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APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1683

CHRISTA B. FISCHER, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED EMPLOYEES,
Appellants in No. 21-1683

v.

FEDERAL EXPRESS CORP.; FEDEX GROUND PACKAGE SYSTEM

On Appeal from the United States District Court for the Eastern District of Pennsylvania
D.C. Civil No. 5-19-cv-04924
District Judge: Honorable John M. Gallagher

Argued: January 26, 2022

Before: RESTREPO, MATEY, and SCIRICA, *Circuit Judges*.

(Filed: July 26, 2022)

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OPINION OF THE COURT

SCIRICA, *Circuit Judge*

Appellant Christa Fischer, a Pennsylvania resident who worked for nearly ten years as a security specialist for Appellees Federal Express Corp. ("FedEx") and FedEx Ground Package System ("FedEx Ground"), brought this collective action under Section 216(b) of the Fair Labor Standards Act ("FLSA") in the Eastern District of Pennsylvania. Fischer alleges FedEx misclassified her and other FedEx security specialists as exempt from the FLSA's overtime rule and underpaid them.

Two out-of-state former FedEx employees, Andre Saunders, from Maryland, and Andrew Rakowsky, from New York, submitted notices of consent, seeking to join Fischer's collective action. Saunders and Rakowsky both worked for FedEx in their home states but, other than FedEx's allegedly uniform nationwide employment practices, have no connection to Pennsylvania related to their claims. The District Court did not allow these two opt-in plaintiffs to join the suit, reasoning that, as would be true for a state court under *Bristol-Myers Squibb Co. v. Superior Ct.*, __ U.S. __, 137 S. Ct. 1773 (2017), the district court lacked specific personal jurisdiction over FedEx with respect to the out-of-state plaintiffs' claims.

We granted Appellants' petition for interlocutory appeal to resolve whether, in an FLSA

collective action in federal court where the court lacks general personal jurisdiction over the defendant, all opt-in plaintiffs must establish specific personal jurisdiction over the defendant with respect to their individual claims. The Sixth and Eighth Circuits have answered in the affirmative, holding FLSA opt-in plaintiffs' claims must arise out of or relate to the defendant's minimum contacts with the forum state. *See Canaday v. Anthem Cos.*, 9 F.4th 392 (6th Cir. 2021); *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861 (8th Cir. 2021). The First Circuit has answered in the negative, holding that, while initial plaintiffs' claims must arise out of or relate to the defendant's minimum contacts with the forum state—the test of the constitutional limit under the Fourteenth Amendment—opt-in plaintiffs' claims need only arise out of or relate to a defendant's minimum contacts with the entire nation—the test of the constitutional limit under the Fifth Amendment. *See Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84 (1st Cir. 2022).

We join the Sixth and Eighth Circuits and hold that, where the basis of personal jurisdiction in an FLSA collective action in a federal court is specific personal jurisdiction established by serving process according to Federal Rule of Civil Procedure 4(k)(1)(A), every plaintiff who seeks to opt in to the suit must demonstrate his or her claim arises out of or relates to the defendant's minimum contacts with the forum state. In this way, the specific personal jurisdiction analysis for an FLSA collective action in

federal court operates the same as it would for an FLSA collective action, or any other traditional in personam suit, in state court. Accordingly, we will affirm the District Court's judgment because the out-of- state opt-in plaintiffs here cannot demonstrate their claims arise out of or relate to FedEx's contacts with Pennsylvania.

I.

Appellant Christa Fischer is a Pennsylvania resident who worked for FedEx in Lewisbury and Williamsport, Pennsylvania from approximately August 2005 to July 2019. On October 22, 2019, she filed a complaint against FedEx in the Eastern District of Pennsylvania, alleging FedEx misclassified employees in her position as exempt from the FLSA's overtime rule and, accordingly, seeking unpaid overtime. Under the FLSA's collective action device in 29 U.S.C. § 216(b), Fischer brought her suit on behalf of herself and "other similarly situated employees," alleging FedEx had misclassified these employees around the country. FedEx[1] is incorporated in Delaware and its principal place of business is in Tennessee.

