UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CARLA ROSARIO, individually and on behalf of other similarly situated individuals,	:	
Plaintiff,	:	**Civ. A. No. 3:15-cv-00241-MPS**
v.	:	
COMPASS GROUP, USA, INC.,	:	
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR NOTICE TO BE ISSUED PURSUANT TO 29 U.S.C. § 216(b)

Plaintiff Carla Rosario has brought this collective action seeking to recover unpaid overtime compensation under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207. Plaintiff claims that she and other Assistant Managers who worked at Eurest Dining Services, a division of Defendant Compass Group, USA, Inc. have been misclassified as exempt from the FLSA's requirement to pay employees time-and-a-half for hours worked in excess of 40 per week.

Plaintiff contends that the primary duties of the Assistant Managers are not managerial, but rather they spend the majority of their time performing the same tasks as the hourly non-managerial employees, such as counting stock, serving customers, cashiering, producing food, cooking on the line, stocking, baking, replenishing the salad and soup bar, cleaning equipment and workstations, and washing dishes. Two opt-in Plaintiffs from other locations are submitting declarations showing commonality in the duties performed by Assistant Managers across different locations. Defendant has informed Plaintiff that there are between 200 and 250 Assistant Managers in its Eurest Dining Services division. Plaintiff now seeks, pursuant to 29 U.S.C. § 216(b), permission to issue notice to all Assistant Managers who have worked for Defendant in its Eurest Dining Services division during the last three years.

The standard for obtaining notice under § 216(b) is very lenient. Plaintiff need only show that the workers she seeks to notify are similarly situated with respect to a policy or practice that is common to the class and unlawful. Neary v. Metro. Prop. & Cas. Ins. Co., 517 F. Supp. 2d 606, 618 (D. Conn. 2007). Unlike under Rule 23, she need not prove that common questions will predominate, that a class action is superior, or that her claim is typical. Rather, she need only identify a common factual nexus

between her situation and that of the individuals she seeks to notify. Under this standard, courts have routinely granted notice to employees who fall under the same job category and, as part of that job category, are classified as exempt from overtime. Indeed, in recent years alone, courts in the District of Connecticut and in the Second Circuit routinely order notice under such circumstances. See, e.g., Scribner v. Ocean State Jobbers, Inc., Civ. A. No. 14-01486, Doc. 62 (D. Conn. Jan. 26, 2015) (ordering notice to putative class of assistant managers who were subject to the same policy of overtime exemption); Lassen v. Hoyt Livery Inc., 2014 WL 4638860, *13 (D. Conn. Sept. 17, 2014) (ordering notice where "[i]t [was] undisputed that all [putative class members] had the same job duties and were subject to the same allegedly unlawful compensation policies" that failed to provide overtime pay); Tomkins v. Amedisys, Inc., 2014 WL 129407, *2-3 (D. Conn. Jan. 13, 2014) (ordering notice where "[putative class members] have substantially similar job requirements and pay provisions that require them to perform work over 40 hours per week for the benefit of [defendant] without proper compensation"); Carlone v. Progressive Casualty Insurance Co., Civ. A. No. 3:12-00207, Doc. 101 (D. Conn. Jan. 10, 2014) (ordering notice to employees with the same job title which was classified as overtime exempt); Fracasse v. People's United Bank, 2013 WL 3049333, *2-3 (D. Conn. June 17, 2013) (ordering notice to employees with the same job title and description who had been classified as overtime exempt); Zaniewski v. PRRC Inc., 848 F. Supp. 2d 213, 230 (D. Conn. 2012) (same); Jacob v. Duane Reade, Inc., 2012 WL 260230, *4 (S.D.N.Y. Jan. 27, 2012) (ordering notice to employees with the same primary job functions who were classified as overtime exempt); D'Antuono v. C & G of Groton, Inc., 2011 WL 5878045, *3 (D. Conn. Nov. 23,

2011) (ordering notice where "all putative class members held the same or similar positions, had the same or similar duties, and were all designated, as a class, as exempt from the . . . provisions of the FLSA.").

This case should be no different than those cited above. Plaintiff here challenges a common policy whereby Defendant classifies all its Eurest Assistant Managers as exempt from overtime. As discussed in more detail below, Plaintiff already has evidence that Defendant's Eurest Dining Services Division is centrally controlled and uniformly operated, and that the Eurest Assistant Managers share similar job duties, and are classified with the same overtime-exempt status. Accordingly, notice should issue to all of the Eurest Assistant Managers who, within the last three years, were classified by Defendant as exempt from overtime, so that they may evaluate their potential claim and decide whether to join this lawsuit.

