UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN GARNICK, TSHACHA ROMEO and COREY HANVEY, Individually, and on behalf of all others similarly situated,
Plaintiffs,

Case No: 8:20-cv-01474

v.

VERIZON CONNECT FLEET USA LLC,
Defendant.
_____.

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, LAUREN GARNICK, TSHACHA ROMEO, and COREY HANVEY, seek an Order from this Honorable Court: (1) conditionally certifying this case to proceed as a Section 216b collective action; (2) requiring Defendant to produce the names, US mail, email addresses and telephone numbers of each putative class member; and (3) authorizing Plaintiff to send notice of this action to all currently or formerly employed BDR and Closers that were employed by Defendant and its predecessor within the preceding three (3) years to the present.

I. INTRODUCTION

Plaintiffs GARNICK, ROMEO, and HANVEY have brought this FLSA section 21b6 collective action against Defendant, VERIZON CONNECT FLEET USA LLC ("Defendant" or "Verizon"), fka FLEETMATICS USA LLC, alleging that Defendant violated the FLSA by willfully failing to pay them and all Inside Sales Representatives (ISR) under the titles of "Closers" and Business Development Representatives (BDR) overtime compensation for all hours worked over 40 in each and every work week, and further willfully failed to properly track

and record their work hours in violation of FLSA, 29 U.S.C. §201, *et seq.* ("FLSA"), (DE 1). HANVEY became a named representative plaintiff in Plaintiffs' First Amended Complaint. (DE 13). Defendant has a long standing history of violating the FLSA and willfully failing to pay BDR overtime wages, as well as willfully failing to properly maintain accurate records of their work hours[1]. The ISR at issue worked under identical job titles: Business Development Representative SMB ("BDR"), Sr. Business Development Rep, such as Garnick and Romeo, and SMB Sales Partner aka Sales Closers ("Closers"), such as Hanvey.

Named Plaintiffs are joined by 34 current and former ISR who worked at five (5) Verizon offices: 1) Tampa, FL, 2) Charlotte, NC, 3) San Diego, CA, 4) Scottsdale, AZ (since closed), and 5) Rolling Meadows, IL. Garnick, Romeo, and other BDR had the same standardized, routine job requirements: soliciting businesses (B2B) by emails and phone calls and attempting to set up demonstration appointments for the Closers to attempt to negotiate the sale of telematics and GPS tracking for fleets of vehicles and other telematics related services. The job duties of Closers like Hanvey are also standardized, routine and primarily were attending appointments set by BDR with businesses to attempt to negotiate the sale of telematics and GPS tracking for fleets of vehicles and other telematics related services. The following key facts show Garnick, Romeo, and Hanvey are similarly situated to the Opt-In Plaintiffs who have joined and who they seek to represent, as corroborated by declarations by Opt-In Plaintiffs attached as Exhibits 1-37.

1. BDR/Closers in all offices were treated as hourly, NON-EXEMPT employees, who worked on base pay plus a monthly bonus/commission plan set up as a percentage to goal.

[1] In 2016, Defendant acquired Fleetmatics USA, LLC ("Fleetmatics"), and continued to operate the business as Fleetmatics even into 2018, and continues to maintain the same unlawful pay practices that led Fleetmatics to come to a $2,102,250.00 plus settlement with a class of ISR, including failing to put in any actual time clock. See *Gillard, Stramiello and Pate v. Fleetmatics USA LLC*, Case no. 8:16-cv-00081, DE 70, (MDFL Nov. 4, 2016).

2. Defendant prevented and discouraged all ISR from recording more than 40 hours on their timesheets, regardless of the number of hours actually worked by ISR.

3. All Plaintiffs were required to perform their identical job duties and responsibilities in similar manners, and all were subject to the same company rules, procedures, policies, unlawful pay practices and paid by identical, standardized compensation plans. Defendant has uniformity in job requirements and compensation plans applicable to all ISR through a national standard job description and company policies and procedures, such that ISR in the Tampa office were subject to the same company policies, procedures and compensation plans as any ISR working at any of Defendant's four (4) other offices.

4. Plaintiffs and the putative class of ISR are similarly situated as a single class, as they were all subjected to a common, unlawful pay practice of being forced and permitted to suffer working off the clock under a De Facto policy by being required to enter a maximum of 40 hours on their weekly timesheets regardless of the number of hours actually worked.

5. Defendant's application of a common unlawful pay practice for all ISR thereby makes 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, the putative class, and Defendant.

6. Based upon turnover and information and belief, the size of the collective or putative class is 1200 persons. Each week that goes by, class members lose their right to recover wages since the statute of limitations keeps running, and for some, delays foreclose any ability to recover the wages owed to them and creates a financial windfall for Defendant. Plaintiffs appeal

to the Court to expeditiously grant this Motion so that ISR can be notified and have the opportunity to opt-in and protect their fleeting FLSA rights.

7. Plaintiffs have met the lenient showing necessary under the 2 stage Similarly Situated analysis of the 11th Circuit to proceed collectively pursuant to Section 216(b) of the FLSA and the Plaintiffs seek to deliver the proposed Notice and Consent to Join form to the following Class or Classes of Similarly Situated persons in one (1) of two (2) alternatives: 1) a Single Class comprised of all Verizon present and former Inside Sales Representatives; or 2) two classes as follows: Class A: those who were formerly or currently employed by Verizon as Business Development Representatives, and Class B: those who were formerly or currently employed by Verizon as Closers. The proposed classes/collective groups are as follows:

ONE CLASS OR COLLECTIVE GROUP CONSISTING OF:
All persons who have worked for VERIZON CONNECT FLEET USA LLC or FLEETMATICS USA LLC as Inside Sales Representatives under the titles of: Account Executive, Account Manager, Consultant, Business Development Representative SMB, SMB Sales Partner, Closer, Associate Sales Partner, Sales Partner, Sales Representative or any other job title used to describe inside sales positions at anytime within the period of July 15, 2017 to to the present.

ALTERNATIVELY, TWO CLASSES OR COLLECTIVE GROUPS:
CLASS A: All persons who were employed by VERIZON CONNECT FLEET USA LLC or FLEETMATICS USA LLC as a Business Development Representative or any other job title used to describe the same position anytime within the period of July 15, 2017 to the present.

CLASS B: All persons who were employed by VERIZON CONNECT FLEET USA LLC or FLEETMATICS USA LLC as SMB Sales Partners or Closers, or other job titles used to describe the same position anytime within the period of July 15, 2017 to the present.

MEMORANDUM OF LAW AND LEGAL ARGUMENT

II. Legal Standard For Conditional Cert. 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 requirement 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 FRCP Rule 23, 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 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>

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, 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). "[D]etermining similarity, at this initial stage, [is] "not particularly stringent," *Hipp*, 252 F.3d at 1214, "fairly lenient," *id*. at 1218, "flexib[le]," Id. at 1219, "not heavy," *Grayson*, 79 F.3d at 1097, and "less stringent than that for joinder under Rule 20(a) or for separate trials under 42(b)," id. at 1096." *Morgan v. Family Dollar Stores*, 551 F.3d 1233, 1261 (11th Cir. 2008). Courts in the 11th Cir. utilize a two-tiered procedure that recognizes distinct burdens at different stages of the litigation process. *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 notice stage is whether Defendant's "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 (SDFL 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); *Palma v. Metropcs Wireless, Inc.*, 2013 US DIST LEXIS 175934 (MDFL 2003); *De Oca v. Gus Machado Ford of Kendall, LLC*, 2011 U.S. Dist. LEXIS 157506 (SDFL 2011); *Thomas v. Waste Pro USA, Inc.*, 360 F. Supp. 3d 1313, 1316 (MDFL 2019).

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. 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 titles or some responsibilities does not preclude notice stage certification where all employees share general duties and the defendant denies overtime pay to all.").

