawsuit, or are unnecessary or misleading' should be rejected." *Whitehorn v. Wolfgang's Steakhouse, Inc.,* 767 F. Supp. 2d 445, 450 (S.D.N.Y. 2011). In the present case, Plaintiff's proposed Class Notice (Exhibit 1) is accurate, neutral, and has been adopted and approved by other courts. Similar notice was approved by Chief Judge Moore in *Roman v. Burger King Corp.,* 2015 U.S. Dist. LEXIS 188963 (S.D. Fla. June 2, 2015).

Included in Plaintiffs' class notice is a basic statement of the law, an anti-retaliation statement, information about how class members' rights may be affected by joining or not joining this litigation, and pertinent contact information. Notably not included in the proposed notice is defense counsel's contact information or a statement about potential liability for fees and costs, as such statements are unnecessary, confusing and discouraging. First, defense counsel has no part in distributing notice or collecting consent forms, and inclusion of more lawyers on the notice merely increases the chance for confusion by notice recipients. *Cryer v. Intersolutions, Inc.,* 2007 WL 1053214, *4 (D.D.C. Apr. 7, 2007) (holding that there was no

reason to include defense counsel on the notice as "[d]efense counsel does not play a role in managing the distribution of the notice or the gathering of consent forms."). Indeed, it "makes no sense for putative class members to seek information from Defendants' counsel" and in fact it creates a real risk of creating a confusing and conflicting situation. See *Perry v. Nat'l City Mortg., Inc.,* 2007 WL 1810472, at *4 (S.D. Ill. June 21, 2007).

In addition, no statement regarding a potential plaintiff's liability for costs should be included in the notice. In *Littlefield v. Dealer Warranty Servs., LLC,* the court declined to include language of the possible costs class members might incur by joining the lawsuit because "this notice might discourage plaintiffs from joining the litigation". 679 F. Supp. 2d 1014, 1018 (E.D. Mo. 2010), citing *Martinez v. Cargill Meat Sols., 265 F.R.D. 490 (D. Neb. 2009)*. Further, "[i]nforming potential class members of costs is not central to the objective of providing notice." *Chin Chiu Mak v. Osaka Japanese Rest., Inc.,* No. 4:12-CV-3409, 2014 U.S. Dist. LEXIS 7275, at *12 (S.D. Tex. Jan. 21, 2014).

Plaintiffs' proposed class notice is accurate, neutral and is substantially similar to other court approved notices in FLSA collective actions. Accordingly, Plaintiffs' proposed notice should be approved and Defendants should be ordered to provide to Plaintiffs a list of all putative class members' names, last known addresses, email addresses and telephone numbers.

V. NOTICE SHOULD BE POSTED AT ALL OF DEFENDANTS' AIRPORT LOCATIONS

Plaintiffs seek to post the notice and consent form in the DEFENDANTS' AIRPORT LOCATIONS during the pendency of the class. Such requests are routinely granted and ensure increased likelihood that members of the putative class who must be notified that their rights may be affected by the action are so notified. See *Harris v. Chipotle Mexican Grill, Inc.*, 49

F.Supp.3d 564, 581(D.Minn.2014) (permitting the notice by email, mail and requiring the defendant to post class notice in a conspicuous place in its business). *See also Shoots v. iQor Holdings US Inc.,* 215 US DIST LEXIS 131617 *82 (posting notice in lunch/break rooms)*; Lora v. To-Rise, LLC,* No. 16-CV-3604 (RRM) (ST), 2017 U.S. Dist. LEXIS 112644, at *47 (E.D.N.Y. July 18, 2017)("Courts routinely order notice to be posted in employee common areas, even if potential class members have been notified by mail"). A defendant was required to post the approved notice at its airport facility in a conspicuous location where potential class members were likely to congregate. *Martinez v. DHL Express (USA) Inc.*, No. 15-22505-CIV, 2016 U.S. Dist. LEXIS 14304, at *29 (S.D. Fla. Feb. 5, 2016); *Collado v. J. & G. Transp., Inc.*, No. 14-80467-CIV-GOODMAN, 2014 U.S. Dist. LEXIS 152441, at *14 (S.D. Fla. Oct. 23, 2014) (notice to be "posted in a conspicuous location in each of Defendants' business offices where putative class members are expected to frequent").