It is vital that notice be issued promptly to preserve the rights of the Eurest Assistant Managers. Unlike in a class action brought under Rule 23, the statute of limitations in a collective action brought under the FLSA is not tolled with respect to unnamed collective action members merely by filing a complaint. Rather, each member must affirmatively toll the statute of limitations by "opting into" the lawsuit. Hoffmann v. Sbarro, Inc., 982 F. Supp. 249, 260 (S.D.N.Y. 1997). Before this case goes any further, Eurest Assistant Managers must be notified of their right to opt in to the case because the statute of limitations is continuing to run for them. The only way to preserve those employees' claims is through notice informing them of their rights and affording them the opportunity to join the suit. Jeong Woo Kim v. 511 E. 5th St., LLC, 2013 WL 6283587, *9 (S.D.N.Y. Dec. 3, 2013); Ruggles v. WellPoint, Inc., 591 F. Supp. 2d 150,

161 n.12 (N.D.N.Y. 2008); Lynch v. United Services Auto. Ass'n, 491 F. Supp. 2d 357, 371 (S.D.N.Y. 2007).

I. FACTS

Defendant is a "foodservice management and support services company" that operates through its various affiliate entities and divisions. See Compass Group Website, "About Us," Exhibit A. Plaintiff was employed by Defendant's Eurest Dining Services division. Declaration of Carla Rosario, Exhibit B, ¶ 2. Eurest is a "facilities solutions" business that operates cafes and cafeterias, among other endeavors. See Eurest Services Website, "Foodservice," Exhibit C. Eurest's dining operations include "corporate dining, restaurants, hospitals, sports & entertainment, [and] school cafeterias." Id. Defendant maintains tight top-down control over Eurest's cafeteria operations from its corporate headquarters in Charlotte, North Carolina. See Compass Group Website, Ex. A. The corporate office promulgates the policies and procedures that govern employee conduct, and the manner in which they carry out their jobs. Rosario Dec. ¶ 12, Ex. B; Compass Group Salaried Associate Handbook, Exhibit D; Compass Group Recruitment and Staffing Policy, Exhibit E; Compass Group Time Off Policy, Exhibit F; Compass Group "Speak Up" Policy, Exhibit G; Compass Group Discrimination and Harassment Policy Acknowledgement, Exhibit H; Memorandum re Compass Group Open Communication Policy, Exhibit I. Eurest Assistant Managers are subject to these policies, including their classification as overtime exempt under the FLSA. See Compass Group Assistant Manager Job Description, Exhibit J; Rosario Dec. ¶ 6, Ex. B; Declaration of Kathleen Rigert, Exhibit K, ¶ 6; Declaration of Jennifer Horne, Exhibit L, ¶ 5. Defendant is also involved with the decision-making at each of its

Eurest facilities, including decisions related to hiring and firing employees and employee discipline. Rosario Dec. ¶ 15, Ex. B; Rigert Dec. ¶ 17, Ex. K; Horne Dec. ¶ 11, Ex. L; see, e.g., March 30-31, 2015, email chain re new hire, Exhibit M (informing Plaintiff of new hire for cashier); Emails from Carla Rosario to Compass Group management re Employee Discipline, Exhibit N.[1]

Eurest Assistant Managers are also subject to the same job descriptions (Rosario Dec. ¶ 13, Ex. B; Rigert Dec. ¶ 15, Ex. K; Horne Dec. ¶ 9, Ex. L), and the duties of all Eurest Assistant Managers are the same (Rosario Dec. ¶¶ 13, 17, Ex. B; Rigert Dec. ¶¶ 15, 19, Ex. K; Horne Dec. ¶¶ 9, 13, Ex. L). These duties include providing employees with minor discipline, directing employees generally, providing low-level training, and participating in the preparation and service of food and beverages. Rosario Dec. ¶¶ 11, 16, 17, Ex. B; Rigert Dec. ¶¶ 13, 18, 19, Ex. K; Horne Dec. ¶¶ 8, 12, 13, Ex. L. However, all Eurest Assistant Managers spend the majority of their time performing non-management duties, including counting stock, serving customers, cashiering, producing food, cooking on the line, stocking, baking, replenishing the salad and soup bar, cleaning equipment and workstations, and washing dishes. Rosario Dec. ¶¶ 8, 17, Ex. B; Rigert Dec. ¶¶ 9, 19, Ex. K; Horne Dec. ¶¶ 6, 13, Ex. L. The most important aspect of the Assistant Managers' duties are these non-management tasks. Rosario Dec. ¶¶ 18, 19, Ex. B; Rigert Dec. ¶ 20, Ex. K; Horne Dec. ¶ 14, Ex. L. Assistant Managers do not have independent discretion to make important decisions,

[1] Defendant's managers closely supervised Eurest Assistant Managers to ensure that they were performing their jobs according to corporate rules. See, e.g., Deposition of Carla Rosario, Exhibit O 130:19-132:2 ("Oh, I'd get a lot of emails [from Eurest managers]. Every day."). For example, Plaintiff Rosario received emails with detailed instructions about how to manage employees she supervised. See, e.g., Emails re Employee Discipline, Ex. N.