Employer/defendant arguments that individual variances in the manner in which each plaintiff performs their day to day job duties/requirements is not accepted by 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 ISR are subject to Defendant's

single national corporate policy (only 5 offices are at issue) and are primarily and generally performing the same job duties or requirements, namely, attempting to sell Defendant's GPS tracking services and telematics. Further, the appointment setters all worked under the job title of BDR (with minor variances), and all the persons who negotiated and closed the sales were Closers (aka SMB Sales Partners).

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).

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 this action for all ISR as a single class or two (2) separate classes of A)

BDR and B) CLOSERS, it is absolutely clear that this action should be conditionally certified to proceed as a collective action. First, all of the Opt-in Plaintiffs held the same job titles: BDR or Closers. See Decs. of present and former **BDR**: Garnick at ¶ 2; Romeo at ¶ 2; Richardson at ¶ 2; Watson at ¶ 2; Bahreini at ¶ 2; Bennett at ¶ 2; Collado at ¶ 2 (and all other BDR declarations); and see the declarations of **Closers** Hanvey at ¶ 2; Ross at ¶ 2; Zaremba at ¶ 2; Manning at ¶ 2; Taylor at ¶ 2. Some Plaintiffs were promoted to Closers from the BDR position. See Decls. of Hegler at ¶ 2; Ross at ¶ 2; Zaremba at ¶ 2; Manning at ¶ 2; Taylor at ¶ 2.

As to the second factor, geographic location, we are dealing with only 5 offices (Tampa, Charlotte, Rolling Meadows, Scottsdale (now closed), and San Diego. Although a similar geographic location weighs in favor of conditional certification, this factor by itself is "not conclusive." *Hipp*, 252 F.3d at 1219. 11th Cir. courts have GRANTED conditional certification of nationwide classes even when opt in plaintiffs are joined from just some or 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 (MDFL. Jan. 10, 2014) (conditionally certifying nationwide class of human resource managers); *Espanol v. Avis Budget Car Rental, LLC*, 2011 U.S. Dist. LEXIS 120485 (MDFL 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)(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 Loss Prevention Managers). Courts in other circuits have 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 (SDTX 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).

Plaintiffs seek to proceed collectively on behalf of all ISR in just 5 offices in 5 states, and GARNICK who worked in Scottsdale and Tampa, and Romeo (Tampa), and Hanvey (Charlotte), are joined by opt ins from all 5 office,, who by their declarations demonstrate and corroborate they are similarly situated as they all had the same job requirements, same compensation plans and were all subjected to the same pay practices alleged by the named Plaintiffs. Garnick and Romeo are joined by the following Tampa opt in plaintiffs: Richardson at ¶ 2; Bahreini at ¶ 2; Bennett at ¶ 2; Kotlyar at ¶ 2; Falcones at ¶ 2. ISR from the Charlotte, North Carolina office: declarations of Hanvey at ¶ 2; Watson at ¶ 2; Collado at ¶ 2; Hegler at ¶ 2; Williams at ¶ 2; Hall at ¶ 2; Warren at ¶ 2. ISR from the Rolling Meadows, Illinois office, See declarations of Venkatasamy at ¶ 2; Grinnell at ¶ 2; Koenig at ¶ 2; Raimondo at ¶ 2; Mitchell at ¶ 2; Evans at ¶ 2. ISR from the Scottsdale, Arizona office, declarations of Garnick at ¶ 2; Hendle at ¶ 2. ISR from the San Diego, California office, see declarations of Small at ¶ 2 and Rubio at ¶ 2.

The third factor, whether the violations occurred during the same time period, the same FLSA violations here all occurred throughout 2017 to the present. On August 1, 2016, Verizon announced its purchase of Fleetmatics for $2,400,000,000.00. See Exhibit 42 But not until March 6, 2018 was the company Fleetmatics officially changed to Verizon. See Exhibit 43. An employee does not lose his or her statutory rights simply because of a change in the employer's business, and "should be able to enforce against a successor a claim or judgment that he could

have successfully enforced against a predecessor" absent extraordinary circumstances. *Kerns v. Lamot Indus. LLC*, No. 3:16cv76-RV/EMT, 2017 U.S. Dist. LEXIS 169110, at *13 (N.D. Fla. June 1, 2017) (quoting *Musikiwamba v. ESSI*, 760 F.2d 740 (7th Cir. 1985).

Plaintiffs here were employed with both Verizon and Fleetmatics spanning from 2009 to the present they claim they were willfully prevented from reporting more than 40 hours worked and being paid for overtime hours within the years 2017 - 2020; and declare Defendant failed to keep and maintain proper time records. See Plaintiff Decls. Exh 1-37. Plaintiffs seek to recover overtime wages for all similarly situated persons for the 3 years of July 15, 2017 to present; this period includes ISR who worked for FLEETMATICS USA LLC, including **Garnick, Venkatasamy, Hall, Hanvey, Ross, Trzcinski, Threats, Zaremba, Manning, Taylor, Grinnell, Evans, and Warren**. See Ex. 44-45, paystubs of Garnick showing she worked for Fleetmatics and later seamlessly paid by Verizon. Moreover, Defendant has produced payroll records for the Plaintiffs which as well include all the time of Plaintiffs who worked for FLEETMATICS.

Courts certify FLSA collective actions with 3 year statute of limitations class periods upon allegations of willful FLSA violations, and the same is alleged here by Plaintiffs in their Complaint. *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 (MDFL 1/10/14)*, supra.,* (approving collective action for 3 yr. SOL period contrary to various defense arguments); as well as in the SDFL (See *Torres-Roman v. Burger King*, 2015 U.S. Dist. LEXIS 188963 Dkt. 66 (SD FL 2016).

As to the 4th and 5th factors, the submitted opt in plaintiff Declarations show a common pay practice or scheme applied by Defendant to all of its ISR to avoid paying overtime

compensation. First, all Plaintiffs declare they routinely worked overtime hours throughout their employment without being paid for all of these hours under a willful scheme to avoid paying overtime applicable in all five (5) offices, despite knowledge by management they were working overtime. Decls. of Garnick at ¶ 29; Romeo at ¶ 29; Hanvey at ¶ 25; Richardson at ¶ 23; Watson at ¶ 26; Bahreini at ¶ 25; Bennett at ¶ 28; Collado at ¶ 26; Hegler at ¶ 21; Kotlyar at ¶ 26; Venkatasamy at ¶ 25; Falcones at ¶ 28; Williams at ¶ 22; Wise at ¶ 28; Hall at ¶ 21; Ross at ¶ 20; Small at ¶ 25; Jones at ¶ 28; Trzcinski at ¶ 25; Threats at ¶ 27; Zaremba at ¶ 20; Manning at ¶ 20; Nitka at ¶ 25; Taylor at ¶ 20; Grinnell at ¶ 29; Kennedy at ¶ 26; Koenig at ¶ 26; Raimondi at ¶ 26; Mitchell at ¶ 27; Hendle at ¶ 27; Merola at ¶ 27; Maya at ¶ 25; Schnulle at ¶ 28; Bates at ¶ 28; Evans at ¶ 26; Warren at ¶ 24; Rubio at ¶ 25.

