

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

EDWARD JOSEPH FULLERTON,
an individual, on behalf of himself
and others similarly situated,
Plaintiff,

v.

Case No.: 3:17cv296-RV/CJK

GOLDEN FLAKE SNACK FOODS INC.,
Defendant.

ORDER

This collective action has been filed under the Fair Labor Standards Act of 1938 (FLSA). The plaintiff has filed a motion for conditional certification (doc. 48), which the defendant has opposed. I held an oral argument for this motion on July 18, 2018, at the conclusion of which I stated that this written order would follow.

I. Applicable Law

In relevant part, the FLSA requires that employees be paid overtime (at least 1.5 times their regular pay) if they work more than 40 hours per week. However, not all employees are entitled to overtime pay. For example, “outside sales employees”—a group that includes “[d]rivers who deliver products and also sell such products”—are exempt from this requirement. 29 C.F.R. § 541.504(a). But, under the regulations, an employee will fall under this exemption “*only* if the employee has a *primary duty* of making sales.” *Id.* (emphasis added). A “primary duty” is “the principal, main, major or most important duty that the employee performs.” *Id.* at § 541.700(a).

Employees who are denied overtime wages under the FLSA can bring personal actions for violations of the statute, or they can pursue collective actions on behalf of themselves and other employees if the other employees are similarly situated and give

consent to become a party in writing with the court under 29 U.S.C. § 216(b). District courts can implement Section 216(b) by facilitating notice to potential plaintiffs of the pendency of the lawsuit and of the opportunity to join (or “opt-in”) the litigation. *See Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 169 (1989). “For an opt-in class to be created under section 216(b), an employee need only show that he is suing his employer for himself and on behalf of other employees ‘similarly situated.’” *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1096 (11th Cir. 1996).

In *Hipp v. Liberty National Life Ins. Co.*, 252 F.3d 1208 (11th Cir. 2001), the Eleventh Circuit endorsed a two-stage approach to help courts resolve the certification question. The first stage (known as the “notice stage”) comes before the plaintiff has had the chance to conduct any discovery, and the court must decide—based solely on the pleadings and affidavits that have been filed—if notice of the litigation should be given to potential class members. *Id.* at 1218-19. A plaintiff’s burden at the first stage is “fairly lenient” and “not heavy.” *Id.*

The second stage is ordinarily precipitated by a motion for decertification filed by the defendant “after discovery is largely complete and the matter is ready for trial.” *Id.* at 1218; *see also, e.g., Alequin v. Darden Restaurants, Inc.*, 2013 WL 3939373, at *3 (S.D. Fla. 2013) (noting that *Hipp*’s second stage analysis is not proper “‘until all discovery—including merits discovery—is substantially complete’”) (Rosenbaum, J.). At that point in the litigation, “the district court has a much thicker record than it had at the notice stage, and can therefore make a more informed factual determination of similarity. This second stage is less lenient, and the plaintiff bears a heavier burden.” *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1261 (11th Cir. 2008).

Although the Eleventh Circuit has “endorsed” the foregoing two-step analysis, it is not required. *Hipp*, 252 F.3d at 1219 (“Nothing in our circuit precedent, however, requires district courts to utilize this approach. The decision to create an opt-in class

under § 216 . . . remains soundly within the discretion of the district court.”) (citations omitted). Thus, some courts have held that where preliminary discovery has been had (*i.e.*, there is more than just “pleadings and affidavits”), but merits discovery is not yet largely complete (*i.e.*, the case is not “ready for trial”), it is advisable to take a middle ground approach and “split the baby.” *See, e.g., Allen v. Hartford Fire Ins. Co.*, 2017 WL 3701139, at *4-6 (M.D. Fla. 2017). Under this approach, the plaintiffs need only demonstrate that they have “‘advanced the ball down the field’—that is, ‘shown some progress as a result of the discovery as measured against the original allegations and defenses.’” *Id.* at *5 (quoting *Creely v. HCR ManorCare*, 789 F. Supp. 2d 819 (N.D. Ohio 2011), and collecting cases where “many district courts across the country have followed suit”). In the case at bar, there has been quite a bit of preliminary discovery, but discovery is not complete.