such as hiring, firing, or disciplining employees. Rosario Dec. ¶ 11, Ex. B; Rigert Dec. ¶ 13, Ex. K; Horne Dec. ¶ 8, Ex. L; Email chain re new hire, Ex. M; Emails re Employee Discipline, Ex. N. Eurest also advertises its Assistant Manager positions throughout the country in the exact same way—there is no difference between the responsibilities and job qualifications for an Assistant Manager in Foxborough, Massachusetts, Charlotte, North Carolina, Madison, Wisconsin, or Bentonville, Arkansas. See Compass Group Assistant Manager Job Postings, Exhibit P.

Defendant classifies all of its Eurest Assistant Managers as exempt from overtime pay. Rosario Dec. ¶ 6, Ex. B; Rigert Dec. ¶ 6, Ex. K; Horne Dec. ¶ 5, Ex. L. Eurest Assistant Managers are consistently scheduled to work over 40 hours per week. Rosario Dec. ¶ 5, Ex. B; Rigert Dec. ¶ 4, Ex. K; Horne Dec. ¶ 4, Ex. L. Eurest Assistant Managers are never paid overtime, regardless of the number of hours they work per week. Rosario Dec. ¶ 6, Ex. B; Rigert Dec. ¶ 6, Ex. K; Horne Dec. ¶ 5, Ex. L.

II. ARGUMENT

A. THE COURT MAY ISSUE NOTICEUPON A MODEST FACTUAL SHOWING THAT SIMILARLY SITUATED CLASS MEMBERS EXIST.

The FLSA allows workers to bring an action either on an individual basis or on a collective basis for himself "and other employees similarly situated." 29 U.S.C. § 216(b). Here, Plaintiff seeks to bring this case on a collective basis. Similarly-situated individuals may not be a party to a collective action under the FLSA unless they affirmatively opt in to the case. Id. To provide those individuals with an opportunity to opt in, "district courts have the discretionary power to authorize the sending of notice to potential class members." Hendricks v. J.P. Morgan Chase Bank, N.A., 263 F.R.D. 78, 82 (D. Conn. 2009) (internal citation omitted); see also Myers v. Hertz Corp., 624 F.3d

537, 554 (2d Cir. 2010), citing Hoffmann–La Roche Inc. v. Sperling, 493 U.S. 165, 169 (1989). Notice is intended to issue early in the life of a collective action in order to establish the contours of the action and to further the broad remedial purpose of the FLSA. See Hoffman-LaRoche, 493 U.S. at 171 (discussing importance of early notice in collective actions in order to "ascertain[] the contours of the action at the outset"); Sbarro, 982 F. Supp. at 263 (refusing to postpone notice until the completion of discovery because the "FLSA's broad remedial intent favor[s] early notice to potential Plaintiff").

The Second Circuit has endorsed a two-stage inquiry in deciding whether notice should issue. See Myers, 624 F.3d at 555. In the first step of the analysis, the court must determine whether the proposed class members are "similarly situated." Id.; Perkins v. S. New Eng. Tel. Co., 669 F. Supp. 2d 212, 217 (D. Conn. 2009). If they are, then the action may be conditionality certified as a collective action, and notice may issue to the prospective members of that action. Myers, 624 F.3d at 555; Perkins, 669 F. Supp. 2d at 217. The Second Circuit has noted that "[t]he court may send this notice after plaintiffs make a 'modest factual showing' that they and potential opt-in plaintiffs 'together were victims of a common policy or plan that violated the law.'" Myers, 624 F.3d at 555 (internal citation omitted). The second step follows discovery, at which point "the district court will, on a fuller record, determine . . . whether the plaintiffs who have opted in are in fact 'similarly situated.'" Id. The Second Circuit has "encourag[ed]" the district courts to conditionally certify collective actions, recognizing that early notice "comports with the broad remedial purpose of the [FLSA] . . . as well as with the interest of the courts in avoiding multiplicity of suits." Sipas v. Sammy's Fishbox, Inc., 2006 WL

1084556, *1 (S.D.N.Y. Apr. 24, 2006), quoting Braunstein v. Eastern Photographic Labs., Inc., 600 F.2d 335, 336 (2d Cir. 1978), cert. denied, 441 U.S. 944 (1979) (internal quotations omitted).