Secondly, all BDR were paid on the same compensation plan of a base hourly pay plus bonus. See Decls. of Garnick at ¶ 10; Romeo at ¶ 8; Richardson at ¶ 6; Watson at ¶ 8; Bahreini at ¶ 8; Bennett at ¶ 9; Collado at ¶ 8; Hegler at ¶ 8; Kotlyar at ¶ 9; Venkatasamy at ¶ 8; Falcones at ¶ 8; Williams at ¶ 8; Wise at ¶ 8; Hall at ¶ 8; Small at ¶ 8; Jones at ¶ 9; Trzcinski at ¶ 8; Threats at ¶ 9; Nitka at ¶ 8; Grinnell at ¶ 9; Kennedy at ¶ 8; Koenig at ¶ 8; Raimondi at ¶ 8; Mitchell at ¶ 8; Hendle at ¶ 8; Merola at ¶ 9; Maya at ¶ 8; Schnulle at ¶ 9; Bates at ¶ 8; Evans at ¶ 8; Rubio at ¶ 8. See Exhibit 46, showing that BDR, regardless of office location, had their sales performances ranked amongst all BDR. And just like BDR, Closers were paid a base hourly rate of pay, plus eligible commissions on a monthly basis. See Decls. of Hanvey at ¶ 8; Ross at ¶ 5; Zaremba at ¶ 5; Manning at ¶ 5; Taylor at ¶ 5; Warren at ¶ 7. All closers, just like BDR were required to submit time sheets with no more than 40 hours on it. See Decls. of Ross at ¶ 8;

Zaremba at ¶ 8; Manning at ¶ 8; Taylor at ¶ 8. Moreover, closers were hourly paid employees just like BDR. See Decl. of Warren at ¶ 17, he was initially paid overtime pay for hours over 40.

Defendant's management conveyed to ISR that work performed before or after the scheduled shift time or during the 1 hour lunch break would not be compensated, although they could with management knowledge and approval, work these overtime hours as long as they didn't submit or claim the hours. See Decls. of Garnick at ¶ 19; Romeo at ¶ 18; Richardson at ¶¶ 12,16; Watson at ¶ 12; Bahreini at ¶ 17; Bennett at ¶ 20; Collado at ¶ 12; Hegler at ¶ 19; Kotlyar at ¶ 19; Venkatasamy at ¶ 18; Falcones at ¶ 21; Williams at ¶ 19; Wise at ¶ 21; Hall at ¶ 17; Small at ¶ 18; Jones at ¶ 21; Trzcinski at ¶ 18; Threats at ¶ 20; Nitka at ¶ 18; Grinnell at ¶ 21; Kennedy at ¶ 18; Koenig at ¶ 18; Raimondi at ¶ 18; Mitchell at ¶ 19; Hendle at ¶ 19; Merola at ¶ 19; Maya at ¶ 18; Schnulle at ¶ 20; Bates at ¶ 20; Evans at ¶ 19; Warren at ¶ 22; Rubio at ¶ 18. Similarly, Defendant's management misled Closers to believe they were not entitled to overtime wages. See Decls. of Hanvey at ¶ 18; Ross at ¶ 9; Zaremba at ¶ 9; Manning at ¶ 9; Taylor at ¶ 9. All ISR were permitted to suffer to work off the clock as they were not allowed to enter more than 40 hours on their weekly timesheet, regardless of the number of hours actually worked and with some of Defendant's managers mechanically entering in 40 hours per week for ISR. See Decls. of Garnick at ¶¶ 15-17; Romeo at ¶¶ 12-14; Hanvey at ¶¶ 12-14; Richardson at ¶¶ 10-11, 18; Watson at ¶¶ 16-18 ; Bahreini at ¶¶ 13-15; Bennett at ¶¶ 13-17; Collado at ¶¶ 16-18; Hegler at ¶¶ 12-17; Kotlyar at ¶¶ 13-16; Venkatasamy at ¶¶ 12-15; Falcones at ¶¶ 12-17; Williams at ¶¶ 12-14; Wise at ¶¶ 12-15; Hall at ¶¶ 12-16; Ross at ¶¶ 8,12; Small at ¶¶ 12-14; Jones at ¶¶ 13-17; Trzcinski at ¶¶ 12-14; Threats at ¶¶ 14-16; Zaremba at ¶ 13; Manning at ¶ 13; Nitka at ¶¶ 12-14; Taylor at ¶ 12; Grinnell at ¶¶ 14-17; Kennedy at ¶¶ 12-14; Koenig at ¶¶ 12-15; Raimondi at ¶¶

12-15; Mitchell at ¶¶ 12-15; Hendle at ¶¶ 12-15; Merola at ¶¶ 14-16; Maya at ¶¶ 12-14; Schnulle at ¶¶ 14-16; Bates at ¶¶ 12-16; Evans at ¶¶ 12-15; Warren at ¶¶ 9-12; Rubio at ¶¶ 12-14.

Additional facts demonstrating similarity among the ISR:

a) All ISR did not have the discretion to alter the company corporate schedule or come and go as they pleased. See Decls. of Garnick at ¶ 28; Romeo at ¶ 28; Hanvey at ¶ 22; Richardson at ¶ 22; Watson at ¶ 25; Bahreini at ¶ 24; Bennett at ¶ 27; Collado at ¶ 25; Kotlyar at ¶ 25; Venkatasamy at ¶ 24; Falcones at ¶ 27; Williams at ¶ 21; Wise at ¶ 27; Hall at ¶ 24; Ross at ¶ 19; Small at ¶ 24; Jones at ¶ 27; Trzcinski at ¶ 24; Threats at ¶ 26; Zaremba at ¶ 19; Manning at ¶ 19; Nitka at ¶ 24; Taylor at ¶ 18; Grinnell at ¶ 28; Kennedy at ¶ 24; Koenig at ¶ 25; Raimondi at ¶ 25; Mitchell at ¶ 26; Hendle at ¶ 26; Merola at ¶ 26; Maya at ¶ 24; Schnulle at ¶ 27; Bates at ¶ 27; Evans at ¶ 25; Warren at ¶ 23; Rubio at ¶ 24.

b) The job duties of ISR were routine, standardized and highly monitored and scrutinized on a daily basis by Defendant's managers. See Decls. of Garnick at ¶ 8; Romeo at ¶ 6; Hanvey at ¶ 6; Richardson at ¶ 5; Watson at ¶ 6; Bahreini at ¶ 6; Bennett at ¶ 7; Collado at ¶ 6; Hegler at ¶ 6; Kotlyar at ¶ 7; Venkatasamy at ¶ 6; Falcones at ¶ 6; Williams at ¶ 6; Wise at ¶ 6; Hall at ¶ 7; Ross at ¶ 7; Small at ¶ 6; Jones at ¶ 7; Trzcinski at ¶ 6; Threats at ¶ 7; Zaremba at ¶ 7; Manning at ¶ 7; Nitka at ¶ 6; Taylor at ¶ 7; Grinnell at ¶ 7; Kennedy at ¶ 6; Koenig at ¶ 6; Raimondi at ¶ 6; Mitchell at ¶ 6; Hendle at ¶ 6; Merola at ¶ 7; Maya at ¶ 6; Schnulle at ¶ 7; Bates at ¶ 6; Evans at ¶ 6; Warren at ¶ 6; Rubio at ¶ 6. See Exhibit 47, showing a single, corporate mandated job functions and duties of all BDR and Closers.

c) Defendant's management was aware ISR were working before and after the set schedule, working through lunch breaks, and performing work outside of the office. See Decls. of Garnick at ¶ 24; Romeo at ¶ 24; Hanvey at ¶ 20; Richardson at ¶ 12; Watson at ¶ 23; Bahreini at ¶ 19; Bennett at ¶ 22; Collado at ¶ 27; Hegler at ¶ 18; Kotlyar at ¶ 21; Venkatasamy at ¶ 26; Falcones at ¶ 23; Williams at ¶ 23; Wise at ¶ 23; Hall at ¶ 22; Ross at ¶¶ 10,15; Small at ¶ 20; Jones at ¶ 23; Trzcinski at ¶ 20; Threats at ¶ 22; Zaremba at ¶¶ 10-15; Manning at ¶ 10; Nitka at ¶ 20; Taylor at ¶ 14; Grinnell at ¶ 24; Kennedy at ¶ 20; Koenig at ¶ 21; Raimondi at ¶ 21; Mitchell at ¶ 22; Hendle at ¶ 22; Merola at ¶¶ 22,28; Maya at ¶ 20; Schnulle at ¶¶ 23, 29; Bates at ¶ 23; Evans at ¶ 27; Warren at ¶¶ 15-18; Rubio at ¶ 20.

