UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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| JOSEPH STRAUCH and TIMOTHY COLBY, on behalf of themselves and all those similarly situated,<br>*Plaintiffs*,<br>*v.*<br>COMPUTER SCIENCES CORPORATION,<br>*Defendant*. | Civil No. 3:14cv956 (JBA)<br><br><br>June 09, 2015 |

**RULING GRANTING PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION**

Plaintiffs, current and former Computer Sciences Corporation ("CSC") System Administrators, bring this action alleging that CSC misclassified them as exempt employees under the Fair Labor Standards Act ("FLSA") and state law. Plaintiffs seek [Doc. # 152] conditional certification of a collective action under 29 U.S.C. § 216, consisting of "[a]ll persons who were, are, or will be employed by CSC nationwide from July 1, 2011 to the present as Associate Professional System Administrators, Professional System Administrators, or Senior Professional System Administrators, who earned less than $100,000 annually, and who were classified as exempt from the overtime pay requirements of the FLSA." (Pls.' Mem. Supp. Mot. for Conditional Cert. [Doc. # 154] at 1.) For the reasons that follow, Plaintiffs' Motion [Doc. # 152] for Conditional Certification is granted.

## I. Background

CSC employs about 72,000 individuals to provide information technology services to clients in more than 70 countries. (Def.'s Opp'n to Mot. for Conditional Cert. [Doc. # 160] at 4.) Because the company is so large, in 2006 it created a company-wide job structure to categorize all of its jobs and enable "people to understand the kinds of

responsibilities that they are going to be doing . . . [and] what their title is." (Josephson Dep., Ex. 11 to Salazar-Austin Decl. [Doc. # 161] & Ex. E to Sagafi Decl. [Doc. # 155] at 71.) In the process, CSC reviewed all of its job titles to ensure they accurately described the work being done by employees, and where they did not, CSC created new job titles. As Heidi Josephson, a principal in CSC's Compensation group, explained, "We did want to use . . . titles so that we could say this was an apple and this was an apple," at a level of generality that "describes the frequent, important duties and responsibilities to help us differentiate between a database administrator and a programmer and a project manager. . . . [A]t a position level things might be a little different, but it helped describe the predominant work performed." (*Id.* at 134–35.) By the end of the process, CSC had grouped its employees into over 1500 job titles, categorized into families, disciplines, functions, and job series. (*Id.* at 15–16.)

One such job series is that of System Administrator ("SA"), which encompasses five job titles (i.e. levels): Associate Professional, Professional, Senior Professional, Advisor and Principal. (Opp'n at 4.) According to CSC's Job Description Summary Report, Associate Professional SAs "[i]nstall[], investigate[] and resolve[] matters of significance with computer software and hardware equipment"; Professional SAs "[i]nstall[], investigate[] and resolve[] routine and complex matters of significance with computer software and hardware equipment"; and Senior Professional SAs "[p]rovide[] support for moderately complex and technical and team management activities related to system and database administration." (SA Job Summaries, Ex. F to Sagafi Decl.; *see also* Job Comparison Report, Ex. N to Sagafi Decl.) All SAs, regardless of job title, fall within the Technology Family, Systems Services Discipline, Systems Administration Function,

and System Administrator Job Series (*see* Job Tree, Ex. G to Sagafi Decl.), and all SAs are classified by CSC as exempt from the FLSA's overtime protections (Opp'n at 3).

SAs "serve CSC's internal, commercial and governmental clients," including the U.S. Armed Forces, the Department of Defense, United Technologies Corporation, General Dynamics, and Boeing. (*Id.* at 11, 14.) Their salaries range from about $35,000 to $100,000 a year, although most make between $60,000 and $80,000 annually. (*See* Salary Table, Ex. 8 to Salazar-Austin Decl.) No SAs supervise or manage other employees. (Josephson Dep. at 80.)

Plaintiffs seek conditional certification of a collective action including SAs from the bottom three levels of the SA hierarchy (Associate Professional, Professional, and Senior Professional SAs). (Mem. Supp. at 1.) Defendant objects only to certification of Senior Professional SAs. (Opp'n at 3.)