II. Background

Golden Flake Snack Foods Inc. (Golden Flake) sells chips and other snack food to supermarkets, gas stations, and dollar stores in a number of states. Those states are divided into regions, and those regions are subdivided into districts that are overseen by district managers. There are “established routes” within each district, and Golden Flake employs Route Sales Professionals (RSPs) to service the same customers along those routes each week. It is undisputed that RSPs often work more than 40 hours per week, but they are paid by commission and are not paid overtime.¹

During the time relevant to this lawsuit, the plaintiff, Edward Joseph Fullerton, worked for Golden Flake as an RSP. According to the plaintiff, his primary duties at that time—and, in fact, the primary duties of all RSPs—included loading his delivery truck with inventory; driving it to the customers along his route; carrying the products

1

For a period of time, RSPs received a base pay rate plus commission. Today, RSPs are paid commission only, with no base pay. The commission is based on what the individual customer pays Golden Flake.

into each store; cleaning and maintaining the assigned shelf space (or “gondola”); and stocking the shelves in general accordance with that particular store’s “plan-o-gram,” which (if the store has one, and not all of them do) provides either hard requirements or mere “suggestions” (depending on the store) as to where and in what order to put the products on the shelves.²

On May 1, 2017, the plaintiff brought this collective action on behalf of himself and others similarly situated, alleging that Golden Flake had violated the FLSA by not paying overtime. To date, twelve individuals have “opted-in” and joined this lawsuit.³ In their Rule 26 Joint Report, the attorneys proposed (and in my Final Schedule Order I agreed to) a two-phased discovery plan. In Phase One, discovery was limited to the plaintiff’s then-anticipated motion to conditionally certify a class, while Phase Two would relate to the merits (but would not begin until certification was resolved).

The parties have completed Phase One discovery, and the plaintiff now moves to conditionally certify a class comprised of “himself and all other persons employed by Defendant as [an RSP] that drove a truck weighing 10,000 pounds or less during

2

During the course of discovery in this case, Golden Flake produced a written job description for RSPs, and according to that job description “[t]he *primary purpose* of this position is to ensure that all customer accounts are properly serviced, completely stocked [according to the “established merchandising plan-o-grams”] and rotated and have a proper appearance” (doc. 47-15) (emphasis added). Even though Golden Flake produced that job description to the plaintiff during this lawsuit (and even though Golden Flake’s Senior Director of Human Resources admitted at deposition that it was the only one maintained in a binder of written job descriptions kept by human resources), the defendant contends that it is not the “official” RSP job description inasmuch as it was never formally approved. Regardless of whether it was official and formally approved, as will be seen *infra*, that job description—with its emphasis on servicing, stocking, rotating, maintaining shelf appearance, and generally following any available plan-o-gram—was kept in human resources and is consistent with the substance of the deposition testimony of Golden Flake’s designated corporate representative and other evidence in the case.

3

In addition to these twelve “opt-ins,” a number of other current and/or former Golden Flake employees have expressed their desire to join this action, but Golden Flake requested (and plaintiff’s counsel agreed) not to file those opt-in notices at this time.

the period of three years preceding the commencement of this action to the present.” Golden Flake opposes the motion, arguing that there is no company-wide uniformity as to the job duties of an RSP. The defendant states that while *some* district managers (including those who supervised plaintiff and certain of the opt-ins) may only expect their RSPs to deliver new products and maintain their shelves, other managers expect their RSPs to sell *additional* items—and those latter RSPs qualify for the “drivers who sell” exemption. Golden Flake thus argues that because “the exemption status of each RSP hinges on whether each RSP qualifies for the outside sales exemption as a ‘driver who sells,’” and because there is insufficient similarity between *all* the individuals in the proposed class, this case “could in no way ever” be handled as a collective action.⁴

II. Discussion

Preliminarily, the parties disagree about the standard of review that applies to the plaintiff’s motion to certify. The plaintiff contends that I should apply the lenient first stage analysis discussed in *Hipp* (or, at most, the intermediate stage in *Allen* and *Creely*), while Golden Flake argues that I should apply *Hipp*’s more stringent second