d) All ISR were scheduled to be at the office for a mandatory overtime schedule of 45 hours per week (nine (9) hours with a one (1) lunch break automatically deducted from their pay). However, whether a BDR took a lunch break or not, Defendant automatically deducted one (1) hour from the timesheet for the lunch break. See Decls. of Garnick at ¶ 13; Romeo at ¶ 11; Richardson at ¶ 9; Watson at ¶ 15; Bahreini at ¶ 12; Bennett at ¶ 12; Collado at ¶ 15; Hegler at ¶ 11; Kotlyar at ¶ 12; Venkatasamy at ¶ 11; Falcones at ¶ 11; Williams at ¶ 11; Wise at ¶ 11; Hall at ¶ 11; Hanvey at ¶ 10; Jones at ¶ 12; Trzcinski at ¶ 11; Threats at ¶ 12; Nitka at ¶ 11; Grinnell at ¶ 13; Kennedy at ¶ 11; Koenig at ¶ 11; Raimondi at ¶ 11; Mitchell at ¶ 11; Hendle at ¶ 11; Merola at ¶ 13; Maya at ¶ 11; Schnulle at ¶ 12; Bates at ¶ 11; Evans at ¶ 11; Warren at ¶ 8. In the San Diego office, ISR worked a schedule of 42.5 hours per week, with the one (1) hour

lunch break automatically being deducted. See Decls. of Small at ¶ 11; Rubio at ¶ 11. See Exhibit 41, email from one of Defendant's managers to an opt in stating "Working through lunch does not count."

e) There was no time clock, and management led them to believe that working through lunch was not compensable time; and there was no actual opportunity or means to clock in and out the times they started and stopped working, time for breaks or report the times they worked through the meal breaks. See Decls. of Garnick at ¶ 18; Romeo at ¶ 16; Richardson at ¶ 12; Watson at ¶ 18; Bahreini at ¶ 15; Bennett at ¶ 15; Collado at ¶ 18; Hegler at ¶ 12; Kotlyar at ¶ 14; Venkatasamy at ¶ 13; Falcones at ¶ 13; Williams at ¶ 12; Wise at ¶ 13; Hall at ¶ 12; Hanvey at ¶ 12; Small at ¶ 12; Jones at ¶ 15; Trzcinski at ¶ 12; Threats at ¶ 14; Nitka at ¶ 12; Grinnell at ¶ 15; Kennedy at ¶ 12; Koenig at ¶ 13; Raimondi at ¶ 13; Mitchell at ¶ 13; Hendle at ¶ 13; Merola at ¶ 13; Maya at ¶ 12; Schnulle at ¶ 14; Bates at ¶ 14; Evans at ¶ 13; Warren at ¶ 10; Rubio at ¶ 12.

f) All BDR were permitted and encouraged to work extra hours such as coming in early, working through meal breaks and staying late, such that Verizon could see they were working more than 40 hours and incurring overtime to meet Key Performance Indicators (KPI) performance metrics, reach production goals or quotas to avoid being fired. See Decls. of Garnick at ¶ 11; Romeo at ¶ 9; Richardson at ¶ 7; Watson at ¶ 9; Bahreini at ¶ 9; Bennett at ¶ 10; Collado at ¶ 9; Hegler at ¶ 9; Kotlyar at ¶ 10; Venkatasamy at ¶ 8; Falcones at ¶ 9; Williams at ¶ 9; Wise at ¶ 9; Hall at ¶ 9; Small at ¶ 9; Jones at ¶ 10; Trzcinski at ¶ 9; Threats at ¶ 10; Nitka at ¶ 9; Grinnell at ¶ 10; Kennedy at ¶ 9; Koenig at ¶ 9; Raimondi at ¶ 9; Mitchell at ¶ 9; Hendle at ¶ 9; Merola at ¶ 10; Maya at ¶ 9; Schnulle at ¶ 10; Bates at ¶ 9; Evans at ¶¶ 7,9; Rubio at ¶ 9.

g) All BDR had the same job requirements which included soliciting businesses by email and telephone to set up appointments for other sales people to demonstrate and negotiate the sale of telematics and GPS tracking for fleets of vehicles and other telematics related services. See Decls. of Garnick at ¶ 5: Romeo at ¶ 7; Richardson at ¶ 4; Watson at ¶ 5; Bahreini at ¶ 5; Bennett at ¶ 6; Collado at ¶ 5; Hegler at ¶ 5; Kotlyar at ¶ 6; Venkatasamy at ¶ 5; Falcones at ¶ 5; Williams at ¶ 5; Wise at ¶ 5; Hall at ¶ 5; Small at ¶ 5; Jones at ¶ 6; Trzcinski at ¶ 5; Threats at ¶ 6; Nitka at ¶ 5; Grinnell at ¶ 6; Kennedy at ¶ 5; Koenig at ¶ 5; Raimondi at ¶ 5; Mitchell at ¶ 5; Hendle at ¶ 5; Merola at ¶ 6; Maya at ¶ 5; Schnulle at ¶ 6; Bates at ¶ 5; Evans at ¶ 5; Rubio at ¶ 5

h) All Closers had the same job requirements which included attending appointments set up by BDR employees with other businesses to attempt to negotiate the sale of telematics and GPS tracking for fleets of vehicles and other telematics related services. See Decls. of Hanvey at ¶ 5; Ross at ¶ 6; Zaremba at ¶ 6; Manning at ¶ 6; Taylor at ¶ 6; Warren at ¶ 5.

i) All BDR and Closers were engaged in sales activities working from Defendants' offices, and that their job requirements were standardized, identical not just the same, regardless of the location they worked at. ISR from the Tampa office: Garnick at ¶ 8; Romeo at ¶ 6; Richardson at ¶ 5; Bahreini at ¶ 6; Bennett at ¶ 7; Kotlyar at ¶ 7; Falcones at ¶ 6. ISR from the Charlotte office: Hanvey at ¶ 6; Watson at ¶ 6; Collado at ¶ 6; Hegler at ¶ 6; Williams at ¶ 6; Hall at ¶ 7; Warren at ¶ 6. ISR from the Rolling Meadows office: Venkatasamy at ¶ 6; Grinnell at ¶ 7; Koenig at ¶ 6;

Raimondo at ¶ 6; Mitchell at ¶ 6; Evans at ¶ 6. ISR from the Scottsdale office: Garnick at ¶ 2; Hendle at ¶ 6. ISR from the San Diego office: Small at ¶ 6 and Rubio at ¶ 6.

The preceding facts paint a clear picture for the Court that the named Plaintiffs and the Opt-In Plaintiffs are "similarly situated" with regard to their job requirements and compensation, and that they were the victims of a common, unlawful pay practice and scheme to avoid paying overtime wages such that Plaintiffs should be permitted to proceed collectively and notify all others similarly situated of this action and their right to join this action and file a claim.