At the conditional certification stage, a "class representative has only a minimal burden to show that he is similarly situated to the potential class, which requires a modest factual showing sufficient to demonstrate that they and the potential class members together were victims of a common policy or plan that violated the law." Marcus v. Am. Contract Bridge League, 254 F.R.D. 44, 47 (D. Conn. 2008), quoting Neary, 517 F. Supp. 2d at 618 (internal quotations omitted); see also Myers, 624 F.3d at 554-55. "This lenient standard applies even where plaintiffs assert a nationwide class." Tomkins, 2014 WL 129407, *2 (internal citation omitted). Indeed, at the "conditional certification stage, 'the court does not resolve factual disputes, decide substantive issues on the merits, or make credibility determinations.'" Aros v. United Rentals, Inc., 269 F.R.D. 176, 180 (D. Conn. 2010), quoting Lynch v. United Servs. Auto. Ass'n, 491 F. Supp. 2d 357, 368-69 (S.D.N.Y. 2007). Although some individual differences are inevitable in every case, "[a] collective action should be certified if, on balance, the differences among the plaintiffs do not outweigh the similarities in the practices to which they claim to have been subjected." Hendricks, 263 F.R.D. at 83 (internal quotations omitted).[2]

Employers often offer a litany of arguments in an effort to complicate the lenient standard for conditional certification. Courts have rightly rejected those arguments as misplaced or premature. For example, employers typically argue that notice is

[2] Collective actions under the FLSA are not subject to Rule 23 requirements, such as numerosity, typicality, etc. Thompson v. Linda And A., Inc., 779 F. Supp. 2d 139, 143 (D.D.C. 2011).

inappropriate because their employees performed different functions, or were properly classified as exempt from overtime. Such arguments are not relevant at the notice stage. In Ruggles, for example, the district court ordered that notice issue to a group comprised of managing nurses. 591 F. Supp. 2d at 159-60. In that case, the defendant contested conditional certification using 66 affidavits from its own employees in which it "counter[ed] [p]laintiffs' assertions," and argued that it was a "vast, complex national corporation" whose managing nurses "may be paid differently, perform[] dissimilar responsibilities, and approach their tasks differently." Id. at 160. The court refused to credit these arguments, holding that "[p]laintiffs are not required to submit evidence implicating every office and to show how they have identical characteristics." Id.; see also Lassen, 2014 WL 4638860, *6 ("At the conditional certification stage, the Court does not weigh evidence or resolve factual disputes and, consequently, affidavits calling into some question plaintiff's factual claims are not controlling.").

Other courts have repeatedly reached the same conclusion. Indeed, in Rose, et al v. Ruth's Chris Steak House, Inc., Civ. A. No. 07-12166 (D. Mass. Sept. 23, 2008), the Court granted conditional certification and ordered that notice be issued to a nationwide class of restaurant servers, despite the defendant submitting 47 affidavits from its servers stating that they had never been subject to the practices challenged in that lawsuit. See Ruth's Chris, Civ. A. No. 07-12166, Doc. 18; minute order dated Sept. 23, 2008; see also Scribner, Civ. A. No. 14-01486, Docs. 34, 62 (granting conditional certification and ordering notice to be issued despite the defendant's submission of several affidavits from its assistant managers contesting the allegations in the plaintiff's certification motion); Puglisi v. TD Bank, N.A., 2014 WL 702185, *3 (E.D.N.Y. Feb. 25,

2014) ("The burden at this first step is minimal because even if the court determines that the potential class members are 'similarly situated,' such a determination is preliminary and it 'may be modified or reversed at the second certification [step].'") (internal citation omitted); Carlone, Civ. A. No. 3:12-00207, Doc. 101 (granting conditional certification and ordering notice to be issued despite the defendant's submission of several affidavits from its claims representatives contesting the allegations in the plaintiff's certification motion); Morrison v. Ocean State Jobbers, Inc., 2010 WL 1991553, *5 (D. Conn. May 17, 2010) ("'[A]lthough [the defendant] is sure to raise some individualized defenses [regarding] the discretion some plaintiffs may have exercised, those questions are more properly raised in a full discussion of the merits, not at the certification stage . . . .' In addition, the 'plaintiffs need only to be 'similarly situated'; they do not need to be 'identically situated.'") (internal citation omitted); Scholtisek v. Eldre Corp., 229 F.R.D. 381, 391 (W.D.N.Y. 2005) (rejecting argument that notice should not issue because not all members of the proposed collective action were similarly situated; "[i]f discovery reveals that some employees are not similarly situated, the class can be redefined or decertified"); Ayers v. SGS Control Servs., Inc., 2004 WL 2978296, *6 (S.D.N.Y. 2004) ("Defendants' focus on the merits is misplaced at this stage. . . . Indeed, the Court need not actually hold that all class members to whom notice will be sent are, in fact, similarly situated to Plaintiff"); LeGrand v. Educ. Mgmt. Corp., 2004 WL 1962076, *2 (S.D.N.Y. Sept. 2, 2004) ("Whether the plaintiff and the proposed recipients of the opt-in notice are similarly situated does not implicate the merits of the plaintiff's claim").