4

In 2016, Golden Flake was acquired by its now-parent company, Utz Quality Foods, which is a similar (but larger) snack food company that also uses RSPs. Prior to the acquisition, a class of RSPs filed an FLSA collective action against Utz for unpaid overtime. Utz stipulated to conditional certification in that case, after which the parties settled the lawsuit. Notably, counsel for Utz in that case, Richard Reibstein, is also counsel for Golden Flake in this case, and the plaintiff argued in his motion to certify (without contradiction from defendant) that the two cases are “virtually identical.” At the outset of the July 18th oral argument, I asked the parties to explain how this case differed from the *Utz* case, and counsel for Golden Flake, Russell Van Sickle, responded by pointing out that the *Utz* case was “filed up north” and suggested that Utz might have managed its RSPs differently than Golden Flake. Van Sickle then referred me to Reibstein’s affidavit on that latter issue—even though Reibstein was at the counsel table during the July 18th oral argument—but his affidavit says nothing about the *Utz* case (doc. 54-1). It appears from the plaintiff’s argument (and from my review of the pleadings filed in both cases) that the two lawsuits are indeed very similar, which means that it’s not really accurate to say the case *sub judice* “could in no way ever” be handled as a collective action because it already has. Furthermore, it warrants mention that in the Joint Motion for Final Approval of Settlement in the *Utz* case, the parties noted that the U.S. District Court for the Eastern District of Pennsylvania had then-recently approved a substantially similar settlement in still another FLSA collective action involving route drivers for a snack company. See *Drummond v. Herr Foods Inc.*, No. 2:13-CV-05991-BMS, 2016 WL 7013512, at *1 (E.D. Pa. Sept. 9, 2016).

stage analysis because the parties engaged in extensive Phase One discovery pursuant to their Rule 26 Joint Report and my Final Scheduling Order. Ultimately, the plaintiff maintains that whichever standard I employ (whether the first, intermediate, or second stage analysis), he has satisfied his burden.

Although we are at an intermediate stage of discovery in this case, I agree with the plaintiff that certification is warranted on the facts presented, regardless of which analysis is used. Indeed, as will be discussed shortly, certification is appropriate based primarily on the deposition testimony of Golden Flake's Rule 30(b)(6) witness, Randy Bates, Vice President of Sales. *See* Deposition of Paul Randall Bates, dated December 12-13, 2017 (docs. 41-1 and 41-2) (Bates Dep.).⁵

Bates testified that all RSPs are trained the same way, regardless of the location of their region and district. *See* Bates Dep. at 176-77. They are each expected to: load their trucks with enough Golden Flake product to service all of the customers on their route; deliver those products and properly "merchandise" the shelves (*i.e.*, "buildup" the shelves, rotate the items to "reduce stale," generally follow any applicable plan-ogram, and keep the shelves "clean and neat"); and then call on those same customers (and do essentially the same thing) week after week. *See, e.g., id.* at 57-62, 68-69, 71-72, 102, 113-14, 118, 147-48, 151-53, 158-59, 180-81, 183-84, 208-11, 480-89, 615, 620, 628-29, 650-51; *see generally id.* at 91-100 (describing an RSP's "typical day" in further detail). There are no other employees at Golden Flake who perform those tasks except for RSPs [*id.* at 90-91], and, thus, Bates testified that if an RSP refused to do them, he would be disciplined and eventually fired. *See, e.g., id.* at 80-81 (RSP would be disciplined if he failed to visit a store and properly stock the shelves); *id.* at 170-71 (failure to "service the store properly and fill it up" constitutes a "disciplinary

5

The plaintiff relied heavily on Bates' deposition testimony in his motion for certification, in response to which Golden Flake has argued that plaintiff took the testimony "wholly out of context." In light of Golden Flake's argument on this point—and in abundance of caution—I read Bates' full two-volume (676-page) deposition in its entirety.

event”); *id.* at 545-46 (failure to deliver product to a customer will “start a disciplinary chain of action”); *id.* at 651 (testifying that an RSP “wouldn’t be employed very long” if he failed to service an account for “a couple of days”).

Based on the foregoing testimony of the defendant’s corporate representative, it would be reasonable to conclude that delivering Golden Flake products and properly servicing all customer accounts is the most important duty that an RSP has.⁶ However, Bates testified that an RSP’s “primary duty” is to sell:

Q: . . . What do you regard as the most important duty of a route salesperson?

A: Selling; going in and selling. That’s what a route sales person does. Everything else is part of that job; driving, delivering, filling, rotating, picking up sales, loading the trucks in the afternoon, making the order out for the next day or net week. All of that is a portion, and it has parts and responsibilities in the overall functionality of the professional route salesman.

But the number one thing that they do all of the time that precludes anything else, everything else is supportive of that, is selling.

