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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AARON SENNE, et al., Individually and on Behalf of All Those Similarly Situated;

Plaintiffs,

vs.

OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL; et al.;

Defendants.

CASE NO. 3:14-cv-00608-JCS
Consolidated with 3:14-cv-3289-JCS

CLASS ACTION

NOTICE OF MOTION AND MOTION FOR NOTICE TO THE CLASS AND CONDITIONAL CERTIFICATION PURSUANT TO THE FAIR LABOR STANDARDS ACT

Date: Oct. 2, 2015
Time: 2:00 p.m.
Ctrm.: G-15th Floor

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, please take notice that on October 2, 2015, at 2:00 p.m., or as soon thereafter as the matter may be heard by the Honorable Joseph C. Spero of the United States District Court of the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, Courtroom G, 15th Floor, Plaintiffs in the above entitled action will and hereby do move for an order conditionally certifying the following Fair Labor Standards Act ("FLSA") Collective pursuant to 29 U.S.C. § 216(b):

> All minor league baseball players employed by MLB or any MLB franchise under the Minor League Uniform Player Contract who worked or works as minor league players at any time since February 7, 2011 but who had no service time in the major leagues at the time of performing work as a minor leaguer.

Plaintiffs seek an order requiring Defendants to produce the contact information for the Collective, and disseminating notice to members of the Collective. Plaintiffs further seek an order tolling the applicable three year statute of limitations period on behalf of members of the Collective from February 7, 2011 through the close of the notice period.

This motion is based on this Notice of Motion and Motion, the attached memorandum of points and authorities, the supportive declarations, the pleadings and papers on file in this action, and such other matters as the Court may consider.

Dated: June 26, 2015

/s/ Bobby Pouya

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I. INTRODUCTION

This action arises from the systematic exploitation of the labor and talents of Plaintiffs[1] and similarly situated minor league baseball players in violation of minimum wage and overtime laws, including the Fair Labor Standards Act ("FLSA"). Plaintiffs request that the Court conditionally certify this FLSA collective action and order notice sent to the proposed Minor League Collective (as defined herein).

Plaintiffs easily satisfy the lenient standard for conditional certification—where the movant simply must show through the pleadings and affidavits that the members of the collective were subjected to a common scheme. As set forth in detail in this Motion, the Office of the Commissioner of Baseball, doing business as Major League Baseball ("MLB"), its member franchises ("MLB Franchises"), and former Commissioner Allan H. "Bud" Selig (collectively "Defendants") control and oversee a vast minor league system, which is the means by which players gain entry into MLB. To work in Defendants' minor league system as a minor league player, Defendants require minor leaguers to enter into substantially identical and non-negotiable Minor League Uniform Player Contracts ("UPC"), which dictates the terms and conditions of their employment. All minor leaguers working under this UPC—across years, franchises, and locations—are subject to the same employment terms, policies, and procedures and required to perform the same work.

Under the UPC, Defendants require minor leaguers to perform extensive work "throughout the calendar year," including during all games, practices, travel, and training sessions—whether during pre-season, regular season, post-season, spring training, or winter training. The work obligations under the UPC require minor leaguers to work in excess of eight hours per day and forty hours per week. Despite the amount and duration of work required throughout the year, the UPC only permits minor leaguers to receive wages during the "championship season" (*i.e.*, the months of the year when minor leaguers play official games). During other times of the year, such as spring training,

[1] "Plaintiffs" refers collectively to all plaintiffs named in the Second Consolidated Amended Complaint. (*See* Dkt. 382).

instructional leagues, and winter training periods, the UPC does not provide for payment of any wages—even though they are required to perform significant amounts of work during these periods. Minor leaguers are never paid overtime and their wages begin at $1,100 per month, meaning many minor leaguers earn approximately $5,000 or less for a full year of work.

Plaintiffs allege that Defendants' uniform wage-and-hour policies violate the FLSA because: (1) they fail to pay minor leaguers the requisite minimum wage for hours worked during the championship season; (2) they fail to pay minor leaguers overtime for work in excess of forty hours per week; and (3) they fail to pay minor leaguers any wages for work performed outside of the championship season. Each member of the collective suffers these injuries because of Defendants' common scheme effectuated though their use of the UPC, and other rules, guidelines, practices and regulations of general applicability.

Thus, their FLSA wage and hour claims are well suited for collective resolution, and Plaintiffs meet the lenient standard for conditional certification. Accordingly, Plaintiffs respectfully request that the Court conditionally certify the Minor League Collective pursuant to 29 U.S.C. § 216(b), require Defendants to produce the contact information for the Minor League Collective, permit notice to be sent to members of the Minor League Collective allowing them to opt into this collective action, and toll the FLSA statute of limitations until the expiration of the opt-in period.

II. RELEVANT PROCEDURAL HISTORY

Plaintiffs filed *Senne, et al. v. Office of the Commissioner of Baseball, et al.* (Case No. 3:14-cv-00608) against defendants MLB, Selig, and three MLB franchises on February 7, 2014. (Dkt. 1). Through two amended complaints, the *Senne* Plaintiffs named additional Plaintiffs and named MLB, Selig, and all thirty MLB franchises as Defendants. (Dkt. Nos. 19, 57). Certain defendants moved to dismiss for lack of personal jurisdiction, (Dkt. 115), and all Defendants sought to transfer venue to the Middle District of Florida, (Dkt. 115).