Employers also routinely argue that an alleged lack of interest by other prospective collective action members precludes conditional certification and notice.

But that argument puts the cart before the horse. As several courts have held, a showing of purported "interest" among collective action members is wholly irrelevant to the question of whether notice should issue. See, e.g., Lassen, 2014 WL 4638860, *6 ("FLSA plaintiffs are not required to show that putative members of the collective action are interested in the lawsuit in order to obtain authorization for notice of the collective action to be sent to potential plaintiffs."), quoting Amendola v. Bristol–Myers Squibb Co., 558 F.Supp.2d 459, 466 (S.D.N.Y. 2008); Morrison, 2010 WL 1991553, *6 ("[D]efendant's argument that the plaintiff has not demonstrated that other potential members of the class want to join this case misapprehends the purpose of the two-step certification inquiry discussed above. While the plaintiff may be unable to demonstrate interest on the part of other potential class members in this case, the inquiry must take place after those potential class members have been notified of the action, not before."); Neary, 517 F. Supp. 2d at 622 ("As to defendant's claim that plaintiff has not identified other potential class members who would want to participate in this action, such identification, at this preliminary stage, is not required in the Second Circuit"); Quinn v. Endo Pharms., Inc., Civ. A. No. 10-11230, order on conditional certification (D. Mass. Jun. 1, 2011) ("I will not, as the defendant urges, require the plaintiffs to produce evidence that there are members of the class who desire to opt in. The goal of conditional certification is to notify potential class members. Simply put, to require that the plaintiffs show that potential class members—who have not yet been notified—wish to join the class is to put the cart before the horse"); Heckler v. DK Funding, LLC, 502 F. Supp. 2d 777, 780 (N.D. Ill. 2007) (defendant's argument that plaintiff needed to prove "interest" to obtain notice "puts the cart before the horse"; "[T]he logic behind

defendants' proposed procedure—requiring [the plaintiff] to show that others want to join in order to send them notice asking if they want to join—escapes the Court. Requiring a plaintiff to make an advance showing that others want to join would undermine the 'broad remedial goal' of the FLSA.").

B. THE COURT SHOULD AUTHORIZE NOTICE BECAUSE PLAINTIFF HAS IDENTIFIED A REASONABLE BASIS FOR HER CLAIM THAT SIMILARLY-SITUATED CLASS MEMBERS EXIST.

The standard for conditional certification and notice is more than met in this case. As shown above, the record here clearly establishes that Defendant employs a category of workers in its Eurest Dining Services Division known as Assistant Managers whom it classifies as exempt from overtime throughout the country. Those employees fulfill the same role within Defendant's corporate hierarchy. They share a common title and a common set of duties. They are all subject to the same policy of overtime exemption as purported "executive" employees. They all assert the same legal claim, namely, that they are not "executive" employees, but instead spend the vast majority of their time cooking, cleaning, cashiering, and performing other tasks similar to those of hourly associates. Accordingly, Plaintiff asserts that Eurest Assistant Managers should have been paid overtime wages when they worked beyond forty hours in a week. Simply put, the Eurest Assistant Managers perform their duties in standardized ways, in accordance with standardized corporate policies. Such a showing well satisfies the low threshold for notice under § 216(b).

That this case challenges an employer's classification of a discrete category of workers as exempt from overtime makes notices all the more appropriate. "[E]xemptions [set forth in the FLSA] lend themselves to efficient resolution during

discovery and stage two certification." Garcia v. Freedom Mortg. Corp., 2009 WL 3754070, *5 (D.N.J. 2009). Accordingly, courts in this Circuit and elsewhere have not hesitated to order notice in cases brought by employees challenging their status as overtime exempt. See, e.g., Lassen, 2014 WL 4638860, *2 (granting notice where "[i]t [was] undisputed that [Defendant] did not provide any overtime pay to drivers who worked more than 40 hours per week"); Tornatore v. GCI Commcn's, Inc., 2014 WL 1404924, *4 (W.D.N.Y. Apr. 10, 2014) (granting notice where "[a]ll three declarants assert[ed] that they regularly worked overtime, [and] were not paid for overtime work"); Puglisi, 2014 WL 702185, *4 (E.D.N.Y. Feb. 25, 2014) (notice appropriate where "it [was] undisputed that, under defendant's wage-and-hour policies, [plaintiffs were] not eligible to receive overtime pay if they work more than forty hours per week"); Zaniewski, 848 F. Supp. 2d at 229-30 (where employer's standardized "practices respecting a particular group of employees are coupled with the employer's uniform classification of all members of that group as 'exempt,' the conclusion is compelled that the employees are 'similarly situated' for purposes of an FLSA action challenging the validity of the exemption"); Alli v. Boston Market Co., 2011 WL 4006691, *1 (D. Conn. 2011) (notice appropriate where employer "does not dispute that it has uniformly categorized all [managers] outside of California as 'exempt' from the overtime provisions of the FLSA"); Aros, 269 F.R.D. at 179-180; Morrison, 2010 WL 1991553, *1; Perkins, 669 F. Supp. 2d at 221-22; Marcus v. Am. Contract Bridge League, 254 F.R.D. 44 (D. Conn. 2008); Neary, 517 F. Supp. 2d at 618; Holbrook v. Smith & Hawken, Ltd., 246 F.R.D. 103, 105-06 (D. Conn. 2007); Francis v. A & E Stores, Inc., 2008 WL