Plaintiffs request the Court approve posting the notice at each of Defendants' locations and in a conspicuous place where putative class members are likely to frequent or congregate. Specifically, Plaintiffs request notice be posted in the management offices of Defendants respective Airport locations and near time clocks, exits and employee lockers.

VI. NOTICE SHOULD BE DELIVERED BY ALL REASONABLE MEANS TO THE PUTATIVE CLASS TO INCREASE THE ODDS OF BEING READ AND NOT REJECTED AS JUNK MAIL OR SPAM.

Plaintiffs request that notice be sent via U.S. Mail to all class members, via the business email address of currently employed class members, via the personal email addresses of former employees, and text message to all class members. See Exhibit 37, proposed text message notice. Courts grant such requests as electronic communications increase the likelihood that

members of the class will actually see the notice and not reject it as junk mail or spam which they may do if received in just one form. The court in *Landry v. Swire Oilfield Servs., L.L.C.*, found that "given the amount of junk mail that people receive, email and text message likely are more effective methods for communicating with potential class members than traditional, first-class mail." 252 F. Supp. 3d 1079, 1129 (D.N.M. 2017)(authorizing class notice by mail, email and text message and reminder notice). In *Martinez v. DHL*, the Court approved sending notice via BOTH email and US mail, and posting the notice at defendant's worksite, as well as sending a reminder notice. No. 15-22505-CIV, 2016 U.S. Dist. LEXIS 14304, at *29 (S.D. Fla. Feb. 5, 2016). "The Court finds the means of transmitting the Proposed Notice appropriate." *Pittman v. Comfort Systems USA (Southeast), Inc.,* No. 8:12-cv-2141-T-30TGW, 2013 U.S. Dist. LEXIS 19434, 2013 WL 525006, at *2 (M.D. Fla. Feb. 13, 2013) (approving notice transmission via email and regular mail); *Collado v. J. & G. Transp., Inc.*, No. 14-80467-CIV-GOODMAN, 2014 U.S. Dist. LEXIS 152441, at *14 (S.D. Fla. Oct. 23, 2014) (approving notice via posting at place of work and email). "[E]mail provides an efficient and cost-effective means of disseminating notice" and recognizing a "current nationwide trend toward emailing judicial notice in FLSA cases and permitting the sending of notice via mail and email. See *iQor* at p. 56 *citing Rhodes v. Truman Med Ctr.,* No. 4:13-CV-990-NKL, 2014 WL 4722285, at *5 (W.D. Mo. Sept. 23, 2014) and *Atkinson v. TeleTech Holdings, Inc.,* No. 3:14-CV-253, 2015 WL 853234, at *5 (S.D. Ohio Feb. 26, 2015). The Court in *Olmstead v. RDJE, Inc.,* found "[t]his Court, however, has approved the use of telephone numbers before, and...e-mail addresses are significantly more effective at reaching potential plaintiffs in cases." 2017 U.S. Dist. LEXIS 140241, at *12 (N.D. Ga. Aug. 30, 2017). Class notice via email is the most efficient means to

effect timely, accurate notice. *See also Stuven v. Tex. De Braz. Tampa Corp.,* 2013 U.S. Dist. LEXIS 22240 (M.D. Fla. Feb. 19, 2013) (granting conditional certification and holding that email and U.S. mail are proper forms of notice); *Cooper v. E. Coast Assemblers, Inc.*, 2013 U.S. Dist. LEXIS 10435 (S.D. Fla. Jan. 25, 2013) (approving notice by email and mail); *Abdul-Rasheed v. Kablelink Communs., LLC,* 2013 U.S. Dist. LEXIS 159632 (M.D. Fla. Nov. 7, 2013) (granting conditional certification and directing defendants to produce to plaintiff's counsel a list containing the names, last known addresses, telephone numbers, and email addresses of putative class members).