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[1] Before the District Court, Appellants argued that FedEx Ground was a joint employer with FedEx. And since FedEx Ground has a principal place of business in Pennsylvania, it would be subject to general jurisdiction in Pennsylvania. The trial judge found that FedEx Ground was not a joint employer, and thus its principal place of business has no bearing on the jurisdictional analysis. *Fischer v. Fed. Express Corp.*, 509 F. Supp. 3d 275, 290 (E.D. Pa. 2020). Appellants do not appeal this finding, and we see no reason to disturb it.

On May 15, 2020, Fischer filed a motion for conditional certification and court-authorized notice. On July 17, 2020 and July 28, 2020, respectively, Andre Saunders, from Maryland, and Andrew Rakowsky, from New York, submitted notices of consent to join the litigation. Neither Saunders nor Rakowsky worked for FedEx in Pennsylvania. And neither has alleged any other connections to FedEx in Pennsylvania. On December 23, 2020, the trial judge granted Fischer's motion for conditional certification.

The District Court held that, because no federal statute authorizes nationwide service of process for opt-in plaintiffs in FLSA collective actions, Fed. R. Civ. P. 4(k)(1)(A) requires a federal court to follow the personal jurisdiction rules applicable to a state court, including the requirement clarified in *Bristol-Myers* that all claims must arise out of or relate to the defendants' minimum contacts with the forum state. Considering the facts in this case, the District Court concluded it lacked personal jurisdiction over FedEx with respect to the putative opt-in plaintiffs who worked for FedEx outside Pennsylvania. Accordingly, the District Court only certified the collective action and authorized notice with respect to security specialists employed by FedEx in Pennsylvania. The plaintiffs now appeal that decision, arguing that the District Court erred in applying *Bristol-Myers* to this FLSA collective action because it was filed in federal court.

II.

We begin with a brief summary of the Supreme Court's decision in *Bristol-Myers*. That suit involved claims that a Bristol-Myers-made drug, Plavix, had injured individuals who took it. The suit included eight separate complaints, collectively including over 600 named plaintiffs, all of which had been aggregated into a single mass action under a California state court aggregation rule. *See Bristol-Myers*, 137 S. Ct. at 1778. Only 86 plaintiffs were California residents; the other 592 were residents of 33 other states. *Id.* The nonresident plaintiffs "did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California." *Id.*

Applying "settled principles regarding specific jurisdiction" under the Fourteenth Amendment, *id.* at 1781, the Supreme Court held Bristol-Myers's "extensive activities in California" were not sufficient to establish personal jurisdiction over Bristol-Myers as to the claims of the non-resident plaintiffs, *id.* at 1778. In doing so the Court clarified several key questions in the law of personal jurisdiction. Notably, *Bristol-Myers* explained that for a state court to have specific personal jurisdiction over a defendant with respect to a plaintiff's claims, those claims must "arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 137 S. Ct. at 1780 (modifications and citations

omitted). Because the out-of-state plaintiffs' alleged injuries did not arise out of or relate to Bristol-Myers's specific contacts with California, the California state courts lacked specific personal jurisdiction over the company with respect to those claims. *Id.* at 1781. The Court also explained that "[t]he mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims." *Id.* at 1781. In other words, even if a state court might have personal jurisdiction over similar claims, other potential plaintiffs must still demonstrate personal jurisdiction over the defendant with respect to their own claims.

But the Supreme Court's decision in *Bristol-Myers* addressed a requirement placed on state courts by the Fourteenth Amendment. Accordingly, it did not purport to address the precise issue in this case, i.e., whether a nationwide FLSA collective action brought in federal court is subject to the same jurisdictional analysis as a mass action brought in a California state court. *Id.* at 1784. Moreover, the Court left open questions about how the decision might impact the personal jurisdiction analysis for other procedural devices like class actions. *See id.* at 1789 n.4 (Sotomayor, J., dissenting).

A.

The District Court held the analysis in *Bristol-Myers* applied to Fischer's FLSA action, despite this case being in federal court rather than state court, and despite the differences between the FLSA collective action and the California mass action at issue in *Bristol-Myers*. Because the FLSA does not authorize nationwide service of process, "service in this case is only effective to the extent that Pennsylvania state courts may exercise jurisdiction over a given defendant." App. 14 (citing Fed. R. Civ. P. 4(k)(1)(A)). Accordingly, "the sole question becomes whether the Court may exercise jurisdiction pursuant to the Fourteenth Amendment," App. 14, the same ultimate question that was at issue in *Bristol-Myers*.