## II. Discussion

### A. Conditional Certification

The FLSA provides employees with a right to sue on behalf of themselves and "other employees similarly situated" for claimed violations of the FLSA; such a joint, or "collective," action requires potential plaintiffs to "opt in" to the suit in order to benefit from any judgment. 29 U.S.C. § 216(b). As both parties recognize, confronted with a purported collective action alleging an FLSA violation, "[c]ourts typically undertake a two-stage review in determining whether a suit may proceed as a collective action under the FLSA. As a first step the court examines pleadings and affidavits, and if the court finds that proposed class members are similarly situated, the class is conditionally certified; potential class members are then notified and given an opportunity to opt-in to the action." *Cuzco v. Orion Builders, Inc.*, 477 F. Supp. 2d 628, 632 (S.D.N.Y. 2007). "The

second step of the certification analysis occurs upon completion of discovery. A court, often prompted by a motion for decertification by the defendant, will examine all evidence then in the record to determine whether there is a sufficient basis to conclude that the proposed class members are similarly situated." *Id.* If it is determined that they are, the case will proceed to trial; if it is determined they are not, the class is decertified and only the individual claims of the purported class representatives (here, Mr. Strauch and Mr. Colby) proceed.

At the initial collective action assessment, before discovery is completed, class representatives must satisfy only a "minimal burden to show that [they are] similarly situated to the potential class," which requires "a modest factual showing sufficient to demonstrate that [they] and potential plaintiffs together were victims of a common policy or plan that violated the law." *Cuzco*, 477 F. Supp. 2d at 632–33; *see Velasquez v. Digital Page, Inc.*, No. CV 11-3892 (LDW) (AKT), 2014 WL 2048425, at *8 (E.D.N.Y. May 19, 2014) ("Courts do not require proof of an actual FLSA violation, but rather that a 'factual nexus' exists between the plaintiff's situation and the situation of other potential plaintiffs." (internal quotation marks omitted)). "The standard of proof remains low because the purpose of this first stage is merely to determine whether 'similarly situated' plaintiffs do in fact exist." *Id.*

Defendant here contends that because some discovery has taken place, the more stringent second tier standard is applicable. (*See* Opp'n at 15 n.69.) The out-of-circuit cases cited by Defendant, however, are contrary to "the overwhelming case law in this Circuit" which "clearly holds that a heightened standard is not appropriate during the first stage of the conditional certification process and should only be applied once the entirety of discovery has been *completed*." *Amador v. Morgan Stanley & Co. LLC*, No. 11

CIV. 4326 (RJS), 2013 WL 494020, at *4 (S.D.N.Y. Feb. 7, 2013) (internal quotation marks omitted) (emphasis in original) (collecting cases). Discovery has not been completed in this case, and the Court will therefore apply the more lenient first stage standard.

Plaintiffs argue, on the basis of CSC's job structure as well as depositions and affidavits from twenty-six named and opt-in plaintiffs, that a factual nexus exists between Mr. Colby and Mr. Strauch's job duties and those of other CSC SAs. With regard to CSC's job structure, Plaintiffs contend that CSC's "system, with its emphasis on giving each worker the proper job title to reflect her core job duties, provides unusually strong evidence that individuals in a given Job Series—like the System Administrators here—are similarly situated." (Mem. Supp. at 8.) Defendant objects that "[a]lthough Plaintiffs make much of the 'Job Family[,]' 'Discipline,' 'Function' and 'Job Series' designations that CSC uses, in reality these designations are simply tools used by Human Resources to organize the tens of thousands of individuals CSC employs. . . . Grouping them together in this way in no way enables CSC, or anyone else, to determine whether one pocket of System Administrators . . . is performing duties similar to another pocket of . . . System Administrators." (Opp'n at 9–10.)

This argument, however, falters in light of CSC's own witness's testimony. Ms. Josephson stated that the job titles were created in such a way as to "describe the predominant work performed" by the individuals with each title (Josephson Dep. at 135), including "the typical nature and level of duties and responsibilities and the central functions that are done on the job" (*id.* at 76). Indeed, Ms. Josephson specifically affirmed that the job structure "ensured that each particular job description grouped employees who did similar work," "no matter where the job was geographically." (*Id.* at 50.) Notwithstanding Defendant's assertions to the contrary, Ms. Josephson's statement

that the 2006 job restructuring was "just [an attempt] to categorize things to help navigate through the job descriptions," does not support the conclusion that CSC's job tree has no bearing on whether SAs are similarly situated individuals. Rather, the Court concludes that while by no means dispositive, the fact that CSC grouped Senior Professional SAs into the same family, discipline, function, and job series as Associate and Professional SAs is some evidence of a factual nexus between individuals in these groups.