On October 1, 2014, the Court entered an order tolling the statute of limitations on the proposed FLSA collective's claims "from July 11, 2014 until 45 days after the Court's resolution of [Defendants' motions to dismiss and transfer venue]." (Dkt. 231) (Seeborg, J.). The tolling agreement further states that "Plaintiffs will not move for conditional certification of the proposed FLSA

collective until resolution of [Defendants' motions to dismiss and transfer venue]." (*See id.*).

On October 10, 2014, the Court (Seeborg, J.) consolidated the *Senne* and a related case, *Marti, et al. v. Office of the Commissioner of Baseball, et al.* (Case No. 3:14-cv-3289-JCS), (Dkt. 235), and appointed Korein Tillery LLC and Pearson, Simon & Warshaw, LLP as Interim Co-Lead Counsel in the consolidated actions. (Dkt. 236). The Court further ordered plaintiffs to file a Consolidated Amended Complaint. Plaintiffs filed their Consolidated Amended Complaint on October 24, 2014. (Dkt. 243). The Defendants refiled their motions to dismiss and transfer venue on November 17, 2014. (Dkt. 281-283). On February 13, 2015 the Court held an initial hearing on these motions and ordered Plaintiffs to file a proposed Second Consolidated Amended Complaint ("SCAC") adding certain Plaintiffs. (*See* Dkt. 353). The operative SCAC was lodged on March 16, 2015 (Dkt. 363), and deemed filed by the Court on May 20, 2015 (Dkt. 382). In addition to FLSA violations, the SCAC asserts Rule 23 class action allegations under the wage and hour laws of several states.

On May 20, 2015, the Court entered an order denying Defendants' Motion to Transfer Venue and denying the Motion to Dismiss for Lack of Personal Jurisdiction filed by the Detroit Tigers, New York Yankees and Pittsburgh Pirates. (Dkt. 379, pg. 105). The Court dismissed the following franchises without prejudice for lack of personal jurisdiction: Atlanta Braves, Chicago White Sox, Tampa Bay Rays, Washington Nationals, Philadelphia Phillies, Boston Red Sox, Baltimore Orioles, and Cleveland Indians. (*See id.*). The minor leaguers employed by these teams still assert claims against MLB and Selig and are thus still members of the Minor League Collective. (*See* SCAC Dkt. 382, ¶¶ 1-18, 73-102, 571).

Defendants have filed another Motion to Dismiss the SCAC claiming that Plaintiffs lack Article III standing to assert certain state law claims. (*See* Dkt. 410). Defendants' newly filed Motion to Dismiss is scheduled to be heard on July 10, 2015. Due to Defendants' serial challenges to the pleadings, and the multiple judicial reassignment orders, discovery in this case is still in its early stages. (*See* Pouya Decl. ¶ 17). The Yankees, Tigers and Pirates did not respond to any merits or class certification discovery until June 17, 2015. (*See id.* ¶ 18). The balance of the Defendants have challenged the scope of Plaintiffs' requests for production, leading to a discovery dispute that the Court will hear on July 10, 2015. (*See id.*, *see also* Dkt. 411). The parties are also still engaged in

negotiations regarding Defendants search terms and custodians in response to Plaintiffs discovery. (*See* Pouya Decl. ¶ 19). As of the filing of this Motion, the majority of Defendants have produced less than 100 pages of documents relating to the named Plaintiffs. (*See id.* ¶ 20). Given the dearth of documents produced by Defendants, Plaintiffs have not taken any depositions. (*See id.* ¶¶ 20-21).

III. STATEMENT OF RELEVANT FACTS

A. The Definition of the Minor League Collective.

Plaintiffs bring this case on behalf of the following proposed Minor League Collective:

> All minor leaguer baseball players employed by MLB or any MLB franchise under the Minor League Uniform Player Contract who worked or works as minor league players at any time since February 7, 2011, but who had no service time in the major leagues at the time of performing work as a minor leaguer.[2]

B. Defendants Use Adhesive Uniform Player Contracts to Employ and Control Members of the Minor League Collective.

MLB and the MLB Franchises operate and control an extensive minor league "farm system." Collectively, they employ thousands of minor league baseball players. The vast majority of minor leaguers never play a game in the major leagues. The Major League Rules ("MLR" or "MLB Rules"), which govern the operations of MLB, make clear that MLB and the MLB Franchises are the employers and remain in control of minor league baseball players for all relevant purposes.[3] (*See* SCAC, Exh. A (Dkt. 382)).

"To preserve morale among Minor League players and to produce the similarity of conditions necessary for keen competition," all minor leaguers must sign the adhesive UPC regardless of which MLB franchise for which they play.[4] All initial UPC lasts for "seven Minor League playing seasons,"[5]

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[2] *See* SCAC, ¶ 128 (Dkt. 382).

[3] *See, e.g.,* MLR 56(g) (Dkt. 382, ¶ 172 & p. 293) ("The players so provided shall be under contract exclusively to the Major League Club and reserved only to the Major League Club. The Minor League Club shall respect, be bound by, abide by and not interfere with all contracts between the Major League Club and the players that it has provided to the Minor League Club.").

[4] MLR 3(b)(2) (Dkt. 382, ¶ 164 & p. 155).