4619858 (S.D.N.Y. 2008); Barrus v. Dick's Sporting Goods, 465 F. Supp. 2d 224, 228-29 (W.D.N.Y. 2006).[3]

Certain courts have even held that notice is warranted based merely upon a showing that the collective action members were subject to the same policy of overtime exemption. In Manning v. Goldbelt Falcon, LLC, 2010 WL 3906735, *1 (D.N.J. 2010), for example, the district court conditionally certified a collective action where:

> The [p]laintiffs . . . made substantial allegations that the putative class members are the victims of the same policy by stating that '[d]efendants had an illegal and common pay policy whereby they automatically reduced the amount of hours credited to each . . . employee.' Plaintiffs further allege that this pay policy was 'common to all putative class members.' These allegations are sufficient to show that the potential plaintiff class was allegedly impacted by a common pay policy that, if actually applied to class members, would make [p]laintiffs similarly situated to the potential class in relation to job requirements and pay provisions.

Id. at *4. The District Court for the Southern District of New York reached the same conclusion in another case, Damassia v. Duane Reade, Inc., holding that employees

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[3] See also, e.g., Cano v. Four M Food Corp., 2009 WL 5710143, *7 (E.D.N.Y. 2009) (granting conditional certification; "[a]s long as [the workers] were all similarly situated with respect to ***being subject to the same policy*** of being denied overtime compensation, and there exists a factual nexus among the plaintiffs, conditional certification of the collective action is appropriate") (emphasis in original); Hallissey v. Am. Online, Inc., 2008 WL 465112, *2 (S.D.N.Y. Feb. 19, 2008) (granting conditional certification; "[t]he fundamental allegation found in [p]laintiffs' declarations and pleadings [is] that [they] were denied minimum and overtime wages because of their classification by [defendant] as 'volunteers'"); Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 368 (S.D.N.Y. 2007) (granting conditional certification; "[t]he named plaintiffs have adequately alleged that they together with the proposed class members were subjected to common wage, overtime and payroll practices that violated the FLSA. Having done so, they are entitled to proceed in a representative capacity"); Lee v. ABC Carpet & Home, 236 F.R.D. 193, 198 (S.D.N.Y. 2006) (granting conditional certification where plaintiff "alleged a common policy or plan of the [d]efendants' failure to pay overtime wages"); Goldman v. RadioShack Corp., 2003 WL 21250571, *8 (E.D. Pa. Apr. 16, 2003) (granting conditional certification; "[d]uring this first-tier inquiry, we ask only whether the plaintiff and the proposed representative class members allegedly suffered from the same scheme"); Kane v. Gage Merchandising Servs., Inc., 138 F. Supp. 2d 212, 215 (D. Mass. 2001) (granting conditional certification; "[t]he record . . . suggests that the [d]efendants had a policy of treating at least some of a discrete class of employees . . . as exempt from the FLSA overtime requirements. That showing is sufficient for this Court to determine that a 'similarly situated' group of potential Plaintiff exists given the adopted lenient standard for court-facilitated notice"); cf. Sperling v. Hoffman-LaRoche, Inc., 118 F.R.D. 392, 407 (D.N.J. 1988) ("In general . . . courts appear to require nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan . . . "); Allen v. Marshall Field & Co., 93 F.R.D. 438, 442-43 (N.D. Ill. 1982) (granting conditional certification based on Plaintiff's allegation that they were subject to a "campaign of discrimination").

may be considered similarly situated where their employer admits that it categorically treats those employees as exempt from overtime, without regard for other factors like "sales volume . . . location . . . work shift . . . tenure . . . [or] management style." 250 F.R.D. 152, 158 (S.D.N.Y. 2008). That the employer could make such "blanket determination[s]," the court observed, was "evidence that differences in the position, to the extent that there are any, are not material to the determination of whether the job is exempt from overtime requirements." Id.[4]; see also Lassen, 2014 WL 4638860, *2 (D. Conn. Sept. 17, 2014) (granting notice where it was "undisputed that [defendant] did not provide any overtime pay to drivers who worked more than 40 hours per week").