Plaintiffs offer additional support for their claim that Senior Professional SAs are similarly situated to other SAs in the form of depositions of the named plaintiffs and declarations by 24 opt-in plaintiffs [Doc. # 156], eight of whom are or were Senior Professional SAs. Although the details of their accounts vary, the majority of opt-in plaintiffs state in their declarations that their main job duties consisted of building and/or installing, maintaining, supporting, upgrading, configuring, and troubleshooting servers and/or software according to specifications set by CSC or the client, in accordance with strict procedures and/or checklists. Named plaintiffs Mr. Colby and Mr. Strauch similarly testified that they built, ran, configured, maintained, and performed troubleshooting on servers, and installed and upgraded operating systems and system software according to a strict set of parameters.

Defendant responds however that these accounts are at odds with CSC's SA job descriptions, and as a result, they undercut Plaintiffs' "entire class theory, which explicitly relies on the alleged 'consistency and uniformity' with which CSC manages its System Administrators." (Opp'n at 17.) Moreover, Defendant argues, citing *Mike v. Safeco Ins. Co. of Am.*, 274 F. Supp. 2d 216, 221 (D. Conn. 2003), "Plaintiffs' disavowal of the job descriptions leaves the Court with no class-wide mechanism for determining whether the

Senior Professionals are 'similarly situated' to the lower levels of the System Administrator position." (Opp'n at 18.)

However, unlike the plaintiff in *Mike*, Plaintiffs here "did not completely disavow the [job] description[s]—[their] testimony was more to clarify the tasks and responsibilities listed and the time [they] spent performing each." *Neary v. Metro. Prop. & Cas. Ins. Co.*, 517 F. Supp. 2d 606, 621 (D. Conn. 2007). A plaintiff's claim that "he and all putative class members were injured by the same . . . policy—designation as exempt from the FLSA . . . — . . . is sufficient to meet the lenient first-tier collective action standard" and a holding "to the contrary would preclude certification of a collection action in any FLSA case where the defendant was asserting an . . . exemption defense." *Id.* at 621–22; *see Austin v. CUNA Mut. Ins. Soc.*, 232 F.R.D. 601, 606 (W.D. Wis. 2006) ("Defendant's arguments about the predominance of individualized inquiries and the dissimilarities between plaintiff and other employees are properly raised after the parties have conducted discovery and can present a more detailed factual record for the court to review."); *White v. MPW Industrial Servs., Inc.*, 236 F.R.D. 363, 373 (E.D. Tenn. 2006) ("[A] defendant's assertion of the potential applicability of an exemption should not be permitted to overcome an otherwise adequate threshold showing by the plaintiff. . . . Several courts have stated . . . that disparate factual and employment settings of the individual plaintiffs should be considered at the second stage of analysis." (internal citations omitted)).

Nor is the Court persuaded by Defendant's contention that "[t]he Senior Professionals' dramatically different pay scale precludes them from being similarly situated to the rest of the putative class." (Opp'n at 21.) *Colon v. Major Perry Street Corp.*, No. 12 Civ. 3788 (JPO), 2013 WL 3328223, at * 7 (S.D.N.Y. July 2, 2013), cited by

Defendant in support of this argument, does not stand for the proposition that "groups separated by [a significant] disparity [in compensation] *cannot* be subject to the same policy and do not share any sort of factual nexus," as Defendant claims. (Opp'n at 21 (internal quotation marks omitted) (emphasis added).) Rather, the *Colon* court stated only that the "markedly different pay scales" of two groups was one factor among several factors—not present here—that led it to conclude the groups were not similarly situated. 2013 WL 3328223, at * 7.

After reviewing the declarations of the opt-in plaintiffs, the depositions of the named plaintiffs, and the parties' well-drafted and thorough briefs and attached exhibits, the Court concludes that Plaintiffs have met their "minimal burden" of demonstrating that they and the "potential plaintiffs together were victims of a common policy or plan that violated the law," *Cuzco*, 477 F. Supp. 2d at 632–33, such that conditional certification is appropriate. The Court thus turns to the parties' disputes regarding the effectuation of notice to potential opt-in plaintiffs which have been refined by the parties' joint submission [Doc. # 167] on issues remaining in dispute after counsels' diligent conferencing.