The District Court here concluded the "collective action opt-in plaintiffs are individual parties that join together and allege the same harm against the same defendant." App. 17. "FLSA opt-in plaintiffs are no different than the plaintiffs in [*Bristol-Myers*]. Therefore, their claims are subject to the same jurisdictional limitations." App. 18. Accordingly, because the out-of-state opt-in plaintiffs "do not claim to have suffered harm within the forum state," they could not demonstrate the "requisite connection between activities within the state and the case at hand." App. 23. Therefore, the District Court found it could only certify a collective action consisting of individuals who were employed

in Pennsylvania, as it lacked personal jurisdiction over the claims of any out-of-state plaintiffs.

On appeal, Appellants contend the jurisdictional problems highlighted by the Supreme Court in *Bristol-Myers* are not present in an FLSA collective action brought in federal court. In doing so, Appellants rely on several doctrines, analogies to other procedural devices, and policy principles. Ultimately, we find none of these arguments convincing for the reasons described below.

B.

Appellants first contend opt-in plaintiffs' claims in FLSA actions should be exempted from the personal jurisdictional requirement in the suit. They urge us to analogize the FLSA collective action to a class action. They contend that for class actions the "personal-jurisdiction analysis occurs at the level of the suit," not at the level of each claim. Appellants' Br. 8 (quotation marks and citation omitted). Accordingly, they posit that, like class actions, we should analyze the personal jurisdiction questions with reference to the named plaintiff only. Once a court has jurisdiction over the defendant with respect to the named plaintiffs' claims, the personal jurisdictional requirements for the entire suit would be satisfied, and additional plaintiffs could freely opt in regardless of whether they could satisfy the Fourteenth Amendment's minimum contacts requirements.

We believe Appellants' analogy from class actions to FLSA collective actions fails. We have long treated properly certified class actions as a sui generis type of suit, with different requirements and accompanying allowances from the "ordinary" process of litigation. *See Taylor v. Sturgell*, 553 U.S. 880, 884 (2008) (describing class actions as one of "[s]everal exceptions" that alter certain foundational rules of litigation). Notably, courts adjudicating properly constituted class actions can bind absent class members without their presence as parties "where they are in fact adequately represented by parties who are present." *Hansberry v. Lee*, 311 U.S. 32, 42–43 (1940); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) ("[T]he class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979))); *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982). As the Supreme Court observed in *Hansberry*, class actions are a recognized exception from the "general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Hansberry*, 311 U.S. at 40. Indeed, one of the principal justifications for the class action device is to allow courts the practical flexibility to better handle situations where mass joinder is "impossible . . . because some are not within the jurisdiction." *Id.* at 41.

Over the last half century, courts and Congress have constructed a careful balance designed to protect both the absent class members (by ensuring their interests are being adequately protected) and defendants (by making the res judicata implications of a class action clearer). *See* Fed. R. Civ. P. 23 advisory committee's note, *reprinted in* 39 F.R.D. 69, 98 (1966); 7A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1753 (4th ed. 2022) [hereinafter "Wright & Miller, Federal Practice and Procedure"]. This has resulted in the important set of requirements, enshrined in Fed. R. Civ. P. 23 ("Rule 23"), to govern judicial oversight of class actions. These requirements are not merely incidental, but rather inextricably intertwined with the class action device. *See Campbell v. City of L.A.*, 903 F.3d 1090, 1105 (9th Cir. 2018) ("[B]ecause of the due process concerns inherent such a proceeding, the district court must initially approve the creation of a class and the appointment of an adequate representative."). It is these protections that allow an absent class-action plaintiff to "sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985). The Supreme Court has rejected attempts to circumvent these critical protections to treat cases as de facto class actions when they do not contain these procedural protections. *See Taylor*, 553 U.S. at 901 (rejecting a doctrine that would have allowed courts to "create *de facto* class actions at will" (quoting *Tice v. Am. Airlines, Inc.*, 162 F.3d 966, 973 (7th Cir. 1998))).