Bates. Dep. at 640; *id.* at 56 (“Q: What do you believe to be the primary purpose of a route person’s job? A: To sell.”). Bates was asked during his deposition to explain what constituted “selling,” and (in addition to the tasks stated above, *e.g.*, loading the trucks and delivering the products to the store and stocking/maintaining the shelves) he identified three things: (1) selling *additional displays* to the store owners; (2) being “constantly” on the lookout for *new accounts* and then calling on those potential new

6

Indeed, that is precisely what the RSP job description that Golden Flake produced to plaintiff during discovery specifically says. *See supra* note 2 (quoting (doc. 47-15), which states, *inter alia*, “[t]he *primary purpose* of this position is to ensure that all customer accounts are properly serviced, completely stocked [according to the “established merchandising plan-o-grams”] and rotated and have a proper appearance”). Although Golden Flake denies that this is the “official” job description, I cannot ignore that it exists and that it was the only one maintained by human resources. *See id.*

accounts in order to sell them; and (3) arranging for *additional shelf space* to account for promotions on any new items that the company brings out. *See id.* at 58-60, 63. As a matter of economics, this is what a commission-based employee would typically try to do. However, Bates' own testimony undercuts the contention that this is an RSP's "primary duty."

As Bates acknowledged at a later point during his deposition, the three "selling" duties that he identified are generally the responsibility of district managers. *See Bates Dep.* at 106, 108-10 (conceding that it is an "essential function" for district managers to "call on existing and potential customers in an effort to increase shelf space as well as acquiring promotional display space"). Although a "really good RSP" may choose to do those things as well, many RSPs do not. *See, e.g., id.* at 446-47, 531, 543, 586, 602, 610-11, 613-14, 628-29, 637-38, 650-51, 660. Ultimately, those three functions are not an RSP's responsibility—let alone their "primary duty"—as Bates testified that Golden Flake will not take any adverse job action (not even a write-up) against RSPs who refuse to do them. *See, e.g., id.* at 80 (RSPs are not disciplined in any manner "for not calling or selling new accounts" or "for not selling displays"); *id.* at 544-45 ("We would not discipline somebody just because they don't go out and sell an extra display or sell a display. We never discipline somebody for not being aggressive. . . . We have some bottom feeders that don't [sell displays] at all. We do not classify them and we do not write them up and discipline them because they are not aggressive."); *id.* at 546 (conceding that RSPs will not "get disciplined for not getting aggressive and obtaining space in addition to what Golden Flake has obtained at the corporate level"); *id.* at 647 ("we are not going to fire somebody for not getting a display, we are not going to reprimand them for not being aggressive"); *id.* at 648 (stating that "if [the RSPs] are in there servicing the store, they are just not pushing for the extras, we're going to try to get them [to] be a little bit more pushy, . . . but we are not going to reprimand them in any way").

In fact, Bates testified that the company does not even keep track when RSPs *are* aggressive and sell extra. *See* Bates Dep. at 100 (Golden Flake doesn't keep track of when RSPs open up a new account on their sales route, "so there would be no way of knowing if any accounts that Golden Flake currently has were originated by a route person"); *id.* at 161 (Golden Flake doesn't document or keep track of when an RSP "is able to obtain additional space or display").

Because no adverse action is taken against RSPs who do not try and sell extra (and Golden Flake doesn't even know and keep track when an RSP *does* sell extra), selling is obviously not an RSP's "primary duty." While some district managers and some RSPs may consider selling additional displays, soliciting new customers, and aggressively marketing promotions as important parts of their jobs, such "selling" is not the "primary duty" of RSPs as a class. Something cannot be the "principal, main, major or most important" part of a person's job if there is no negative consequence whatsoever if he fails to do it—nor any record of when he does.