The reasoning of these cases applies with equal force here. Plaintiff has identified a common pay policy that, if her allegations are found true, would adversely impact hundreds of workers performing their duties in a similar manner under similar conditions. The fact that Defendant ***admits*** that it classifies Assistant Managers in its Eurest Dining Services division as exempt from overtime only further establishes that the collective action members are similarly situated since an employer's "blanket determination[s]" in setting its overtime compensation policies is clearly "evidence that differences . . . are not material to the determination of whether the job is exempt from overtime requirements." Id. Put another way, if Defendant considers its Eurest Assistant Managers to be similarly situated enough that it may treat them as exempt from overtime as a matter of company policy, then those Eurest Assistant Managers must be similarly situated enough for purposes of receiving notice under the FLSA. See

[4] Notably, the court in Duane Reade granted certification of a class of employees under Rule 23, which is far more stringent in its requirements than § 216(b). See Lewis v. Wells Fargo Co., 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009) ("The requisite showing of similarity of claims under the FLSA is considerably less stringent than the requisite showing under Rule 23.").

Fracasse, 2013 WL 3049333, *2 (notice warranted where defendant admitted that its policy was to classify plaintiffs as exempt); Zaniewski, 848 F. Supp. 2d at 229-30 (notice warranted based on employer's own "uniform classification of all members of that group as 'exempt'").

Courts in this circuit have also held it appropriate to issue notice where job postings for the position evidence the same requirements for all potential class members. In Puglisi, the court held that notice was appropriate where the job postings for the position from several different states and branches were "predominately similar" because "[t]hese similarities tend to suggest that [the putative class members] across the nation are treated uniformly to some degree, and that they have similar job duties and requirements." Puglisi, 2014 WL 702185, *4; Patton v. Thomson Corp., 364 F. Supp. 2d 263, 267 (E.D.N.Y. 2005) (notice appropriate where job description for the position listed the same duties for all potential class members); see also Fracasse, 2013 WL 3049333, *2 (notice appropriate where "[i]t is undisputed that all putative class members share a single job title and description"). Plaintiff has shown that the Defendant's job postings for Eurest Assistant Managers use similar job descriptions for its dining facilities across the country. Plaintiff has clearly satisfied the minimal burden for conditional certification to satisfy the standard set forth in this circuit.

C. NATURE AND EXTENT OF THE NOTICE

This Court should order notice to be mailed to all Eurest Assistant Managers who have worked for Defendant within the last three years, giving them a meaningful opportunity to understand their rights and to join this litigation.

1. The Court Should Approve Plaintiff's Proposed Notice Process

i. Plaintiff requests that the Court authorize her to send the Proposed Notice, attached as Exhibit Q, to all individuals who have worked for Defendant as Eurest Assistant Managers during the period from June 30, 2012, to the present ("Potential Opt-In Plaintiffs"). Plaintiff's Proposed Notice is "timely, accurate, and informative." Hoffmann-La Roche, 493 U.S. at 172. The District of Connecticut has often approved notice in other FLSA cases, and should approve this one as well. See Tomkins, 2014 WL 129407, *3; Zaniewski, 848 F. Supp. 2d at 230. Notice serves the FLSA's "broad remedial purpose" (Braunstein, 600 F.2d at 336), and the form and content of a 216(b) notice should maximize participation. Otherwise, potentially meritorious claims will diminish or expire. See Sbarro, Inc., 982 F. Supp. at 260 (the FLSA statute of limitations runs until an employee files a consent form); Cruz v. Hook-Superx, LLC, 2010 WL 3069558, *1 (S.D.N.Y. Aug. 5, 2010) ("Employees must receive timely notice in order for the benefits of the collective action to accrue."). A proposed Opt-In Form for members of the potential collective action to fill out and return is attached as Exhibit R.

ii. The time period described in Section (i) above is appropriate. Because this case alleges a "willful" violation of the FLSA, [Doc. # 39] First Amended Compl. ¶ 24, the applicable statute of limitations is three years. 29 U.S.C. § 255(a); see Galeana v. Lemongrass on Broadway Corp., 2014 WL 1364493, *5 (S.D.N.Y. Apr. 4, 2014); Aros, 269 F.R.D. at 181.