If the requirements of Rule 23 are met and the court decides to certify the class, the class "acquires an independent legal status." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013). The relevant entity for purposes of the litigation after certification is the class, not the individuals who make up the class. *See id.* Once certified, class actions "present 'a unitary, coherent claim' that moves through litigation at the named plaintiff's direction and pace." *Canaday*, 9 F.4th at 403 (quoting *Lyngaas v. Curaden AG*, 992 F.3d 412, 435 (6th Cir. 2021)). "[A]s a practical matter, a defendant litigates against only the class representative." *Lyngaas*, 992 F.3d at 435. Because of this, courts have considered absent class members in Rule 23 suits not to be "parties" for jurisdictional purposes. *See Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 297 (D.C. Cir. 2020) ("[U]nnamed class members are treated as nonparties for other purposes, including jurisdictional ones."); *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 445 (7th Cir. 2020) ("For cases relying on specific jurisdiction over the defendant, minimum contacts, purposeful availment, and relation to the claim were assessed only with respect to the named plaintiffs.").

The Supreme Court itself has regularly entertained nationwide classes where the plaintiff relied on specific personal jurisdiction, without taking note of any procedural defects. For instance, *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338 (2011), involved a nationwide class brought in California

against Wal-Mart, which was headquartered in Arkansas and incorporated in Delaware. *See* Fourth Amended Complaint at ¶¶ 14, 90, *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137 (N.D. Cal. 2004), ECF No. 767. *Phillips Petroleum* involved a nationwide class action brought in Kansas against a defendant headquartered in Oklahoma and incorporated in Delaware. 472 U.S. at 799. In neither case did the Supreme Court find any jurisdictional deficiencies due to the presence of claims by absent out-of-state class members.[2]

Therefore, *Bristol-Myers*'s dictate that courts analyze specific personal jurisdiction in terms of "connection[s] between the forum and the specific claims at issue" is not in tension with our existing approach to class actions. 137 S. Ct. at 1781.[3] And in

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[2] The holding in *Philips Petroleum* is significant for another reason: Because Kansas state courts, unlike federal courts, are unable to exercise personal jurisdiction beyond the limits of the Fourteenth Amendment, the holding cannot be read as somehow authorizing the exercise of jurisdiction under the Fifth Amendment. The propriety of nationwide class actions brought in state court, such as the one at issue in *Philips Petroleum*, demonstrates that the proper personal jurisdiction analysis for class actions does not turn on whether the constitutional limit on jurisdiction is the Fourteenth Amendment or the Fifth Amendment. That out-of-state plaintiffs may be included in a class action in state court necessarily implies that the personal jurisdiction analysis applicable to class actions does not depend on the arguments we discuss in Section II.E, *infra*, which would only apply in federal court.

[3] The Justices' approach to oral argument in *Bristol-Myers* further buttresses this conclusion. Justices Breyer and Kagan both pressed the litigants on the implication their decision

a class action, the relevant claim is the claim of the class. Accordingly, we analyze the jurisdictional questions with respect to the class as a whole, as exemplified by the named plaintiff. Thus, we agree with many of our colleagues across the appellate and trial benches who held have that *Bristol-Myers* did not change the personal jurisdiction question with respect to class actions. *See, e.g.*, *Lyngaas*, 992 F.3d at 433 ("We decline to extend *Bristol-Myers Squibb* in this manner. Long-standing precedent shows that courts have routinely exercised personal jurisdiction over out-of state defendants in nationwide class actions, and the personal jurisdiction analysis has focused on the defendant, the forum, and the named plaintiff, who is the putative class representative."); *see also Mussat*, 953 F.3d at 448; *Molock v. Whole Foods Mkt., Inc.*, 297 F. Supp. 3d 114, 126–27 (D.D.C. 2018), *aff'd sub nom. Molock*, 952 F.3d 293; *Chernus v. Logitech, Inc.*, No. 17-673(FLW), 2018 WL 1981481, at *7 (D.N.J. Apr. 27, 2018) (collecting cases).

C.