[5] MLR 3(b)(2) (Dkt. 382, ¶ 164 & p. 155).

and the failure to sign a UPC disqualifies the player from working as a minor leaguer.[6] If the initial UPC expires or is terminated, the player must again sign a new UPC to work in the major leagues, though it may be for a shorter duration.[7]

MLB Franchises "make[ ] all decisions related to player development, including selecting the coaching staff and deciding which players to assign to the [minor league] team."[8] MLB requires MLB Franchises to pay the wages of minor league players in a certain manner and provides MLB Franchises with the authority to control minor league assignments.[9] The MLB Rules dictate the minor league playing schedule,[10] establish mandatory guidelines for minor league travel itineraries,[11] and require all minor league travel schedules to be approved by the MLB Franchises.[12] The Commissioner must approve all UPCs[13] and no MLB Franchise can use a contract differing from the UPC.[14] The UPC is signed by the player, the Commissioner of Baseball, and the MLB Franchise.[15]

Like other similarly situated members of the Minor League Collective, each of the named Plaintiffs signed the UPC without modification. (*See* Plaintiff Declarations, p. 1).[16] The UPC governed

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[6] MLR 3(d) (Dkt. 382, ¶ 165 & pp. 163-64) ("[P]layer's refusal to sign a formal contract shall disqualify the player from playing with the contracting Club or entering the service of any Major or Minor League Club."); *see also* MLR 4(h) (Dkt. 382 p. 176).

[7] MLR 3(b)(2) (Dkt. 382, p. 155).

[8] SCAC, ¶ 174 (Dkt. 382) (quoting *MiLB.com Frequently Asked Questions*, MiLB.com, http://www.milb.com/milb/info/faq.jsp?mc=business#3, which is now available at http://www.milb.com/milb/info/faq.jsp?mc=business#6 (last visited June 26, 2015)) (Pouya Decl. Exh. C).

[9] MLR 56(g) (Dkt. 382, ¶ 172-75 & pp. 293-94).

[10] MLR 32(b) (Dkt. 382, pp. 238) ("[T]he schedule of each Minor League and Minor League Club shall comply with the standards set forth in [the MLR].").

[11] MLR 57 (Dkt. 382, pp. 166-67).

[12] *See id.*

[13] MLR 3(b)(3); *see also* MLR 3(b)(4) (Dkt. 382, ¶ 165 & p. 155) (saying that a player cannot play until the UPC is signed).

[14] *See id.*

[15] MLR Addendum C-D (Dkt. 382, pp. 330-33).

[16] The term "Plaintiff Declarations" refers collectively to the concurrently filed declarations in support (footnote continued)

their terms of employment and compensation at all relevant times, and they contracted exclusively with MLB and its member Franchises.[17]

Thus, the UPC is an adhesion contract granting MLB and the Franchises the exclusive rights to the minor leaguer for seven minor league playing seasons (about seven years).

C. Defendants Apply Generally Applicable Wage-and-Hour Practices Toward Members of the Minor League Collective.

At all relevant times and for all Defendants, the UPC and the MLRs control the Minor League Collective's employment. Notably, these overarching policies control when, how, and what the Collective is paid.

The UPC dictates that wages are only to be paid during the "championship season," which typically lasts from early April to early September.[18] Yet the UPC and Defendants require all minor leaguers to "perform professional services on a calendar year basis, regardless of the fact that salary payments are to be made only during the actual championship playing season."[19] The UPC further prohibits minor leaguers from performing baseball-related services for any other organization.[20] In other words, members of the Minor League Collective are required to work for Defendants

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of this Motion submitted by plaintiffs named in the SCAC.

[17] *See generally* UPC, *see also* Plaintiff Declarations, p. 1.

[18] MLR Attachment 3, UPC ¶ VII.B (Dkt. 382, ¶ 187 & p. 310).

[19] *See id.* Consistent with this obligation, the UPC requires members of the Minor League Collective to work:

> throughout the calendar year including Club's championship training season, Club's exhibition games, Club's instructional, post-season training or winter league games, any official play-off series, any other official post-season series in which Club shall be required to participate, any other game or games in the receipts of which Player may be entitled to a share, and any remaining portions of the calendar year. Player's duties and obligations shall continue in full force and effect until October 15 of the calendar year of the last championship playing season covered by this Minor League Uniform Player Contract.

[20] *See* MLR Attachment 3, UPC ¶ XV.D (Dkt. 382, p. 316). (prohibiting minor leaguers from making "any contract or any contractual obligation to render skilled services as a professional baseball player with any person or organization other than the Club").

throughout the calendar year, but are only paid nominal wages for a few of those months. Defendants' refusal to pay minor leaguers any wages for work performed outside of the championship season violates the FLSA.

Moreover, even when Plaintiffs are paid during the championship season, Defendants' policies establish menial wages that fall below the requisite minimum wage and never provide for overtime wages. MLR 3(c)(2) requires all first-year minor leaguers to earn the same wages,[21] and MLR 3(b)(2) allows Defendants to collusively set minimum wages for subsequent years.[22]

Plaintiffs' investigation indicates all first-year minor leaguers earn approximately $1,100 per month—again, only during the championship season pursuant to the UPC.[23] Beyond the first year, the UPC purports to allow wage negotiations but in reality, negotiations do not occur.[24] Rather, minor league player wages are subject to uniform, minimal stepwise increases across the industry. Defendants unilaterally determine non-first-year wages in annual, non-negotiable addenda to the UPC. Plaintiffs believe they use the following approximate levels with guidance from MLB: (1) $1,250 per month for Class-A; (2) $1,500 per month for Class-AA; and (3) $2,150 for Class-AAA.[25] Players signed to subsequent UPCs sometimes earn higher salaries during the championship season. But whether players are on their first UPC or a subsequent UPC, they are subject to the same pay

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[21] MLR Rule 3(c)(2) (Dkt. 382, ¶ 176, p. 156) (saying that first-year players shall earn "the amount established by the Major Leagues for each Minor League classification or League").