Plaintiffs have far exceeded the lenient standard for stage 1 conditional cert action for all ISR, as they have shown a "reasonable basis" and NEXUS between them and the ISR they seek to represent, and which demonstrates that "there are other similarly situated employees" who would seek to join. *Morgan*, 551 F.3d at 1260. Defendant has utilized a standardized job description and job duties or requirements for all BDR and Closers as stated in the declarations. Going even further, the exhibits and declarations demonstrate Defendant created and subjected Plaintiffs in all (5) offices to a common unlawful pay practice of not paying overtime compensation, by operating **a de facto policy against ISR reporting more than 40 hours or reporting their actual work hours, and permitting them to suffer to work off the clock. (except there was not a time clock that FLEETMATICS or VERIZON ever installed) and they failed to maintain accurate time records as required by the FLSA.** See 29 CFR Part 516. In all offices, Defendant permitted, pressured and encouraged BDR to work as many overtime hours as needed to meet goals, quotas and performance metrics, and when they came in early, stayed late or worked through lunches, management was readily there to see them and approve it. See Decls. of Garnick at ¶ 24; Romeo at ¶ 24; Hanvey at ¶ 20; Richardson at ¶ 12; Watson at ¶ 23; Bahreini at ¶ 19; Bennett at ¶ 22; Collado at ¶ 27; Hegler at ¶ 18; Kotlyar at ¶ 21;

Venkatasamy at ¶ 26; Falcones at ¶ 23; Williams at ¶ 23; Wise at ¶ 23; Hall at ¶ 22; Ross at ¶¶ 10,15; Small at ¶ 20; Jones at ¶ 23; Trzcinski at ¶ 20; Threats at ¶ 22; Zaremba at ¶¶ 10-15; Manning at ¶ 10; Nitka at ¶ 20; Taylor at ¶ 14; Grinnell at ¶ 24; Kennedy at ¶ 20; Koenig at ¶ 21; Raimondi at ¶ 21; Mitchell at ¶ 22; Hendle at ¶ 22; Merola at ¶¶ 22,28; Maya at ¶ 20; Schnulle at ¶¶ 23, 29; Bates at ¶ 23; Evans at ¶ 27; Warren at ¶¶ 15-18; Rubio at ¶ 20.

Managers made it clear that BDR were not to report more than 40 hours on time sheets, Decls. Romeo at ¶¶ 21,22; Richardson at ¶ 12; Bennett at ¶ 23; Hegler at ¶ 15; Hall at ¶ 14; Mitchell at ¶ 20; Hendle at ¶ 20; Merola at ¶ 20; Schnulle at ¶ 21; Bates at ¶ 21; Evans at ¶ 20; and management participated in falsified timesheets by filling in timesheets to reflect just 40 hours for the week for BDR and Closers, regardless of the actual hours they worked. See Decls. of Romeo at ¶ 17; Richardson at ¶ 14; Watson at ¶ 16; Bennett at ¶ 13; Collado at ¶ 17; Kotlyar at ¶ 13; Falcones at ¶ 12; Wise at ¶ 12; Hanvey at ¶ 16; Ross at ¶ 12; Jones at ¶ 13; Threats at ¶ 13; Zaremba at ¶ 13; Manning at ¶ 13; Taylor at ¶ 12; Grinnell at ¶ 14; Koenig at ¶ 12; Raimondi at ¶ 12; Mitchell at ¶ 12; Hendle at ¶ 12; Bates at ¶ 12; Evans at ¶ 12; Warren at ¶¶ 9,16.

Finally, Management would tell BDR that either the overtime hours were on their own dime and not going to be paid, or that they had to get pre-approved for working the overtime hours, but meanwhile they could work these hours as long as they didn't report or claim them. See Decls. of Garnick at ¶ 19; Romeo at ¶ 18; Richardson at ¶¶ 12,16; Watson at ¶ 12; Bahreini at ¶ 17; Bennett at ¶ 20; Collado at ¶ 12; Hegler at ¶ 19; Kotlyar at ¶ 19; Venkatasamy at ¶ 18; Falcones at ¶ 21; Williams at ¶ 19; Wise at ¶ 21; Hall at ¶ 17; Small at ¶ 18; Jones at ¶ 21; Trzcinski at ¶ 18; Threats at ¶ 20; Nitka at ¶ 18; Grinnell at ¶ 21; Kennedy at ¶ 18; Koenig at ¶ 18; Raimondi at ¶ 18; Mitchell at ¶ 19; Hendle at ¶ 19; Merola at ¶ 19; Maya at ¶ 18; Schnulle at

¶ 20; Bates at ¶ 20; Evans at ¶ 19; Warren at ¶ 22; Rubio at ¶ 18. Based upon the foregoing facts, Declarations and exhibits, Plaintiffs have met the lenient standard demonstrating they are similarly situated to the opt in plaintiffs and those they seek to represent, such that this Court should expeditiously certify this case to conditionally proceed as a 216b collective action.

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 (SDFL. 2014); *Mackenzie v. Kindred Hosps. E.*, 276 F. Supp. 2d 1211, 1220 (MDFL 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 (MDFL 1/24/2004) (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 **11** opt-in plaintiffs); *Sellers v. Sage Software, Inc.*, No. 1:17-CV-03614-ELR, 2018 U.S. Dist. LEXIS 188420 (N.D. Ga. May 25, 2018) (conditionally certifying class of ISR based upon 12

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 **(1)** opt-in plaintiff).

The fact that **34 people have Opted into this Case from all 5 offices** evidences there are others interested in joining this suit and given Notice of this action, others will seek to join. See Decls. of Garnick at ¶ 33; Romeo at ¶ 31; Hanvey at ¶ 25; Richardson at ¶ 26; Watson at ¶ 28; Bahreini at ¶ 27; Bennett at ¶ 30; Collado at ¶ 28; Hegler at ¶ 23; Kotlyar at ¶ 28; Venkatasamy at ¶ 27; Falcones at ¶ 30; Williams at ¶ 24; Wise at ¶ 30; Hall at ¶ 26; Ross at ¶ 21; Small at ¶ 27; Jones at ¶ 30; Trzcinski at ¶ 27; Threats at ¶ 29; Zaremba at ¶ 21; Manning at ¶ 21; Nitka at ¶ 27; Taylor at ¶ 21; Grinnell at ¶ 31; Kennedy at ¶ 27; Koenig at ¶ 28; Raimondi at ¶ 28; Mitchell at ¶ 29; Hendle at ¶ 29; Merola at ¶ 29; Maya at ¶ 27; Schnulle at ¶ 30; Richardson at ¶ 6; Watson at ¶ 8; Bahreini at ¶ 8; Bennett at ¶ 9; Collado at ¶ 8; Hegler at ¶ 8; Kotlyar at ¶ 9; Venkatasamy at ¶ 8; Falcones at ¶ 8; Williams at ¶ 8; Wise at ¶ 8; Hall at ¶ 8; Small at ¶ 8; Jones at ¶ 9; Trzcinski at ¶ 8; Threats at ¶ 9; Nitka at ¶ 8; Grinnell at ¶ 9; Kennedy at ¶ 8; Koenig at ¶ 8; Raimondi at ¶ 8; Mitchell at ¶ 8; Hendle at ¶ 8; Merola at ¶ 9; Maya at ¶ 8; Schnulle at ¶ 9; Bates at ¶ 30. Such declarations have been found to be sufficient to demonstrate interest in the lawsuit and to conditionally certify a class. *Stuven v. Tex. De Braz. Tampa Corp.*, 2013 U.S. Dist. LEXIS 22240 (MDFL 02/19/2013). "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 (MDFL 11/22/2006). Likewise, in *Albert v. HGS Colibrium*, the Court conditionally certified a class based upon just two (2) supporting declarations. Case No. 1:16-cv-3072-WSD, 2017 U.S. Dist. LEXIS 67180 (NDGA 05/3/2017). By providing 34 Opt-In

Plaintiffs alleging the same common policies, pay practices and job requirements, Plaintiffs have demonstrated enough interest in this lawsuit to warrant conditional certification and for NOTICE to be delivered to either a single class of all ISR, or, to 2 separate classes. Plaintiffs estimate there are upwards of 1200 members in the classes considering turnover within the past three (3) years. *See* First Amended Compl. at ¶ 66.