Furthermore, courts are increasingly inclined to authorize class notice by email and text message. See *Vasto v. Credico United States Llc,* 2016 U.S. Dist. LEXIS 60158, at *50 (S.D.N.Y. May 5, 2016). Courts have permitted issuance of class notice by TEXT message to cellular telephone numbers. See *Irvine v. Destination Wild Dunes Mgmt., Inc.,* 15-cv-980 (RMG), Dkt. No. 44-9 (D.S.C. July 23, 2015).

Any argument Defendants may make against notice by text message, corporate email or personal email as being disruptive, or violative of personal privacy concerns are de minimis when weighed against the Court's obligation to effectuate the remedial purposes of the FLSA by quickly and effectively providing Class Notice to all putative class members. See *Williams v. Omainsky,* 2016 U.S. Dist. LEXIS 7419*; Jacob v. Duane Reade, Inc.,* No. 11-CV-0160 (JPO), 2012 U.S. Dist. LEXIS 11053, 2012 WL 260230, at *10 (S.D.N.Y. Jan. 27, 2012). If the Court grants Plaintiffs' motion for class certification, the Court should employ the most reasonable and effective means to disseminate Class Notice: email and text message in addition to mailing and posting. *Lynch v. Stadium Grp. LLC,* 2015 U.S. Dist. LEXIS 138290, at *15 (D.S.C. Oct. 8,

2015); *McKinzie v. Westlake Hardware, Inc.,* No. 09-cv-796 (FJG), 2010 U.S. Dist. LEXIS 58078, 2010 WL 2426310, at *5 (W.D. Mo. Jun. 11, 2010); *Bhumithanarn v. 22 Noodle Mkt. Corp.,* No. 14-cv-3624 (RJS), 2015 U.S. Dist. LEXIS 90616, at *12 (S.D.N.Y. July 13, 2015); *Eley v. Stadium Grp.,* 2015 U.S. Dist. LEXIS 126184, at *9 (D.D.C. Sept. 22, 2015) (authorizing text messages and finding "the use of email to notify potential plaintiffs of this litigation, 'communication through email is [now] the norm.'"); *Martin v Sprint/United Mgmt. Co.,* 2016 U.S. Dist. LEXIS 352, at *57 (S.D.N.Y. Jan. 4, 2016); *Pippins v KPMG LLP,* 2012 U.S. Dist. LEXIS 949, at *41 (S.D.N.Y. Jan. 3, 2012) ("[G]iven the reality of communications today...the provision of email addresses and email notice in addition to notice by first class mail is entirely appropriate."); *See Irvine v. Destination Wild Dunes Mgmt., Inc.,* 15-cv-980 (RMG), Dkt. No. 44-9 (D.S.C. July 23, 2015).

In the social media era, and in the year 2019, email and text messages are increasingly the preferred form of communication for business and personal matters alike and are an extremely cost effective method of ensuring delivery and review. In a "belt and suspenders" approach, and as previous courts have done, this Court should allow Plaintiffs to send notice via US Mail, email and text messages.

A. Notice Should Be Delivered to Business Email Addresses as well as Personal Email Addresses.

The purpose of court-issued notice of collective actions under the FLSA is to make sure that each and every class member is notified of their right to join the suit and how their rights may be affected by the suit. "[Class Notice] advances the remedial purpose of the FLSA by increasing the likelihood that all potential opt-in plaintiffs will receive notice." *Shoots v. iQor Holdings US Inc.,* 2015 U.S. Dist. LEXIS 141617 *, 2015 WL 6150862 (D. Minn. Oct. 19,

2015). Courts have required Defendants to allow email notice to their business email addresses. *Edwards v. Multiband Corp.,* No. 10-cv-2826 (MJD/JJK), 2011 WL 117232, at *5 (D. Minn. Jan. 13, 2011), *iQor Holdings US Inc.,* 2015 U.S. Dist. LEXIS 141617 2015 WL 6150862 (D. Minn. Oct. 19, 2015).