[22] MLR 3(b)(2) (Dkt. 382, ¶ 177-78, p. 155) ("The minimum salary in each season covered by a Minor League Uniform Player Contract shall be the minimum amount established from time to time by the Major League Clubs…."). The UPC even forbids the payment of performance bonuses. MLR Rule 3(b)(5) (Dkt. 382, p. 155) (prohibiting any "bonus for playing, pitching or batting skill or if it provides for payment of a bonus contingent on the standing of the signing Club at the end of the championship season.").

[23] *See* 2013 Miami Marlins Minor League Player Guide (Dkt. 382, ¶ 177, Pouya Decl. Exh. B)(stating "all first-year players receive $1,100 per month regardless of playing level per the terms of the [UPC]."); *see also* SCAC ¶ 177 (Dkt. 382).

[24] *See* 2013 Miami Marlins Minor League Player Guide (Dkt. 382, ¶ 177, Pouya Decl. Exh. B) ("This salary structure will be strictly adhered to; therefore, once a salary figure has been established and sent to you, there will be NO negotiations."); *see also* Player Declarations pp. 4-5.

[25] *See* SCAC ¶ 179 (Dkt. 382).

practices flowing from Defendants' use of the UPC, use of a single set of MLB Rules, and adherence to other universal policies. These uniform policies and practices affect players uniformly, and violate the FLSA's minimum wage and overtime requirements.[26]

D. Members of the Minor League Collective Share the Same Duties, Responsibilities, and Obligations.

Members of the Minor League Collective have the same fundamental duties, responsibilities, and schedules, regardless of the MLB Franchise or minor league affiliate they are assigned. These duties and responsibilities are aligned throughout the calendar year, regardless of whether the Minor Leaguers are performing work during the championship season, spring training, instructional leagues, or the winter training period.

During the championship season, minor league teams play games either six or seven days per week.[27] As a result of Defendants' unilateral control over scheduling decisions, minor leaguers enjoy a day off on average only once every 2–3 weeks.[28] On a typical game day, all minor leaguers share the same general responsibilities: they have to arrive at the stadium hours prior to the game, they warm up and stretch; they participate in batting practice and other pre-game work; they meet with their team and coaches before the game; they play a game that typically lasts three hours; and they shower, change, and go home—often as late as 11:00 p.m.[29] This game day routine systematically requires minor leaguers to work eight or more hours per day and more than forty hour per week.[30]

Minor leagues are also required to perform protracted travel, usually by a team bus in order to attend road games.[31] Travel itineraries must be reviewed and approved by the MLB Franchises and

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[26] *See* Player Declarations, p. 2.

[27] *See id.*

[28] *See* Player Declarations, p. 2-3.

[29] *See id.*

[30] *See id.*

[31] *See* MLR 57(a) (Dkt. 382, p. 166); Player Declarations, p. 2-3.

conform to the standards and procedures dictated by the MLB Rules.[32] Approximately half of the games are road games, and a typical road trip often entails multiple bus rides each lasting several hours, adding several compensable hours onto player work schedules.[33]

Defendants also require the Minor League Collective to perform extensive work outside the championship season without pay during spring training, fall instructional leagues, and the winter training period.[34] Spring training usually lasts four weeks or more.[35] During spring training, minor leaguers normally work numerous hours per day, seven days a week during this period, and usually meet or exceed forty-hour workweeks. [36] Spring training work requires minor leaguers to attend practice for several hours each day, and usually then play a full game against teammates or other MLB franchises.[37]

Many minor leaguers also work in Defendants' fall instructional leagues, pre-spring training minicamp, and other training camps. During these sessions, they work a schedule similar to that performed during spring training while again earning no wages.[38] Many minor leaguers must also work in extended spring training, where they again work a schedule similar to that performed during spring training.

Defendants also require minor leaguers to perform extensive training and conditioning during the winter training period.[39] The MLB Franchises direct this winter work by issuing training packets to

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[32] *See* MLR 57(a) (Dkt. 382, p. 166); Player Declarations, p. 2-3.

[33] *See* Player Declarations, pp. 2-3.

[34] *See* Player Declarations, pp. 3-4.

[35] *See* Player Declarations, pp. 3-4.

[36] *See* MLR Attachment 3, UPC ¶ VII.B; Player Declarations, p. 3-4.

[37] *See* Player Declarations, pp. 3-4.