Based upon the Complaint and the 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 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 Collectively in Similar Cases, even cases involving 50 states and hundreds of locations.

In a factually similar case involving ISR working from 2 offices, the NDGA conditionally certified the case to proceed collectively. *Sellers v. Sage Software, Inc.*, 1:17-CV-03614-ELR, 2018 U.S. Dist. LEXIS 188420 (NDGa May 25, 2018). In *Sellers*, plaintiff was joined by 12 opt-in ISR plaintiffs working from 2 offices in Georgia involving nearly identical claims and allegations here: ISR working under an unlawful de facto policy and working off the clock. Here, the 3 Plaintiffs are joined by 34 Opt-In Plaintiffs from a total of 5 offices/locations, which is just 3 more offices than in *Sellers;* and there are opt in Plaintiffs from all five (5) of the offices who corroborate everything Garnick, Romeo and Hanvey allege and declare they were subjected to the same unlawful pay practices as well as routinely working more than 40 hours without being paid for al the hours worked, just like the named Plaintiffs. In *Thomas v. Waste Pro USA, Inc.*, an FLSA collective action was conditionally certified where the

plaintiffs showed they were subject to the same compensation plans, held similar positions, and held the same title. 360 F. Supp. 3d 1313 (M.D. Fla. 2019). Similarly, this class should be conditionally certified as Plaintiffs and the putative class were subject to the same compensation plan, hourly pay plus commissions, held similar positions, attempting to sell Defendant's GPS and telematics services, and the same title, BDR or Closer.

Plaintiffs move this Court for conditional certification of a collective action and an order finding that Plaintiffs have met or demonstrated the lenient standard to show they are similarly situated to the opt in plaintiffs who they seek to represent and who comprise the class of ISR, including BDR and closers who worked for Defendant. Defendant is free AFTER discovery, at stage two to demonstrate that the Plaintiffs here are not similarly situated. But for now, at this stage, as per the declarations of all the Plaintiffs here, and the supporting documentation, including paystubs, and email, without dispute demonstrate that all the BDR: a) had the same competition plan consisting of a base hourly rate and a monthly commission or bonus, b) had the same job duties and requirements, and c) were all subjected to the same scheme or plan by Defendant to avoid paying overtime wages; d) all worked in each respective offer the same standardized mandatory overtime schedule of 42.5 or 45 hours per week (42.5 in San Diego), 9 hour days (8.5 in San Diego) with an automatic deduction from their pay each day of 1 hour for the lunch break regardless of whether they worked through some or all of that lunch break. All the BDR solicited businesses (B2B) and set appointments for the sales closers to attempt to demonstrate and sell the Fleetmatics, and later Verizon Connect, Fleet GPS tracking and telematics services. Their jobs were routine, mundane, and standardized: solicit by email and phones with a sales pitch, and then closers would attend appointments and present computer

demonstrations and attempt to close the deal. Work as many hours as needed to hit sales quotas, and performance metrics all while being discouraged from claiming or reporting overtime hours; thus being permitted to suffer to work off the clock.

As Defendant failed to institute any actual time clock in any of the five (5) offices, despite having been subjected to the identical claims of BDR in the case of ***Brown, Stramiello and Pate v. FLEETMATICS USA LLC,*** Case No.8:16-cv-00081, DE 70, (MDFL Nov. 4, 2016)(order approving settlement agreement of $2,102,250.00); it was business as usual and the unlawful pay practices continued without change. See Decls. of Garnick at ¶¶ 2, 18; Venkatasamy at ¶¶ 2, 16-17; Hall at ¶¶ 2, 19; Hanvey at ¶¶ 2, 15; Ross at ¶¶ 2, 20; Trzcinski at ¶¶ 2, 15-17; Threats at ¶¶ 2, 17-19; Zaremba at ¶¶ 2, 20; Manning at ¶¶ 2, 20 Taylor at ¶¶ 2, 20 Grinnell at ¶¶ 2, 18; Evans at ¶¶ 2, 16-17 and Warren at ¶¶ 2, 13-15 who state they were a BDR for Fleetmatics USA LLC, and continued to work overtime hours without being paid for all the hours, under the approval and knowledge of management. Thus, as per these opt in Plaintiffs, and paystubs of Garnick Exhibits 44,45 and Exhibits 42,43 Notice must go to all persons who worked for Fleetmatics USA during the respective 3 years 2017-2020. As per the paystubs, after the purchase of Fleetmatics USA LLC by Verizon, it continued to operate the Fleetmatics company until as late as April 2018. An employee does not lose his or her statutory rights simply because of a change in the employer's business, and "should be able to enforce against a successor a claim or judgment that he could have successfully enforced against a predecessor" absent extraordinary circumstances. *Kerns v. Lamot Indus. LLC,* No. 3:16cv76-RV/EMT, 2017 U.S. Dist. LEXIS 169110, at *13 (NDFL 6/1/2017) (quoting Musikiwamba v. ESSI, 760 F.2d 740 (7th Cir. 1985). The only extraordinary circumstances here is that Verizon followed and

continued Fleetmatics' unlawful pay policies. Verizon is the successor and is responsible for, and has successor liability for the wage claims of the ISR who worked in the entire 3 year applicable period of time. It didn't just buy the assets, it bought the whole kit and kaboodle too including all the employees and then continued the unlawful pay practices. As stated by opt in plaintiff Evans, who was a part of the previous overtime settlement involving Fleetmatics, nothing really changed after the settlement and the switch to Verizon as he was still working overtime hours without being paid for all of the hours, and all with managements' knowledge and encouragement. See Decl. of Evans at ¶ 28.

The facts and allegations of the plaintiffs in *Sage* are nearly identical to those of the Plaintiffs here, and the Court should follow the courts in *Sage* and others and conditionally certify this action. See *Sage, Supra*; *Stuven v. Tex. De Braz. Tampa Corp.,* 2013 U.S. Dist. LEXIS 22240 (M.D. Fla. Feb. 19, 2013); *Shakib v. Back Bay Rest. Group, Inc.,* 2011 U.S. Dist. LEXIS 124143 (D.N.J. Oct. 26, 2011); *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, for 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)[2] and *Bradford v. CVS*, 2013 U.S. Dist. LEXIS 14403.

[2] "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).

In sum, Plaintiffs have submitted substantial evidence in support of their Motion including declarations of Garnick, Romeo and Hanvey and 34 of opt-ins along with Exhibit 46 showing all BDR were subject to the same bonus plan and their performance was tracked against BDR from the other offices and Exhibit 47 which shows there was a single, corporate mandated job functions and duties for BDR and Closers, all of which demonstrate they are similarly situated. Defendant Verizon cannot dispute they had the same jobs, job titles and compensation plans for all respective BDR and Closers regardless of which of the 5 offices worked from. Defendant cannot dispute it did not have a time clock in place such that BDR and closers did not clock their exact work hours, including hours if any they took for meal/lunch breaks they all routinely worked through. Most courts agree that if the plaintiffs and opt in plaintiffs have the same compensation plans and same job requirements or job duties they meet the lenient standard or definition of similarly situated. See *Thomas v. Waste Pro USA, Inc.*, 360 F. Supp. 3d 1313 (M.D. Fla. 2019); *Wade v. Furmanite Am., Inc.*, 2018 U.S. Dist. LEXIS 75624 (S.D. Tex. May 4, 2018); *Gregory v. Stewart's Shops Corp.*, 2016 U.S. Dist. LEXIS 89576 (N.D.N.Y. July 8, 2016); *Jewell v. Aaron's, Inc.*, 2012 U.S. Dist. LEXIS 92285 (NDGA June 28, 2012).