**B. Timing of Notice(s)**

"Because trial court involvement in the notice process is inevitable in cases with numerous plaintiffs where written consent is required by statute, it lies within the discretion of a district court to begin its involvement early, at the point of the initial notice, rather than at some later time." *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 171 (1989). "When exercising [their] broad discretion to craft appropriate notices in individual cases, District Courts consider the overarching policies of the collective suit provisions and whether the notice provides accurate and timely notice concerning the

pendency of the collective action so that an individual receiving the notice can make an informed decision about whether to participate." *Velasquez*, 2014 WL 2048425, at *9 (internal quotation marks and brackets omitted).

The parties here dispute the amount of time potential plaintiffs should be given to opt-in to the collective action. Plaintiff seeks a notice period of 90 days while Defendant seeks a period of 45 days. Courts in this Circuit "routinely restrict the opt-in period to sixty days," *id.* at *12 (collecting cases), and generally only grant 90-day opt-in periods "where the period is agreed upon between the parties or special circumstances require an extended opt-in period," *Whitehorn v. Wolfgang's Steakhouse, Inc.*, 767 F. Supp. 2d 445, 452 (S.D.N.Y. 2011). As Plaintiffs have not represented that any special circumstances exist here, the notice which will be mailed (not emailed) should be modified to direct opt-in plaintiffs to submit their consent forms within sixty days of the date of the notice. The Court will entertain untimely motions to join on a showing of good cause for the delay.

The parties additionally disagree about whether or not Plaintiffs may send out a reminder notice 21 days before the end of the notice period. Defendant, citing primarily out-of-circuit cases, objects to a reminder notice on the grounds that Plaintiffs have failed to provide a reason for the notice in this case and because "a second Notice inherently suggests to the recipient that he or she did something wrong when they chose to disregard the first Notice." (Opp'n at 32–33.) However, "[g]iven that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt-in," the Court finds that a Court-approved reminder notice is appropriate and may be executed by mail and/or email to non-responding putative class members. *Chhab v. Darden Rests., Inc.*, No. 11 Civ. 8345 (NRB), 2013 WL 5308004, at

*16 (S.D.N.Y. Sept. 20, 2013); *see Morris v. Lettire Const., Corp.*, 896 F. Supp. 2d 265, 274 (S.D.N.Y. 2012) (same).

**C. Disclosure Request**

Plaintiffs seek a Court order requiring Defendant to produce "the names, all known addresses, all known email addresses, all known telephone numbers including non-work numbers, and Social Security numbers of all Collective Members." (Notice of Mot. for Conditional Cert. [Doc. # 152] at 2.) Defendant objects, asserting that "[a]ny information beyond employee name and last known address is unwarranted and intrusive, and could encourage improper and unauthorized contact." (Opp'n at 31.) The Court disagrees. "'Disclosure of the names, addresses, telephone numbers and email addresses of putative class members is commonplace in this [Circuit] because such information is essential to identifying and notifying potential opt-in plaintiffs.'" *Robles v. Liberty Rest. Supply, Corp.*, No. 12-cv-5021 (FB) (VMS), 2013 WL 6684954, at *11 (E.D.N.Y. Dec. 18, 2013) (quoting *Melgadejo v. S & D Fruits & Vegetables Inc.*, No. 12 Civ. 6852 (RA) (HBP), 2013 WL 5951189, at * 7 (S.D.N.Y. Nov. 7, 2013)); *see Puglisi v. TD Bank, N.A.*, 998 F. Supp. 2d 95, 102 (E.D.N.Y. 2014) ("In regard to requests for 'names, last known addresses, telephone numbers (both home and mobile), e-mail addresses, and dates of employment,' courts 'often grant this kind of request in connection with a conditional certification of an FLSA collective action.'" (quoting *Raniere v. Citigroup, Inc.*, 827 F. Supp. 2d 294, 327 (S.D.N.Y. 2011))); *Ack v. Manhattan Beer Distribs., Inc.*, No. 11 Civ. 5582 (CBA) (SMG), 2012 WL 1710985, at *6 (E.D.N.Y. May 15, 2012) (ordering production of names, addresses, telephone numbers, and email addresses).