With this in mind, we return to Appellant's analogy to the class action device. Appellants contend that because Fischer's claims are premised on FedEx's specific contacts with Pennsylvania, the

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might have for class actions. See Transcript of Oral Argument at 17, 58–59, *Bristol-Myers*, 137 S. Ct. 1773 (No. 16-466). Counsel for Bristol-Myers assured them that any decision they authored in their favor would not need to disrupt class action practice. *Id*. at 18.

trial court had specific personal jurisdiction over this matter, and any opt-in plaintiffs, like absent class action members, should be ignored for the purposes of the jurisdictional analysis.

Nevertheless, the statutory text of the FLSA collective action device, particularly as compared to Rule 23 and the California aggregation rule at issue in *Bristol-Myers*, the FLSA's legislative history, and the weight of the caselaw, demonstrate that FLSA suits should be treated as ordinary in personam suits for purposes of personal jurisdiction. Accordingly, opt-in plaintiffs are required to demonstrate the court has personal jurisdiction with respect to each of their claims.

1.

"Statutory interpretation, as we always say, begins with the text." *Ross v. Blake*, 578 U.S. 632, 638 (2016). Section 216(b) of the FLSA provides:

> An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party

> and such consent is filed in the court in which such action is brought.

29 U.S.C. § 216(b).

The difference between the language of § 216(b) and Rule 23 is striking. As the Second Circuit has observed, these two provisions "bear little resemblance to each other." *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502, 519 (2d Cir. 2020).

The FLSA collective action device contains none of the crucial requirements that allow the class action to be excepted from certain rules of "general application in Anglo-American jurisprudence." *Hansberry*, 311 U.S. at 41–43. Instead, the FLSA collective action only requires that the opt-in plaintiffs be "similarly situated." 29 U.S.C. § 216(b). As the Ninth Circuit aptly explained, "[t]his gap between the requirements of collective and class proceedings is to be expected, as many of the rules specific to class actions have evolved to protect the due process rights of absent class members, a consideration not pertinent under the post-1947 FLSA." *Campbell*, 903 F.3d at 1112. The lack of such mandatory protections and process for FLSA collective actions means they should not be analogized to class actions. *See Taylor*, 553 U.S. at 900–01; *Canaday*, 9 F.4th at 403; *Campbell*, 903 F.3d at 1112 ("[A]s nonrepresentative actions, collective actions have no place for conditions such as adequacy or typicality.").

Furthermore, while courts often borrow language from the class action context when discussing the "certification" of a collective action, that is a misnomer. The FLSA does not mandate courts take any action to certify a collective action. 29 U.S.C. § 216(b). The widely practiced common law "certification" process courts have adopted only results in notice to potential plaintiffs, rather than the creation of an independent legal entity. *See Genesis Healthcare Corp.*, 569 U.S. at 75 ("The sole consequence of conditional certification [in an FLSA collective action] is the sending of court-approved written notice to employees, who in turn become parties to a collective action only by filing written consent with the court." (citation omitted)); *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527, 536 (3d Cir. 2012) ("[T]he 'conditional certification' is not really a certification. It is actually . . . the [facilitation of] sending of notice to potential class members." (citation omitted)); *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1259 (11th Cir. 2008) ("Because similarly situated employees must affirmatively opt into the litigation, the decision to certify the action, on its own, does not create a class of plaintiffs."). That "[d]istrict courts have also allowed opt- in plaintiffs to stay in the litigation, even after certification is denied," *Mickles v. Country Club Inc.*, 887 F.3d 1270, 1280 (11th Cir. 2018), further demonstrates that FLSA collective action "certification" is fundamentally different from the certification of a Rule 23 class. While this linguistic imprecision may not seem significant, the fact that certification does not create an independent legal

entity with its accompanying rights and protections is a critical distinction between the FLSA collective action and the Rule 23 class action.

Once the class is certified, Rule 23(a) explicitly contemplates the named plaintiff or defendant acting as a "representative part[y]." Fed. R. Civ. P. 23(a). No analogous language appears in § 216(b). *See Campbell*, 903 F.3d at 1113 (stating that the lack of any mention of a "class proceeding" in § 216(b) indicates an affirmative congressional choice to distinguish an FLSA collective action from a Rule 23 class action). In contrast, an opt-in plaintiff under § 216(b) becomes a "party plaintiff." 29 U.S.C. § 216(b). By defining them as party plaintiffs, the statute indicates "opt-in plaintiffs should have the same status in relation to the claims of the lawsuit as do the named plaintiffs." *Prickett v. DeKalb Cnty.*, 349 F.3d 1294, 1297 (11th Cir. 2003); *see also Mickles*, 881 F.3d at 1278 (finding that opt-in plaintiffs remain parties until they are dismissed, and may appeal adverse judgments in the same manner as a named plaintiff); McLaughlin on Class Actions § 2:16 (2021) ("Unlike absent members of a certified class action, any plaintiff who opts in to a collective action has full party status and obligations.").