[38] *See id.*

[39] The UPC requires all minor leaguers to maintain "first-class" conditioning throughout the calendar year because the player's "physical condition is important to…the success of the Club." MLR Attachment 3, UPC ¶ VI.D. A minor leaguer must "report for practice and condition[ing] at such times and places as Club may determine." If the player fails to meet these requirements, the "Club may impose a reasonable fine upon Player."[39]

the players.[40] The MLB Franchises further monitor workouts and punish players for not performing winter training.[41] Defendants again pay no wages for this mandatory work.[42]

When performing these duties and obligations, members of the Minor League Collective do not exercise independent judgment or discretion. Instead, MLB, the MLB Franchises, and the Commissioner—through the MLR, UPC, and other collusive means—dictate wages, assignments, transportation, uniforms, conduct and discipline of the Minor League Collective.[43] Further, per the MLRs, the MLB Franchises employ and control the managers, coaches, instructors and trainers, who supervise and dictate the daily activities of the Collective's members.[44] Members of the Collective do not supervise, manage or exercise judgment or control over any other players or employees.[45]

E. Defendants' Uniform Wage-and-Hour Policies Violate the FLSA's Minimum Wage and Overtime Requirements.

Plaintiffs allege that the meager wages that Defendants pay to the Minor League Collective do not comply with the minimum wage and overtime requirements of the FLSA. (*See* SCAC ¶¶ 568-80) (Dkt. 382); 29 U.S.C. §§ 206, 207. Plaintiffs further allege that Defendants have failed to maintain accurate time records in violation of 29 U.S.C. § 211(c). The meager wages paid to the Minor League Collective during the championship season pursuant to the UPC often fail to comply with the FLSA's requisite minimum wage of $7.25 per hour. *See* 29 U.S.C. § 206. And since Defendants pay the same wages during the season no matter how many hours minor leaguers work, Defendants are further violating the FLSA's overtime requirements by failing to pay an overtime rate of not less than one-and-one-half times the regular rate of pay for each hour worked in excess of forty hours per week. *See*

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[40] *See* Player Declarations, pp. 3-4.

[41] *See* Player Declarations, pp. 3-4.

[42] *See* MLR Attachment 3, UPC ¶¶ VI.D., XXII.

[43] *See generally* MLR, UPC.

[44] *See* MLB Rule 56(g) ("The Major League Club shall have the sole right to select and employ, and the sole obligation to compensate and provide benefits for, the manager, coaches, instructors and trainers for the Minor League Club.")

[45] *See* MLB Rule 56, 57.

29 U.S.C. § 207. Furthermore, Defendants violate the FLSA by employing members of the Minor League Collective for extensive hours outside of the championship season—*e.g.* spring training and other training periods—without paying any wages. These harsh wage-and-hour practices violate the FLSA in a uniform manner.

IV. LEGAL ARGUMENT

A. The Lenient Standard For Conditional Certification of FLSA Classes.

The FLSA permits employees to bring a collective action "[on] behalf …of themselves and other employees similarly situated." 29 U.S.C. § 216(b); *see also Does v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000); *Leuthold v. Destination America, Inc.*, 224 F.R.D. 462, 466 (N.D. Cal. 2004). "The FLSA does not define the term 'similarly situated,' nor has the Ninth Circuit defined it." *Santiago v. Amdocs, Inc.*, No. C 10-4317 SI, 2013 WL 5444324, at *3 (N.D. Cal. Sept. 30, 2013). However, multiple courts "have held that FLSA's 'similarly situated' standard is less stringent than Rule 23(b)(3)'s requirement that common questions of law and fact predominate." *Id.* at *8 (quoting *Hill v. R+L Carriers, Inc.*, 2011 WL 830546, at *3 (N.D. Cal. Mar. 3, 2011)); *see also Thiebes v. Wal-Mart Stores, Inc.*, 1999 WL 1081357, at *2 (D. Or. Dec. 1, 1999) ("similarly situated" standard is more flexible than Rule 20 standard for joinder).

District courts in the Ninth Circuit generally follow a two-step process when determining whether employees are "similarly situated." *See, e.g.*, *Lewis v. Wells Fargo & Co.*, 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009); *Misra v. Decision One Morg. Co, LLC*, 673 F. Supp. 2d 987, 992-93 (C.D. Cal. 2008); *Wren v. RGIS Inventory Specialists*, 2007 WL 4532218, *4-5 (N.D. Cal. Dec. 19, 2007) (Spero, J.) (citing *Wynn v. Nat'l Broad. Co., Inc.*, 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002)). The first step is conditional certification, where the court determines, based on pleadings and affidavits, whether class members are similarly situated and should receive notice of the case. *See id.*; *see also Leuthold*, 224 F.R.D. at 466. Second, after substantial discovery in the case, the court can re-examine the record to determine whether the case should proceed to trial as a collective action. *Id.*; *see also Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317, 320-21 (S.D.N.Y. 2007).

The standard for the first step—conditional certification—"is a lenient one that typically results in certification." *Benedict v. Hewlett-Packard Co.*, 2014 WL 587135, at *10 (N.D. Cal. Feb. 13,

2014); *accord Edwards v. City of Long Beach*, 467 F. Supp. 2d 986, 990 (C.D. Cal. 2006); *Misra*, 673 F. Supp. 2d. at 992-93; *Leuthold*, 224 F.R.D. at 467. Plaintiff's burden at this point is minimal; the court is simply deciding whether the potential class should be notified of the pending action. *Id.* Indeed, the standard requires "'nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan.'" *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1102 (10th Cir. 2001) (quoting *Vaszlavik v. Storage Tech. Corp.*, 175 F.R.D. 672, 678 (D. Colo. 1997)). Conditional certification is usually decided based on the pleadings and affidavits from named plaintiffs. *Leuthold*, 224 F.R.D. at 468-69 (finding the standard for conditional certification was satisfied based on the declarations of three named plaintiffs); *Helton v. Factor 5, Inc.*, 2012 WL 2428219, at *4 (N.D. Cal. June 26, 2012) (citing authority).