iii. Defendant should also be ordered to produce a list of Potential Opt-In Plaintiffs' names, last-known mailing addresses, last-known telephone numbers,

email addresses, work locations, and dates of employment. Courts routinely require defendants to produce this information when granting conditional certification motions. See, e.g., Tomkins, 2014 WL 129407, *3 (ordering defendants to provide plaintiffs with each potential plaintiff's name, last-known address, dates of employment, social security number, and dates of birth, noting "[g]enerally, courts grant this type of request in connection with a conditional certification of a FLSA certification action"); Hernandez v. NGM Mgmt. Grp. LLC, 2013 WL 5303766, *5 (S.D.N.Y. Sept. 20, 2013) (ordering defendants to provide names, title, compensation rate, hours worked per week, period of employment, last known mailing address, alternate addresses, and all known telephone numbers) (collecting cases); Jacob, 2012 WL 260230, *9-10 (ordering defendants to provide plaintiffs with potential plaintiffs' last known mailing addresses, telephone numbers, email addresses, work locations, and dates of employment); Pippins v. KPMG LLP, 2012 WL 19379, *15 (S.D.N.Y. Jan. 3, 2012) (same); Raniere v. Citigroup Inc., 827 F. Supp. 2d 294, 327 (S.D.N.Y. 2011) (same), overturned on other grounds by, Ranierev. Citigroup, Inc., 827 F. Supp. 2d 294 (2d Cir. 2013); Alonso v. Uncle Jack's Steakhouse, Inc., 648 F. Supp. 2d 484, 490 (S.D.N.Y. 2009) (ordering production of names, addresses, and telephone numbers).

iv. The Court should also allow Plaintiff to send notice to class members by email, as well as U.S. Mail. See Pippins, 2012 WL 19379, *14 (ordering notice sent by email and finding that "given 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 also Kelly v. Bank of Am., N.A., 2011 WL 7718421, *1-2 (N.D.

Ill. Sept. 23, 2011) (authorizing dissemination of notice via mail, email, and website posting).

v. Defendant should also be required to post the notice in each of its facilities. See Carlone, C.A. No. 3:12-cv-00207, Doc. 91, at 24; and Doc. 101 (requiring defendant to post notice in each of its offices where potential plaintiffs worked); Trinidad v. Pret A Manger (USA) Ltd., 962 F. Supp. 2d 545, 564 (S.D.N.Y. 2013) (ordering that defendant post notice in its stores because "[a] purpose of notice *is* to start a conversation among employees, so as to ensure that they are notified about potential violations of the FLSA and meaningfully able to vindicate their statutory rights"); Whitehorn v. Wolfgang's Steakhouse, Inc., 767 F. Supp. 2d 445, 449 (S.D.N.Y. 2011) ("Courts routinely approve requests to post notice on employee bulletin boards and in other common areas, even where potential members will also be notified by mail."); Moung Su Kim v. Kap Sang Kim, 2010 WL 2854463, *1 (E.D.N.Y. July 19, 2010) (granting request to post notice at each of employer's business locations).

vi. The Court should set the notice period at 90 days. See, e.g., Carlone, C.A. No. 3:12-cv-00207, Doc. 91, at 24; and Doc. 101 (authorized notification to putative class members for 90-day period); Fang v. Zhuang, 2010 WL 5261197, *1 (E.D.N.Y. Dec. 1, 2010) (same).

vii. The Court should also authorize Plaintiff to mail a Court-authorized reminder to all class members who have not yet opted-in to this matter within 45 days of the first notice mailing. It is well-documented that people often disregard collective action notices. See Andrew C. Brunsden, Hybrid Class Actions, Dual Certification, and Wage Law Enforcement in the Federal Courts, 29 Berkeley J. Emp. & Lab. L. 269, 295

(2008). Courts regularly authorize reminder notices to increase the chance that workers will be informed of their rights. See Carlone, C.A. No. 3:12-cv-00207, Doc. 91, at 24; and Doc. 101 (authorizing plaintiffs to mail a Court-authorized reminder postcard); Sanchez v. Sephora USA, Inc., 2012 WL 2945753, *6 (N.D. Cal. July 18, 2012) ("[C]ourts have recognized that a second notice or reminder is appropriate in an FLSA action since the individual is not part of the class unless he or she opts-in.") (internal citations omitted). Defendant has no reason to oppose a reminder mailing other than that it may increase the participation rate, which is not a good reason. Plaintiff will bear the cost of the reminder mailing, and it will not change the end of the notice period.

III. CONCLUSION

Plaintiff has plainly shown that notice is appropriate at this stage. Accordingly, the Court should: (1) conditionally certify this action as a collective action under 29 U.S.C. § 216(b); and (2) order that notice be issued to all Eurest Assistant Managers who have worked for Defendant throughout the United States during the last three years.

Dated: June 30, 2015

Respectfully submitted,

CARLA ROSARIO,
individually and on behalf of all others
similarly situated,
By her attorneys,

/s/ Shannon Liss-Riordan_____
Shannon Liss-Riordan, *pro hac vice*
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994 – 5800
sliss@llrlaw.com

Richard E. Hayber, ct11629
Anthony J. Pantuso, III
Hayber Law Firm, LLC
221 Main Street, Suite 502
Hartford, CT 06106
(860) 522-8888
rhayber@hayberlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2015, a copy of this document was filed electronically on all counsel of record.

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan, Esq.