In Declarations Exhibits 1-37 Plaintiffs have presented specific facts to demonstrate they are similarly situated including that they: a) all performed the same, or at least similar job duties; b) all performed these job duties in similar manners; c) they all worked in excess of 40 hours per week and had a standardized mandatory overtime schedule of 45 hours, 9 hour days (except San Diego that had 42.5 hour workweek). Further, Plaintiffs have demonstrated in the declarations that all ISR were subjected to Defendant's willful and intentional common policy and practice of not paying its ISR overtime compensation through a De Facto policy against reporting all their

work hours by discouraging it; and worse, by participating in the fraudulent submission of time records by managers who filled in 40 hours per week for the ISR, regardless of the actual hours the ISR worked. See Declarations of Romeo at ¶ 17; Richardson at ¶ 14; Watson at ¶ 16; Bennett at ¶ 13; Collado at ¶ 17; Kotlyar at ¶ 13; Falcones at ¶ 12; Wise at ¶ 12; Hanvey at ¶ 16; Ross at ¶ 12; Jones at ¶ 13; Threats at ¶ 13; Zaremba at ¶ 13; Manning at ¶ 13; Taylor at ¶ 12; Grinnell at ¶ 14; Koenig at ¶ 12; Raimondi at ¶ 12; Mitchell at ¶ 12; Hendle at ¶ 12; Bates at ¶ 12; Evans at ¶ 12; Warren at ¶¶ 9,16. If Defendant's sales managers or supervisors know the time sheets or time records being presented to payroll, HR and upper management are inaccurate and fictitious, then clearly Defendant knows it!

Allowing certification of, and notification to this putative class avoids multiple lawsuits where numerous employees have been harmed by the same unlawful pay practices and policies. *See Hoffman-LaRoche*, 493 U.S. at 470 ("The judicial system benefits by efficient resolution in one proceeding of common issues of law and fact arising from the same alleged discriminatory activity."). Factoring in that Defendant's predecessor[3], FLEETMATICS subjected ISR to the same unlawful pay practices complained of herein, and which carried over seamlessly to the ISR here for Verizon upon the purchase and renaming of the company, this action should be conditionally certified to proceed collectively as well for all persons who worked as ISR from July 15, 2017 to the present.

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

At this early point in the case, the instant action is properly assessed pursuant to Stage 1, or Step 1 of the two-step certification process. In other words, this is the "notice stage," not the

[3] *Gillard, Stramiello and Pate v. Fleetmatics USA LLC*, Case no. 8:16-cv-00081

decertification stage where the burden would be on the Defendant.[4] Plaintiffs anticipate Defendant may respond with competing declarations and factual arguments. Such arguments regarding the factual nature of Plaintiffs' claims and Defendant's defenses, 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) (the question of whether individual differences between class members makes their claims ill-suited for a collective action will only 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 of national class, refusing to consider factual disputes raised by defendant where plaintiff offered affidavits establishing a similarly situated class based upon just four (4) opt ins); *Gjurovich v. Emmanuel's 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) (information [submitted by Defendant] only issue after discovery, granting conditional cert); *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 Defendant argues it did

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

not violate the FLSA, it is putting the cart before the horse because to get to the "decertification stage" this Court must first conditionally certify this class or collective action. As the 11th Cir. 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 properly ignoring anticipated arguments by Defendant related to the merits of the case, the Court should only decide whether Plaintiffs have met their burden based upon the pleadings and declarations Plaintiffs 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 rejecting defendant's "masses of sworn testimony" that "indicates a need for individual factual analyses…" *Id.* at *16. "…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. See also *Lytle v. Lowe's, supra and Torres-Roman v. Burger King, supra.* (all rejecting masses of competing declarations filed by defendants).

Only the Opt-In Plaintiffs' Declarations, confirming the allegations in the Complaint should be assessed at this stage in deciding whether Plaintiffs have made the requisite showing to conditionally certify the action. The primary purpose of the court making the determination on whether to certify the class/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 (NDGA 4/5/2012). The Court need only consider the declarations provided by Plaintiff at stage 1, not those who are class members **not opting in**. See *Carmody v. Fla. Ctr. for Recovery, Inc.*, 2006 U.S. Dist.

LEXIS 81640 (S.D. Fla. 2006) (granting conditional certification). 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). In *Evans v. Lowe's Home Ctrs., Inc.*, 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…" 2004 U.S. Dist. LEXIS 15716 (MDPA 6/17/2004). 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.[5] The Court in *Lytle* stated in rejecting all defendant's arguments against conditional certification of need for individualized analysis of job duties, performance variances by persons and location, such arguments are contrary to the purpose of collective actions:

> "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. 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 Ctrs., Inc.*, No. 8:12-cv-1848-T-33TBM, 2014 U.S. Dist. LEXIS 3227, at *12-13 (MDFL 2014).

IV. <u>This Court Should Approve The Plaintiffs Notice and Order Defendant To Produce The Names, US And Email Addresses and Telephone Numbers Of The Putative Class</u>

[5] "[Wh]ether the requested class in this case actually includes similarly situated individuals (and thus serves judicial economy) is a question more appropriately addressed at the decertification stage, when more specific information will be available." *Reyes v. AT&T Mobility Servs. LLC*, 801 F. Supp. 2d 1350, 1360 (S.D. Fla. 2011).

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). "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. Courts in this Circuit 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); *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). Verizon should be ordered to provide to Plaintiffs a list of all putative class members, last known US mail and email addresses, and cell numbers.

The Notice, text message and Consent to Join form (*See* attached Exhibits 38-40), is typical of notices approved many times in this Circuit. *See Parrilla v. Allcom*, Case No.: 6:08-cv-01967-GAP-GJK at Dkt. 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, Dkts. 66 and 69; *Gutescu v. Carey Intern, Inc.*, 2003 WL 25586749 at p. 18 (S.D. Fla. 2003) (similar

notice form issued); *Torres-Roman v. Burger King*., 2015 U.S. Dist. LEXIS 188963. Included in the notice is standard language; a basic statement of the law against retaliation by an employer if a putative plaintiff joins the case. *Id.* In addition, no statement regarding a potential plaintiff's liability for costs should be included in the notice. *See Littlefield v. Dealer Warranty Services, LLC*, 2010 WL 173796 (EDM 2010) (denying defendant's request that notice inform potential plaintiffs of the possible costs they might incur by joining the lawsuit since it might discourage plaintiffs from joining); *Abdul-Rasheed v. KableLink Communs., LLC*, 2013 U.S. Dist. LEXIS 167159, at *15 (MDFL Nov. 25, 2013) (warning of costs in Notice "would undermine the FLSA's goal of encouraging full enforcement of statutory rights because warning would dissuade people from joining the lawsuit.")

V. THE NOTICE PROPOSED BY PLAINTIFF SHOULD BE USED

"Absent reasonable objections by either the defendant or the Court, Plaintiff 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)(quoting *Kelly v. Bank of Am., N.A.*, No. 10 C 5332, 2011 U.S. Dist LEXIS 157763, 2011 WL 7718421, at *1 (N.D. Ill. Sept. 23, 2011)(internal quotation marks omitted)). *McCoy v. RP, Inc.*, 2015 U.S. Dist. LEXIS 142521,*18, 25 Wage & Hour Cas. 2d (BNA) 826, 2015 WL 6157306. A court has discretionary authority over the notice-giving 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. *Id*. *Alexander v. Cydcor, Inc.,* 2012 U.S. Dist. LEXIS 187258 *see Jackson v. Fannie Mae,* 181 F. Supp. 3d 1044, *1062; 2016 U.S. Dist. LEXIS 70305,**45 (NDGA 2016).