"It is well-established that the 'similarly-situated' standard does not require that all of the class-members' claims must be identical." *Wren*, 2007 WL 4532218, *5 (citing *Thiebes*, 1999 WL 1081357, at *2; *see also Benedict*, 2014 WL 587135, at *10 ("Plaintiffs need only show that class members' positions are similar, not 'identical,' to the positions held by other members."). Likewise, the similarly-situated "inquiry does not include an examination of the merits of the alleged FLSA claims." *Helton*, 2012 WL 2428219, at *5 (citing *Leuthold*, 224 F.R.D. at 467). Accordingly, courts routinely grant certification to claims alleging violation of minimum wage and overtime laws, so long as the plaintiffs make a threshold showing that the job duties of members of the collective were "similar in pertinent regards." *Kress v. PricewaterhouseCoopers, LLP*, 263 F.R.D. 623, 630 (E.D. Cal. 2009) (granting conditional certification to an FLSA overtime collective consisting of tax auditors employed by the defendant); *Helton*, 2012 WL 2428219 at * 5 (granting conditional certification to plaintiffs minimum wage and overtime claims based on the allegations in plaintiff's complaint and supporting declarations); *Flores v. Velocity Exp., Inc.,* 2013 WL 2468362, * 7 (N.D. Cal. June 7, 2013) (certifying a FLSA Class despite defendant's argument that adjudication of the claims would involve "a fact intensive inquiry"); *In re Wells Fargo Home Mortgage Overtime Litig.*, 527 F. Supp. 2d 1053, 1060-61 (N.D. Cal. 2007) (certifying a FLSA collective consisting of Wells Fargo mortgage consultants because plaintiffs submitted policies, procedures and declarations evidencing common compensation policies and experiences among the collective members).

B. Plaintiffs Have Satisfied the Lenient Standard for Conditional Certification of the Proposed Minor League Collective.

Whether plaintiffs' employment is similar to members of the FLSA collective is evaluated in light of the issues raised by the particular FLSA claim. *See Kress*, 263 F.R.D. at 630. In this case, Plaintiffs' proposed Minor League Collective consists of past and present minor leaguers working under the identical, compulsory terms of the UPC and the MLRs. These overarching policies have led to FLSA allegations applicable to all members of the Collective, including:

- failure to pay minimum wage for hours worked during the championship season;
- failure to pay overtime wages for performing more than forty hours in a workweek; and
- failure to pay any wages for work performed throughout the calendar year outside of the championship season.

See SCAC, ¶¶ 121-30 (Dkt. 382).[46]

Plaintiffs support these allegations with affidavits and documentary evidence establishing that all Minor League Collective members are similarly situated and subjected to a single scheme orchestrated by Defendants. This evidence demonstrates that Defendants' homogenous, adhesive contracts, along with Defendants' collusive, industry-wide practices, govern the terms and conditions of employment, such as:

- the amount and manner of payment;
- the activities to be paid for;
- the mandatory participation in pre-game activities, games, practices and training during the championship season; and
- the mandatory participation in spring training, winter training and other training

[46] *See also* 29 U.S.C. § 206 (requiring employers pay each employee at a minimum wage of $7.25 per hour for each hour worked); *id.* § 207 (requiring employers to pay each employee a rate not less than one and one-half times the regular rate at which he is employed for each hour worked in excess of forty hours per week).

activities.[47]

The members of the Minor League Collective are all employed in a substantially similar position and capacity as minor league baseball players pursuant to the UPC.[48] Regardless of the minor leaguer, or their MLB Franchise or minor league affiliation, the same rules and same contract mandate the same conduct and the same responsibilities for all members of the Minor League Collective.[49] Minor League Collective members share the same fundamental responsibilities and obligations, and they are subjected to the same uniform pay practices.[50] Whether during the championship season, spring training or winter training period, Defendants uniformly dictate participation in all games, practices and training throughout the year.[51]

Moreover, the members of the Minor League Collective are subordinate employees who lack authority over other employees. The schedules and activities of the Minor League Collective are determined pursuant to the MLB Rules and the uniform, year-round work schedules dictated by the Defendants.[52] Thus, the duties and responsibilities of the Collective are "similar in pertinent respects" and entitled to collective action under the FLSA. *See Kress*, 263 F.R.D. at 630.

Indeed, the only question even possibly requiring independent consideration in this case may be the amount of damages to be paid to the Minor League Collective. However, as this Court and several others have recognized, the possible presence of individual inquiries related to the number of hours worked and damages allotted to class members cannot undermine the appropriateness of collective adjudication under the FLSA. *See Wren*, 2007 WL 4532218, at *5 (Spero, J.) ("[T]he potentially individualized nature of determining damages is irrelevant in considering conditional certification [because] [t]he threshold inquiry does not require that the extent of the potential

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[47] *See generally* MLR, UPC (Dkt. 382, Exh. A).

[48] *See* Player Declarations, pp. 1-5.

[49] *See id.*; *see also* SCAC.

[50] *See* Player Declarations, pp. 1-5, *see also* SCAC.