Plaintiffs contend that Class Notice should be issued to the business email address of currently employed putative class members because it is one of the most effective ways for the Court to ensure class members are notified of their rights in this matter, as current employees are more likely to receive non-spam and non-junk email in their office email than in personal email. Furthermore, a large number of the putative class (approximately 250) are current employees. Emailing their business address is effective and increases the certainty that class members will not only receive notice of their rights, but review it as non-junk or spam. Defendants' potential arguments that such would be disruptive is nonsense as the matter involves their employees and the Defendants' continued unlawful pay practices. By using company email, the Court ensures a significantly reduced risk that paper notice and all the other spam and junk one typically receives in email accounts from being ignored or considered "junk mail." At the same time, contacting putative class members using a list of Defendants' current employees' work email addresses will be highly efficient as these addresses are verified and current, whereas a list of last-known street and email addresses will inevitably contain some addresses that are incorrect or out-of-date.

Moreover, Defendants will likely argue that class notice to company email is a business disruption or somehow interfere with the employee's' job. Defendant's position is simply meritless, and merely a pretense to a means to reduce the risk of current employees from receiving the notice or acting upon it. The Class Notice email can be sent and viewed during

non-business hours or on the weekend. Moreover, the FLSA exemption issue here affects their rights as an employee, and the most efficient and effective means to notify them should be utilized: their company email. Any argument Defendants may make about providing the corporate email addresses as being unduly burdensome or disruptive are de minimis when weighed against the Court's obligation to effectuate the remedial purposes of the FLSA by quickly and effectively providing Class Notice to all putative class members. See *Williams v. Omainsky,* 2016 U.S. Dist. LEXIS 7419; *Jacob v. Duane Reade, Inc.,* No. 11-CV-0160 (JPO), 2012 U.S. Dist. LEXIS 11053, 2012 WL 260230, at *10 (S.D.N.Y. Jan. 27, 2012). If the Court grants this Motion, it has agreed that Defendants' current employees must be notified, and thus, all reasonable means and the most effective means should be utilized to ensure not just delivery, but also careful review of the notice ordered to be sent.

Accordingly, in order to effectuate the purpose of issuing the class notice - informing putative class members of the existence of this litigation and to inform them of their rights under the law - delivery of Class Notice to currently employed class members' known business email addresses is the most effective manner in which to provide notice to the majority of the putative class members and the least costly.

B. 75 DAY NOTICE PERIOD and 1 US MAIL REMINDER NOTICE

Plaintiffs seek a seventy-five (75) day notice period which is reasonable and shorter than what has been approved in other collective actions. *Pittman v. Comfort Sys. USA (Se.), Inc.,* No. 8:12-CV-2142-T-30TGW, 2013 U.S. Dist. LEXIS 19434, 2013 WL 525006, at *2 (M.D. Fla. Feb. 13, 2013) (granting a ninety (90) day opt-in period); *Torres v. Nature Coast Home Care LLC,* 2016 U.S. Dist. LEXIS 139745, *8, 2016 WL 5870217. *See Stelmachers v. Maxim*

Healthcare Servs., No. 1:13-CV-1062-RLV, 2013 U.S. Dist. LEXIS 189876, at *12 (N.D. Ga. Aug. 5, 2013) (same). "The Court concludes that a ninety-day notice period is appropriate and overrules [Defendant's] objection." *Pittman v. Comfort Sys. USA (Southeast), Inc.,* No. 8:12-cv-2142-T-30TGW, 2013 U.S. Dist. LEXIS 19434, at *5 (M.D. Fla. Feb. 13, 2013). *See also Torres v. Nature Coast Home Care LLC,* 2016 U.S. Dist. LEXIS 139745, *8, 2016 WL 5870217. (Approving ninety (90) day notice period)*; Isaacs v. One Touch Direct, Ltd. Liab. Co.,* No. 8:14-cv-1716-T-30EAJ, 2015 U.S. Dist. LEXIS 6211 (M.D. Fla. Jan. 20, 2015) (objection to ninety (90) day opt in period overruled). As previous courts have done, this Court should grant Plaintiffs' request for a seventy-five (75) day opt-in period.