It is true, as previously noted, that RSPs are paid by commission. And for most commission-based jobs, selling is the primary duty. For example, if a shoe salesman is paid only on what he sells to customers who walk into the store, then making sales could certainly be described as his "primary duty." Commission-based compensation is a very effective incentive for anyone to try and generate more sales, regardless of how it may be characterized. But this case does not present that sort of "eat what you kill" commission arrangement. Golden Flake RSPs are assigned pre-existing routes with already-established customers, and it's from those already-established routes that their "commissions" are derived. The evidence in this litigation to date—in particular, Bates' testimony—indicates that many RSPs don't really have to do *any* "selling" in order to earn their "commissions." They must only stock and maintain their shelves or gondola space (although their commissions will obviously be higher if they do sell

extra).⁷ To be sure, Bates himself testified that a not-insignificant number of RSPs will only stock the shelves. *See, e.g.*, Bates Dep. at 446-47 (testifying that “a really good RSP” will sell additional displays, but conceding that “I wish I had more [really good RSPs], I don’t have a lot of them. I don’t have as many as I would like to have”); *id.* at 531 (“the better route salespeople will try” to maximize sales, but “[s]ome of the ones that we have on our payroll . . . aren’t so good, they don’t really push for it”); *id.* at 543 (“good route salespeople” will ask for extra displays, but others “don’t even ask for one”); *id.* at 544-45 (conceding that “[w]e do have some bottom feeders that don’t [sell] at all”); *id.* at 602 (“really good” RSPs will “go sell everything they can sell,” but some “just fill up [the] shelf and don’t worry about it”); *id.* at 609-611 (“maybe over 50 percent” of RSPs are “good” and seek additional space for promotions, while the others “do it periodically” or “never do it”); *id.* at 613-14 (testifying that “a portion of our RSPs go call on new business,” but “there are some RSPs that are currently on our payroll that don’t call on new business at all”).⁸

7

As was discussed at oral argument, whether and to what extent an RSP will try to sell extra may be based, at least in part, on the type of stores he has been assigned. An RSP with large retailers on his route that sell a lot of product (e.g., Wal-Mart) will probably be less inclined to be aggressive and sell extra than an RSP with small “mom and pop” convenience stores or gas stations. While the type of route that an RSP is assigned may provide him different *incentives*, it does not alter his job description or “primary duty.”

8

It is unclear how many RSPs are “bottom feeders that don’t [sell] at all.” Bates Dep. at 544-45. As quoted above, at one point Bates suggested it was a majority because he didn’t have “many” good ones. *See id.* at 446-47. At another point he said that at or around 50% did the job the way it was supposed to be done. *See id.* at 609-11. Regardless, it is clear from his deposition testimony that Golden Flake has a sizeable number of RSPs who don’t sell “properly, aggressively.” *See id.* at 609. It is difficult to see how something can be the “primary” part of a job if a large number of employees (whatever the number is) don’t do it regularly *or at all*. To the extent Golden Flake has admitted that these RSPs don’t sell extra because (like plaintiff) they work for district managers who discourage it and prefer to handle the sales themselves, if nothing else, that would appear to be a concession that making sales is not the primary duty for *those* RSPs.

Tellingly, at one point Bates testified that RSPs who don't sell anything extra "just do the job," that is, "they will follow the plan-o-gram to a T and never vary from it. They will just say, hey, this is what I was told to put in, and that is what I am going to put in, and if it doesn't sell, okay, fine." *Id.* at 617 (emphasis added). In light of Bates' testimony, it is apparent that going above and beyond to sell additional Golden Flake products is preferred—and some RSPs will do it—but "the job" of an RSP is really just putting on the shelf what they are told to put on the shelf. Golden Flake does not keep any record if they do more, and they are not disciplined, written up, or reprimanded in any way if they don't.⁹

The deposition testimony of one of the opt-ins, Aqueelah Caddell (doc. 50-1), which Golden Flake cited several times in its memorandum in opposition and during oral argument, is not inconsistent. Caddell testified that the overwhelming majority of her day was spent driving to the stores along her route, unloading the truck, and stocking the shelves. *See id.* at 96-97. While stocking the shelves, she generally had to follow the plan-o-grams. *See id.* at 93 ("Q: And could you just put whatever you wanted on the shelf, you know, disregarding the plan-o-gram? A: No."); *see also id.* at 93-95. At certain stores she was able to make slight "tweaks" to the plan-o-gram (depending on whether it had an "empty space" that allowed her to swap out a product that wasn't selling for one that was) [*id.*; *accord id.* at 100], but for other stores she could not depart from the plan-o-gram. *See id.* at 87 ("Q: So is it fair to say that you chose product to put on the shelves based upon what people liked in that area? A: Not

