

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WENDELL WALTON, et al.,
Plaintiffs,
v.
AT&T SERVICES, INC.,
Defendant.

Case No. 15-cv-03653-VC

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION**

Re: Dkt. No. 71

The two named plaintiffs in this case, Wendell Walton and Michael Mantonya, seek conditional certification to proceed as an opt-in collective action under the Fair Labor Standards Act ("FLSA") and seek approval for a notice to be mailed to the potential collective action members. The plaintiffs allege that employees in two job classifications at AT&T, Senior Training Manager Design and Senior Training Manager Delivery, were denied payment for overtime because they were improperly classified as exempt from overtime payments under state and federal law. The motion for conditional certification is granted for the proposed group of employees in the job classifications of "Senior Training Manager Design" and "Senior Training Manager Delivery" subject to the arbitration and time frame restrictions in the complaint. The request by the plaintiffs for authorization to provide formal notice to potential members of the collective action is granted, subject to the discussion below.

Conditional Certification of the Collective Action

At this initial conditional certification stage, the Court inquires only whether the plaintiffs are "similarly situated" for the purposes of sending notice of the action to potential collective

action members. *Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 1203 (N.D. Cal. 2013); *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 837 (N.D. Cal. 2010). This is a "fairly lenient standard, and typically results in 'conditional certification' of a representative class." *Harris*, 716 F. Supp. 2d at 837 (quoting *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 471 (E.D. Cal. 2010)).

The plaintiffs have satisfied their light burden at this stage. Walton and Mantonya provide evidence that AT&T's decision to classify all employees in the Senior Training Manager Design and Senior Training Manager Delivery categories as exempt from overtime is the common source of the alleged harm. They also provide declarations and corporate documents to support their allegations that AT&T has corporate procedures that apply uniformly to members of the proposed collective with respect to aspects of job performance relevant to FLSA overtime exemption. *See e.g.*, dkt. 72-1 (job descriptions); dkt. 72-4 (instructor competencies); dkt. 72-16, at 17-18 (deposition of Wendell Walton, explaining job descriptions and overtime treatment); dkt. 72-18 (declaration explaining job duties and overtime treatment); *see also Adams v. Inter. Con Sec. Sys.*, 242 F.R.D. 530, 537 (N.D. Cal. 2007).

Although AT&T responds with evidence that might ultimately cut against certification, that evidence is more properly considered at the second phase of the FLSA certification inquiry. For example, AT&T submits declarations in which workers testify that they exercise discretion in their work and that they do not wish to opt in to this lawsuit. But where some potential members of the proposed collective oppose or do not wish to join in litigation, the opt-in process provided by the FLSA is particularly useful. *See Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 470 (N.D. Cal. 2004). And generally, competing affidavits or declarations will not defeat conditional certification. *See Hill v. R+L Carriers, Inc.*, 690 F. Supp. 2d 1001, 1010 (N.D. Cal. 2010); *Escobar v. Whiteside Const. Corp.*, No. C 08-01120 WHA, 2008 WL 3915715, at *4 (N.D. Cal. Aug. 21, 2008).

Notice and Opt-In Period

Contrary to AT&T's argument, it is appropriate to provide a formal notification to

potential members of the collective action following this conditional certification. *See, e.g., Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171-72 (1989). In addition:

- Notice may be provided by email as well as regular mail.
- The plaintiffs may use an interactive website.
- The proposed class members may receive a reminder notice.
- The opt-in period shall be 75 days – the compromise proposed by the plaintiffs.
- The notice should inform the proposed class members that they "might be required to provide information" relevant to the lawsuit if they join it.

The plaintiffs shall submit a revised proposed notice that comports with the above guidelines within 7 days of this ruling (after meeting and conferring with the defendants). If the parties cannot agree on the language of the proposed notice, the defendants may submit an alternative version on the same date, with a redline version to facilitate a comparison of the two.

IT IS SO ORDERED.

Dated: September 15, 2016



VINCE CHHABRIA
United States District Judge