Plaintiffs also seek the right to send a reminder notice to the putative class who have not responded during the Notice period, and resend the Notice if returned with notice of bad address by the US post office. To achieve the remedial purpose and intent of the FLSA to ensure that all putative class members have notice of their rights, the Court should authorize Plaintiffs to send a Reminder notice to class members who have not submitted their opt-in consent forty-five (45) days after the initial notice. See *Braunstein v. Eastern Photographic Laboratories, Inc.,* 600 F.2d 335, 336 (2d Cir. 1978) (notice "comports with the broad remedial purpose of the Act, which should be given a liberal construction, as well as with the interest of the courts in avoiding multiplicity of suits"). A reminder notice serves the statutory purpose and intent to ensure all class members have adequate opportunity to be apprised of their rights under the FLSA before the statute of limitations precludes their rights in part or in totality. "A Reminder notice facilitated the remedial goals of the FLSA by protecting potential class members against their

claims being extinguished by the running limitations period" *LLora v. To-Rise, LLC,* No. 16-CV-3604 (RRM) (ST), 2017 U.S. Dist. LEXIS 112644, at *49 (E.D.N.Y. July 18, 2017).

By sending the reminder notice, the Court increases the likelihood that the putative class members will actually receive, read and understand their rights under the FLSA. In this social-media society and era of fake news, people are more likely than ever to dismiss communications as spam. By sending a reminder notice, the Court is more likely to achieve the goal of FLSA class notice - "The reminder notice is consistent with the FLSA's objective of notifying potential plaintiffs about the action and their right to participate in it." Id.

Reminder notices are not unreasonable and have been authorized in the Northern District of Georgia as well as numerous other courts in the Eleventh Circuit. *Lovett v. SJAC Fulton IND I, LLC*, No. 1:14-CV-0983-WSD-JSA, 2015 U.S. Dist. LEXIS 39727, at *25 (N.D. Ga. Mar. 23, 2015)(Granting notice by mail, email and reminder postcard because the "Court does not find them to be unreasonable on their face"). Accordingly, Plaintiffs request that this Court authorize a second notice to be sent forty-five (45) days after the initial notice.

VII A THREE YEAR SOL SHOULD BE USED FOR DEFENDANTS' WILLFUL VIOLATIONS OF THE FLSA.

The overwhelming majority of Courts use a three (3) year statute of limitations period because it is apparent that the issue of whether a willful or reckless violation has occurred will not likely be decided until trial. *See Simpkins v. Pulte Home Corp.*, 2008 WL 3927275 at p. 9 (M.D. Fla. 2008) (the determination whether that standard is met in this case is fact determinative and will not be made at the conditional certification stage); *See* also *Lytle v. Lowe's, supra; Torres-Roman v. Burger King, supra*. Where Plaintiff has alleged a willful violation, however, "it is prudent to certify a broader class of plaintiffs that can be limited

subsequently, if appropriate, during the second phase of the collective certification process." *Anglada v. Linens 'N Things, Inc.*, 2007 U.S. Dist. LEXIS 39105 (S.D.N.Y. Apr. 26, 2007).

Plaintiffs have alleged in their Complaint a willful plan of misclassification. *See* Complaint (DE #38 at ¶56). As the court stated in *Stuven*, "At the conditional certification stage, Plaintiff's allegations concerning willfulness will suffice for a three year limitations period." *Stuven*, 2013 U.S. Dist. LEXIS at *15–*16. Plaintiff has sufficiently alleged in his Complaint that a willful violation has occurred to warrant reference to the FLSA's three-year statute of limitations. *See Longcrier v. HL-A Co., Inc.*, 595 F. Supp. 2d 1218, 1242 (S.D. Ala. 2008) (approving three (3) year statute of limitations in a court-facilitated notice when the plaintiffs adequately alleged willfulness). Sufficiently alleged facts that raise an inference of willfulness are enough at this stage of the proceedings to find that a three (3) year period is appropriate. See *Whitaker v. Kablelink Communications, LLC,* No. 2013 U.S. Dist. LEXIS 157675, (M.D. Fla. Nov. 4, 2013)

Here, Plaintiffs allege that Defendants willfully misclassified Plaintiffs and the class of similarly situated in order to save millions of dollars in labor costs and to increase profits. Defendants were aware that Plaintiffs were performing laborious, mostly and primarily non-exempt repetitive job duties and working overtime hours without being paid a premium for overtime hours. Further, Plaintiffs' Complaint is supported by twenty-one (21) Opt-Ins who make the same allegations. See Exhibits 3-26. Plaintiffs have sufficiently alleged facts that support an inference that Defendants' violations of the FLSA were willful. Accordingly, a three (3) year statute of limitations period is warranted.