Courts should give deference to a plaintiff's drafted notice unless there are problems with it or it is prejudicial. The Court has the authority to ensure that the notice is fair and accurate, but should not alter a plaintiff's proposed notice unless such alteration is necessary. *Creten-Miller v. Westlake Hardware, Inc.,* 2009 U.S. Dist. LEXIS 60393, at *5-6 *(citing Lewis v. ASAP Land Express, Inc.,* 2008 U.S. Dist. LEXIS 40768 (D. Kan. 2008)(Vratil, J.)). *See Hoffmann-La Roche Inc. v. Sperling,* 493 U.S. at 172. "[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,* 767 F. Supp. 2d at 450 (S.D.N.Y. 2011). Plaintiff's proposed Class Notice is accurate, neutral, and has been adopted and approved by other courts[6]. Accordingly, Plaintiff's proposed Class Notice should be approved.

VI. Notice Should Be Posted in Defendant's Office break rooms.

VERIZON must post the notice and consent form in the break rooms and sales floor of its 4 offices. 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 notice by email, mail and requiring the defendant to post class notice in a conspicuous place in its business); *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"); See *Martinez v. DHL Express (USA) Inc.*, No. 15-22505-CIV, 2016 U.S. Dist.

[6] *Shawn Martin, individually and on behalf of all others similarly situated v. Partsbase Inc. d/b/a Govgistics*, Case 9:20-cv-80235-DMM, (May 14, 2020 SDFL), DE 52

LEXIS 14304, at *29 (S.D. Fla. Feb. 5, 2016) and *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) (ordering notice posted in a conspicuous location in each of Defendant's business offices).

VII. Notice Should Be Delivered By Us Mail, Email And Text Message, Be Available On A Website And Opt-ins Should Be Allowed To Sign Electronically

Plaintiffs seek approval to deliver notice by US mail, email, and by text. Courts grant such requests as this increases the likelihood members of the class will see the notice and not reject it as junk mail or spam which they may do if received in just one (1) form. *See Landry v. Swire Oilfield Servs.*, L.L.C., 252 F. Supp. 3d 1079, 1129, 2017 U.S. Dist. LEXIS 66497, *119-120, 2017 WL 1709695. (**"the court authorizes two mailings of the notice and consent form via regular mail, email, and text message, and authorizes class members to execute their consent forms electronically."** Increasingly, courts permit issuance of the 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); *Dickensheets v. Arc Marine, LLC*, No. 3:19-CV-00322, 2020 U.S. Dist. LEXIS 32058, at *4-5 (S.D. Tex. Feb. 19, 2020) (notice via text message in addition to other traditional notice methods appropriate in modern society."). Opt-ins should be allowed to sign the consent to join form electronically as was allowed in *Kraft v. Freight Handlers, Inc.*, No. 6:18-cv-1469-Orl-41GJK, 2019 U.S. Dist. LEXIS 128826, at *20 (M.D. Fla. May 21, 2019). *See Rivenbark v. JPMorgan Chase & Co.*, 340 F. Supp. 3d 619, 627 (S.D. Tex. 2018) (opt-ins routinely allowed to sign consent to join forms electronically); Fla. Stat. § 668.004. Further, the MDFL also permis e-signatures on documents.

Plaintiffs also request authorization to post the Court approved Notice and Consent forms on a website, a link to which will be contained in the email and text message sent to putative

class members. Other courts in FLSA cases have allowed similar websites. *See Sellers v. Sage Software, Inc.,* No. 1:17-CV-03614-ELR, 2018 U.S. Dist. LEXIS 188420, at *15-16 (N.D. Ga. May 25, 2018); *Varghese v. JP Morgan Chase & Co.*, 2016 U.S. Dist. LEXIS 122428, at *26 (S.D.N.Y. Sep. 8, 2016). The SDFL authorized Notice via US mail, email, and text message and that a reminder notice could be sent out via the same communication methods 30 days into the 60 day notice period. See *Shawn Martin et al v. Partsbase Inc. d/b/a Govgistics*, Case 9:20-cv-80235-DMM, (S.D. Fla. May 14, 2020). The court authorized posting of the notice and consent form to a newly created website consent forms signing electronically. *Id*. Similarly, Plaintiffs request authorization to deliver notice to putative class members via mail, email, and text message, that the Court approve the Notice and Consent forms be posted on a newly created website, and that opt-ins be permitted to sign their consent forms electronically.

VIII. 60 DAY NOTICE PERIOD and REMINDER NOTICE

Plaintiffs seek a 60 day notice period which courts agree is reasonable and appropriate. *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); *Torres v. Nature Coast Home Care LLC*, 2016 U.S. Dist. LEXIS 139745, *8, 2016 WL 5870217. A reminder notice of duplicate notice also is reasonable. *Leja v. Brousseau Mgmt. Co., L.L.C.*, No. 19-00269-BAJ-EWD, 2020 U.S. Dist. LEXIS 50932, at *7-8 (M.D. La. Mar. 19, 2020), *Shawn Martin et al v. Partsbase Inc. d/b/a Govgistics*, Case 9:20-cv-80235-DMM, (S.D. Fla. May 14, 2020. Plaintiffs thus request the right to send an identical reminder notice after 30 days by the same methods.

IX. A Three Year Sol Should Be Used For Determining Who To Send Notice To

The overwhelming majority of courts use a 3 year SOL period when Plaintiffs allege a willful violation 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). Courts in this circuit have authorized a three-year period at this stage because any issue of willfulness is better addressed on a motion for decertification. *Whitaker v. Kablelink Communications, LLC*, No. 8:13-cv-2093-T-30MAP, 2013 U.S. Dist. LEXIS 157675, 2013 WL 5919351, at *4 (M.D. Fla. Nov. 4, 2013); *Sellers v. Sage Software, Inc.*, No. 1:17-CV-03614-ELR, 2018 U.S. Dist. LEXIS 188420 (N.D. Ga. May 25, 2018).; *Anglada v. Linens 'N Things, Inc.*, 2007 U.S. Dist. LEXIS 39105 (S.D.N.Y. Apr. 26, 2007); *Stuven*, 2013 U.S. Dist. LEXIS at 15–16. Plaintiffs have sufficiently alleged in the Complaint a willful FLSA violations to warrant a (3) year SOL for Notice. *See Longcrier v. HL-A Co., Inc.*, 595 F. Supp. 2d 1218, 1242 (S.D. Ala. 2008) (approving 3 year sol when plaintiff alleged willfulness). *See* First Amended Compl. DE 13 at ¶¶ 5, 7, 12, 15, 63, 67, 82, 87, 101, 107, 118, 122, 123, 125, 130, 132, and 137. Defendant's willful violation is also shown by the fact that they have faced the same charges from its workforce in the past. *See Gillard v. Fleetmatics USA, LLC*, No. 8:16-cv-81-T-27MAP, 2016 U.S. Dist. LEXIS 127695 (M.D. Fla. Sep. 20, 2016).

CONCLUSION AND RELIEF REQUESTED

Plaintiffs have more than met the relatively lenient burden to conditionally certify the action to proceed collectively on behalf of all ISR under 11th Circuit precedent. Accordingly, Plaintiffs request this Court conditionally certify 1 class of ISR, or 2 classes and approve Plaintiffs sending Notice to all current and former ISR employed by Defendant or Fleetmatics from 07.17.17 to the present; approve a 60 day notice period; approve Plaintiffs' proposed Notice, Consent Form and text message; authorize Notice via mail, email, and text message; authorize a reminder notice via mail, email, and text message; authorize Plaintiffs to post the Court approved Notice and Consent to Join form to a newly created website; opt-ins be allowed to electronically sign the consent form; order Notice posted in the 4 offices; and order Defendant to produce a list of all ISR with cell numbers, personal emails, US mail addresses, and dates of employment within 14 days.

Dated this 9th day of September, 2020.

/s/Mitchell L. Feldman
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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2020, I electronically filed the foregoing 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.
Florida Bar No. 0080349