However, Plaintiffs have offered no reason why Defendant should be required to produce *all known* addresses, email addresses, and phone numbers, as opposed to only

*last-known* addresses, email addresses, and phone numbers. Nor have Plaintiffs demonstrated a need for social security numbers, which have been recognized by courts to be a particularly sensitive form of identification that should not be ordered to be produced absent a showing of necessity. *See Velasquez*, 2014 WL 2048425, at *15 ("With regard to . . . social security numbers, however, courts typically decline to allow discover in the first instance."); *Whitehorn*, 767 F. Supp. 2d at 448 ("While courts often decline to allow discovery of social security numbers due to privacy concerns, it is generally accepted that such discovery is permitted where Plaintiff can demonstrate that names and contact information are insufficient to effectuate notice."). Similarly, since Plaintiff's counsel will not be conducting "out reach' other than by the procedures outlined here, there is no need shown for telephonic information except for opt-in plaintiffs who can themselves provide such information to Plaintiffs' counsel.

As such, Defendant is ordered to provide Plaintiffs, in Microsoft Excel or comparable format, with a list of the names, last known addresses, known email addresses, and dates of employment of all potential collective action members employed by it during the relevant time period. The list is to be furnished within 21 days of the entry of this Order and is to be treated by the parties as confidential. If Plaintiffs are unable to effectuate notice on some potential opt-in plaintiffs with the information that is produced, they may renew their application for additional individual employee information.

**D. Third-Party Administrator**

Finally, Defendant seeks an order requiring that the notice to potential opt-in plaintiffs be issued by a third-party administrator, rather than by Plaintiffs. (Opp'n at 28.) Defendant claims such a step is "necessary" "given the aggressive recruitment tactics

already employed by Plaintiffs and their counsel." (*Id.*) Defendant stops short of accusing Plaintiffs' counsel of impropriety but asserts that Plaintiffs' "overzealous recruitment efforts" demonstrate the "potential for abuse." (*Id.* at 29, 30.)

The Court sees no need for a third-party administrator at this stage. Unlike in *Ruggles v. Wellpoint, Inc.*, 591 F. Supp. 2d 150, 164 (N.D.N.Y. 2008), cited by Defendants, there is no record of abuse or misleading statements by Plaintiffs' counsel here, and "[t]he bulk of the district courts in this Circuit" do not require the use of third-party administrators, *Hernandez v. Merrill Lynch & Co.*, No. 11 CIV. 8472 (KBF), 2012 WL 1193836, at *7 (S.D.N.Y. Apr. 6, 2012). *See Pippins v. KPMG LLP*, No. 11 CIV. 0377 (CM) (JLC), 2012 WL 19379, at *15 (S.D.N.Y. Jan. 3, 2012) (rejecting request for third-party administrator); Diaz v. Scores Holding Co., No. 07 CIV. 8718 (RMB), 2008 WL 7863502, at *5 n.2 (S.D.N.Y. May 9, 2008) (same). Defendant's request for a third-party administrator is therefore denied.

## III. Conclusion

For the foregoing reasons, Plaintiffs' Motion [Doc. # 152] for Conditional Certification is GRANTED.

The Court Orders the following:

1. Within **21 days** of the entry of this Order, Defendant shall provide Plaintiffs, in Microsoft Excel or comparable format, with a list of the names, last known addresses, email addresses, and dates of employment of all potential collective action members employed by CSC during the relevant time period.

2. Notice shall be sent by first class mail to all persons who were, are, or will be employed by CSC nationwide from July 1, 2011* to the present as Associate Professional System Administrators, Professional System Administrators, or Senior Professional System Administrators, who earned less than $100,000 annually, and who were classified as exempt from the overtime pay requirements of the FLSA.
3. Potential opt-in plaintiffs will have 60 days from the date of the notice to submit their consent forms, electronically or in writing.
4. Plaintiffs' counsel may send a Court-approved reminder notice, by first class mail and/or email, to potential opt-in plaintiffs who have not yet opted in 21 days before the opt-in period closes. Plaintiffs shall submit their proposed reminder notice to the Court by June 23, 2015 and Defendant may file letter comments by June 29, 2015.

IT IS SO ORDERED.

/s/
Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut this 9th day of June, 2015.

* Any issues of equitable tolling are deferred until the opt-in period closes to permit development of an appropriate record on which to base the Court's determination.