VIII THE COURT SHOULD ALLOW PLAINTIFFS TO PUBLISH NOTICE ON A WEBSITE AND ALLOW ELECTRONIC SIGNATURES.

Plaintiffs request that they may publish the court approved notice to the putative class on a website. In *Alexander v. Cydcor, Inc.*, plaintiffs were allowed to maintain a website to inform putative class members of their right to join the case. 2012 U.S. Dist. LEXIS 187258, *26. The web address of Plaintiffs' proposed site is: https://hertzmanagerovertime.com.

Plaintiffs further request that any putative class member who receives notice (by mail, text message or email) should be able to electronically sign their consent forms via the administrator's website. In *Schear v. Food Scope Am., Inc.*, plaintiffs in that case were granted permission "to publish an internet website where "FLSA Covered [**37] Employees" may submit a consent to join form electronically." 297 F.R.D. 114, 129 (S.D.N.Y. 2014).

The proposed electronic signature process would confirm the class member's identity, and verify the signature via email confirmation to ensure the class member's eligibility. Such practice has been held to be reasonable, efficient and legally compliant. See *Landry v. Swire Oilfield Servs,* 252 F. Supp. 3d 1079 (D.N.M. 2017). Specifically, the FLSA only requires that a consent form "be in writing." See 29 U.S.C. 216(b). The Court in *Dyson v. Stuart Petroleum Testers, Inc.,* held that electronic signatures satisfy the FLSA's 'writing' requirement, and further found that the Federal E-Sign Act, 15 U.S.C. §7001(a)(1), required the acceptance of electronically signed consent forms. 308 F.R.D. 510, 517 (W.D. Tex. August 27, 2015). See LR 5.1 and FRCP 5 (e-signatures).

In today's social-media, electronic society, websites and electronic signatures are the most efficient and effective means of obtaining consent forms from class members who wish to

join this action. Accordingly, putative class members should be able to view the court approved notice and consent on a Website to be created and electronically sign the consent form through a link to the administrator's website.

CONCLUSION

Plaintiffs have met their lenient or modest burden to demonstrate that Plaintiffs are similarly situated and that other members of the putative class would seek to join this action. Plaintiffs support their position with twenty-one (21) Declarations from Function and Location Managers from Defendants' Airport Locations across ten (10) states and two (2) US territories. Defendants treat all members of the putative class as exempt from overtime wages under a single, common unlawful pay practice, and Plaintiffs and class of similarly situated not only have the same job titles, but have the same job requirements. Plaintiffs and the putative class are all treated as EXEMPT, regardless of any individualized variances or differences in job performance and duties. Plaintiffs move to conditionally certify this case as a collective action and request the Court permit notice to be delivered to the putative class members under the Eleventh Circuit precedent. Accordingly, Plaintiffs respectfully request that this Court conditionally certify the proposed collective classes and permit and supervise notice to all current and former Managers employed by The Hertz Corporation and DTG Operations, Inc. in the three (3) years preceding the filing of the Complaint to the present day because of Defendants' past and continuing unlawful pay practices and scheme to avoid paying overtime wages. Plaintiffs respectfully request that the Court make an expeditious ruling as Plaintiffs now have twenty-one (21) Opt-In Plaintiffs and the proposed class(es) continue to grow at a steadfast pace. Furthermore, this Court should conditionally certify the class of Managers to avoid burdening the judicial system

with twenty-four (24) individual claims against the Defendants while serving the purposes of FLSA collective actions – the efficient resolution of the claims of similarly situated plaintiffs.

Dated this 15th day of April, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2019, I electronically filed the attached with the Clerk of Court using the CM/ECF system. Parties may access this filing through the Court's System.

/s/ Mitchell L. Feldman
MITCHELL L. FELDMAN, ESQ.
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