[51] *See* Player Declarations, pp. 1-5, *see also* SCAC.

[52] *See* Player Declarations, pp. 1-5, *see also* SCAC.

plaintiffs' damages be identical or even similar.") (quoting *Adams v. Inter-Con Sec. Sys., Inc.*, 242 F.R.D. 530, 537 (N.D. Cal. 2007)); *see also Otey v. CrowdFlower, Inc.*, 2013 WL 4552493, *3-4 (N.D. Cal. Aug. 27, 2013) (holding that the question of whether damages require individualized proof is reserved for the second stage of the FLSA certification process).

Consequently, Plaintiffs have not only met, but have far exceeded, the lenient standard for conditional certification and distribution of notice under the FLSA and respectfully request that the Court conditionally certify the Minor League Collective.

C. The Court Should Order Notice and Require Defendants to Disclose the Contact Information for Members of the Minor League Collective.

District courts presiding over FLSA collective actions routinely order notice to be distributed to the members when granting a motion for conditional certification. *See Wren*, 2007 WL 4532218, at *9 ("'[D]istrict courts have discretion, in appropriate cases, to implement 29 U.S.C. § 216(b) ... by facilitating notice to potential plaintiffs.'") (quoting *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 169 (1989)). Notice helps facilitate the purpose of the FLSA by allowing Minor League Collective members to opt into the collective action and be bound collectively by the judgment and resolution in the case pursuant to 29 U.S.C. § 216(b). *See Hoffman La-Roche*, 493 U.S. at 172 ("Court authorization of notice serves the legitimate goal of avoiding multiplicity of duplicative suites and setting cutoff dates to expedite disposition of the action.").

In order to facilitate such notice and the need for discovery in the second phase of the collective action, courts also require Defendants to produce the contact information for the Collective's putative members to Plaintiffs' counsel. *See Hoffmann-La Roche II*, 493 U.S. at 170 ("[D]iscovery [of names and addresses] was relevant to the subject matter of the action and ... there were no grounds to limit the discovery under the facts and circumstances of the case."); *Adams,* 242 F.R.D. at 540 ("[T]he court orders defendant to submit the contact information of potential plaintiffs to plaintiffs' counsel."); *Gerlach v. Wells Fargo & Co.*, 2006 WL 824652 at * (N.D. Cal. Apr. 11, 2007) (ordering defendants to produce the names, addresses, and alternative addresses of all putative class members to plaintiffs' counsel); *Benedict*, 2014 WL 587135, at *14 (ordering production of contact information such as addresses, email addresses, and phone numbers).

Plaintiffs have submitted a proposed FLSA notice attached as Exhibit A, to the Declaration of Bobby Pouya. The proposed notice has been drafted utilizing neutral language and adequately informs members of the Minor League Collective of their rights. Plaintiffs' propose that the notice be distributed to putative members of the Minor League Collective through individualized notice via U.S. mail, e-mail, each Defendant's official website, a case website, and at each location or facility where minor league players work.

D. The Statute of Limitations for Plaintiffs' Claims Should Extend Back Three Years Because of Defendants' Willful Violation of the FLSA.

The statute of limitations under the FLSA is extended from two to three years if defendants engaged in a "willful violation" of the FLSA. *See* 29 U.S.C. § 255(a). "A violation of the FLSA is willful if the employer 'knew or showed reckless disregard for the matter of whether its conduct was prohibited by the [FLSA].'" *Chao v. A-One Med. Services, Inc.*, 346 F.3d 908, 919 (9th Cir. 2003) (quoting *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988)).

As this Court has recognized, the application of a shorter two-year statute of limitations at the conditional certification stage is only appropriate when "*as a matter of law,* [plaintiffs] will be unable to establish willfulness." *Wren,* 2007 WL 4532218 * 10 (emphasis in original); *see also Adams,* 242 F.R.D. at 542 ("[T]he court will not make a determination of willfulness at this early stage and declines to limit the scope of notice to officers employed in the last two years.").

Here, the Defendants are highly sophisticated parties presiding over a multi-billion-dollar cartel. They are well versed in the law, accustomed to drafting detailed contracts, and represented by highly qualified counsel. Rather than complying with the basic requirements of the FLSA, Defendants have willfully and purposely imposed wages, hours and conditions on minor leaguers that disregard the fundamental minimum wage and overtime requirements of the FLSA. Indeed, they have continued their unlawful wage and hour practices even after the filing of this lawsuit. Defendants have engaged in these practices despite having actual and constructive notice that they are not exempt from the minimum wage and overtime requirements of the FLSA, and despite numerous investigations into the industry's wage practices by the Department of Labor. *See Bridewell v. The Cincinnati Reds*, 68 F.3d 136, 139 (6th Cir. 1995), *cert. denied*, 516 U.S. 1172 (1996); *Bridewell v. The Cincinnati Reds*, 155 F.3d 828,

829 (6th Cir. 1998); *see also* Pouya Decl., Exh. D, San Francisco Giants Pay Employees $545,000 in Back Wages, Damages.