9

To be clear, it is not dispositive that Golden Flake doesn't discipline or reprimand RSPs who simply aren't *good* sellers. Many—if not most—employers don't reprimand every bad salesman on their staff because their compensation will automatically reflect poor performance. But that is not what we have here. As noted, Bates testified that they have a fairly large number of RSPs who don't even *try* to sell, and yet they are not disciplined. Not being disciplined for being a bad salesman is one thing; not being disciplined for refusing to even try is something else entirely.

in Dollar Generals, not in Winn-Dixie, because I had no say-so on what goes on the shelf. It's already a plan-o-gram."); *id.* at 99 (in Winn-Dixie "you have to follow the plan-o-gram . . . one hundred percent" and if you don't "you get in trouble"). While Golden Flake points out that Caddell testified that she could (and did) sometimes try to sell extra display space to increase her commission [*see id.* at 34-37], it was mostly at one specific Winn-Dixie store because they were "more friendly." *See id.* at 38-42; *compare id.* at 52 (testifying that she would never try to sell extra displays at Dollar General because: "They were very strict. You could only bring in what they allowed. If they say you bring in one, you bring in one."). Moreover, when she did try to sell extra displays, she would talk to the store manager about it for just a few minutes only once every few weeks when Golden Flake was running seasonal, holiday, or sporting-event promotions when there was going to be "increased demand." *See id.* at 43, 59-60, 101-03. Nothing in Caddell's testimony indicates that "selling" by pushing extra displays was her primary duty.

In sum, Bates testified that although Golden Flake has some "aggressive" and "pushy" RSPs who focus on selling, "[we] don't have a lot of them." *See Bates Dep.* at 446-47. If there is a large percentage of RSPs (perhaps even a majority) who aren't focused on selling—but instead efficiently deliver the products and stock the shelves, keeping the customers happy—this is not the typical "eat what you kill" commission job. Making sales is simply not their primary duty.¹⁰

10

Once again, consider an RSP's failure to "sell" (as Bates defined the term) with a failure to deliver Golden Flake products to a customer and properly stock and maintain the shelf. The former will not get you disciplined in any way [*see, e.g., Bates Dep.* at 545 ("we do not [even] write them up"), but the latter will. *See, e.g., id.* at 170-71 (failure to stock and service a store is a "disciplinary event"). Therefore, it is clear that "selling" (once again, as Bates defined that term) is not an RSP's primary duty, despite that some more aggressive RSPs—and their district managers—may think it important. As plaintiff's counsel argued at the oral argument, selling extra appears to be the "cherry on top" of what an RSP primarily does.

III. Conclusion

As earlier noted, an employee will fall under the “driver who sells” exemption “*only* if the employee has a *primary duty* of making sales.” 29 C.F.R. § 541.504(a) (emphasis added). “Primary duty” is defined as “the principal, main, major or most important duty that the employee performs.” *Id.* at § 541.700(a). Although Golden Flake has produced evidence that some district managers and their RSPs regard selling additional displays, soliciting new customers, and aggressively marketing promotions as important parts of an RSP’s job, Bates’ sworn testimony leads to the inescapable conclusion that such “selling” (although encouraged) is not their primary duty. Thus, the exception that Golden Flake has relied upon to avoid certification does not apply.

For these reasons, the plaintiff’s motion for conditional certification (doc. 48) is GRANTED. It is hereby ORDERED that:

(a) This case is conditionally certified as an FLSA collective action pursuant to § 216(b), and the Putative Collective Members shall be comprised of the plaintiff, Edward Joseph Fullerton, and all other persons employed by the defendant, Golden Flake Snack Foods, Inc., as a Route Sales Professional that drove a truck weighing 10,000 pounds or less during the period three years preceding the commencement of this lawsuit to the present;

(b) The parties shall jointly submit within fourteen (14) days from this order a proposed Notice to the Putative Collective Members of the pendency of this collective action and of their ability to opt into the case by signing and submitting an Opt-In and Consent Form;

(c) The defendant shall provide within fourteen (14) days from this order a Roster of all Putative Collective members that includes their full names, their dates of employment, and their last known home addresses and personal email addresses;

(d) The Notice shall then be sent to all Putative Collective Members within 30 days using the home and email addresses listed in the Roster; and

(e) Duplicate copies of the Notice may be sent in the event new, updated, or corrected mailing addresses or email addresses are found for one or more such present or former employees.

DONE and ORDERED this 30th day of August, 2018.

/s/ Roger Vinson
ROGER VINSON
Senior United States District Judge