Many of Defendants' unlawful policies and procedures were written directly into the MLB Rules, UPC and other adhesion contracts that Defendants unilaterally imposed on minor leaguers. *See Wren,* 2007 WL 4532218 * 10 (holding that plaintiffs made a threshold showing of willfulness because, *inter alia*, "[s]ome of the policies challenged by Plaintiffs are expressly stated in [defendant's] written policies."). These facts demonstrate that Defendants' wage violations were known, or in reckless disregard, of the FLSA. Accordingly, Defendants should be subject to a three-year statute of limitations for purposes of distributing notice to the Minor League Collective.

E. The Court Should Order a Ninety-Day Opt-In Period and Thirty Day Reminder Notice to Provide Members of the Minor League Collective with Sufficient Opportunity to Opt Into the Action.

Courts presiding over FLSA collective actions have held that a ninety-day opt-in period is appropriate when justified by the particular facts and circumstances of the collective action. *See Adams,* 242 F.R.D. at 542 (ordering a ninety-day opt-in notice period); *Benedict*, 2014 WL 587135, at *13 (adopting a ninety-day period); *Wren,* 2007 WL 4532218, at *10 (recognizing the application of a ninety-day opt-in period by courts when appropriate). A ninety-day opt-in period is appropriate in this case because of the minor leaguers' work circumstances. As detailed above, minor leaguers work long hours and spend a significant amount of time on road trips. Minor leaguers often receive multiple minor league assignments, which require them to change addresses. These facts necessitate a ninety-day notice period to ensure the Minor League Collective's members receive, and have an adequate opportunity to consider, the opt-in notice in this case.

These same facts call for members of the Minor League Collective to receive a reminder notice thirty days before the expiration of the ninety-day notice period at Plaintiffs' discretion. Courts "commonly approve such reminders." *Benedict*, 2014 WL 587135, at *14; *see also Helton*, 2012 WL 2428219 at *7 (ordering that a reminder postcard be sent thirty days before the opt-in period ended). Here, the nomadic nature of the work and the relative youth of many of the potential claimants strongly favors sending a reminder notice.

F. The Court Should Toll the Statute of Limitations From the Date of Filing Until the Close of the Notice Period.

As set forth above, the Stipulation and Order Tolling FLSA claims in this case tolled the applicable FLSA statute of limitations for members of the Minor League Collective "from July 11, 2014 until 45 days after the Court's resolution of Defendants'" jurisdictional and venue motions. (*See* Dkt. 231). The tolling agreement further prohibited Plaintiffs from filing a Motion for Conditional Certification or seeking class member contact information before resolution of Defendants' jurisdictional and venue motions. (*See id.*). Plaintiffs complied with the terms of the parties' stipulation by filing this motion within the 45-day period and as soon as practicable after resolution of Defendants' jurisdictional and venue motions. In order for the parties' tolling agreement to be effective and reflective of the parties' intent, the Court should further toll the statute of limitations during the pendency of this motion and through the close of the applicable opt-in period.

The tolling of the statute of limitations under these circumstances is necessary to fulfill the intent of the parties, and to protect the rights of members of the Minor League Collective—many of whom will be unaware of their right to join the action until notice is received. *See Owens v. Bethlehem Mines Corp.*, 630 F. Supp. 309, 312-13 (S.D. W. Va. 1986) (tolling the FLSA statute of limitations during pendency of a motion for class certification because plaintiffs opted in when they were first granted the opportunity to do so) (citing *Partlow v. Jewish Orphans Home of Southern California, Inc.,* 645 F.2d 757 (9th Cir.1981)); *see also Adams,* 242 F.R.D. at 543-44 (tolling the statute of limitations from the time that defendant refused to comply with plaintiffs' request for class member contact information to facilitate notice).

Based on the parties' tolling agreement, the statute of limitations should thus run from at least July 11, 2011 until the end of the 90-day notice period for those opting into the action after July 11, 2014. For those persons who opted in before July 11, 2014, the limitations period should at least extend to three years from the date the opt-in form was signed.

Plaintiffs further request that the Court apply principles of equitable tolling to extend the tolling period to the date that the initial complaint was filed on February 7, 2014. After all, Plaintiffs believe that Defendants did not—and perhaps still do not—post the requisite minimum wage and

overtime posters in minor leaguers' workplaces, which is a basis for equitable tolling. *Yu G. Ke. v. Saigon Grill, Inc.*, 595 F. Supp. 2d 240, 258–59 (S.D.N.Y. 2008) (allowing equitable tolling since no minimum wage posters were posted because plaintiffs could not know of the possibility of an action against their employer). Discovery is needed to substantiate this belief, but Plaintiffs request that, at least for purposes of preliminary certification and court-authorized notice, the limitations period extend from February 7, 2011 until the end of the 90-day notice period. *Cf. Ayala v. Tito Contractors, Inc.*, 2015 WL 968113, at *6–9 (D.D.C. Mar. 4, 2015) (delaying determination on equitable tolling based on lack of minimum wage posters when conflicting evidence was provided at summary judgment). If discovery later reveals that Defendants in fact posted the requisite minimum wage posters in an appropriate manner, the Court can then determine at summary judgment or trial whether the limitations period should run until February 7, 2011 or July 11, 2007.

V. CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request that the Court enter an order granting their motion for conditional certification of the Minor League Collective pursuant to 29 U.S.C. 216(b), authorizing distribution of notice to the Minor League Collective in the manner specified herein, ordering Defendants to produce the contact information for members of the Minor League Collective to Plaintiffs' counsel, and tolling the statute of limitation until the close of the notice period.

Dated: June 26, 2015

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