Rule 23 also contains important post-certification protections that are notably absent in § 216(b). Because absent class members are not present in court, the court is authorized to issue various orders "to protect class members and fairly

conduct the action." Fed. R. Civ. P. 23(d)(1)(B). The FLSA does not provide any analogous authority. Rule 23 also establishes a rigorous system surrounding the settlement of class actions in which absent class members are notified and provided an opportunity to opt-out and to object. Fed. R. Civ. P. 23(e). And before approval of the settlement, the court must conduct a hearing and find "it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Once again, FLSA collective actions contain none of these protections. *See* 29 U.S.C. § 216(b); McLaughlin on Class Actions § 2:16 ("Unlike class actions, which cannot be settled without notice to absent class members under Rule 23(e), a collective action may be settled without notice to absentee members." (footnote omitted)).

These differences do not solely manifest themselves in the statutory text or during the certification process. The essentially individual character of an FLSA collective action litigation means "each FLSA claimant has the right to be present in court to advance his or her own claim." Wright & Miller, Federal Practice and Procedure § 1807. And defendants in an FLSA collective action retain the ability to assert "highly individualized" defenses with respect to each of the opt-in plaintiffs. *Thiessen v. Gen. Elec. Cap. Corp.*, 267 F.3d 1095, 1107 (10th Cir. 2001); *see also Morgan*, 551 F.3d at 1263 (finding the presence of individualized defenses does not prevent an FLSA collective action from being brought); *Shabazz v. Morgan Funding Corp.*, 269 F.R.D. 245, 251 (S.D.N.Y. 2010) (allowing

defendants to "assert individualized issues that may result in factual disputes at trial" in an FLSA collective action); *Rodolico v. Unisys Corp.*, 199 F.R.D. 468, 484 (E.D.N.Y. 2001) ("[S]tanding alone, the prospect of individual defenses should not defeat authorization of a collective action in this case."). Moreover, district courts presiding over FLSA collective action trials typically instruct juries to consider the claims of each plaintiff entirely separately.[4]

Accordingly, from start to finish, FLSA collective actions are materially different from Rule 23 class actions with regard to the representative nature of the suits.

2.

This gulf between FLSA collective actions and Rule 23 class actions is drawn into sharper relief when comparing the FLSA collective action with the California aggregation rule at the heart of *Bristol-Myers*.

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[4] *See, e.g.*, Verdict Form at 32–33, *Lopez v. Genter's Detailing, Inc.*, No. 03:09-CV-553-G, 2011 WL 5119964 (N.D. Tex. Oct. 14, 2011) (including separate verdicts for each plaintiff in a collective-action); Allan G. King & Andrew Gray, *The Unanimity Rule: "Black Swans" and Common Questions in FLSA Collective Actions*, 10 Fed. Cts. L. Rev. 1, 17–19 (2017) ("In multi-plaintiff actions under the FLSA, the norm in submitting jury interrogatories is to submit a single verdict form for each plaintiff.").

The mass action at issue in *Bristol-Myers* was coordinated under Cal. Civ. Proc. § 404 (West 2022) (the "California Coordination Statute"). The California Coordination Statute allows coordination of "civil actions sharing a common question of fact or law" that are pending in different courts. Cal. Civ. Proc. § 404. Coordination is appropriate

> if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.

Id. § 404.1.

And unless otherwise specified, "all provisions of law applicable to civil actions generally apply to an action included in a coordination proceeding." Cal. St. Rules of Court 3.504(a).

Unlike Rule 23, the California Coordination Statute does not contemplate any parties acting in a

representative manner. And like FLSA collective actions, the California Coordination Statute lacks the stringent procedural protections of Rule 23. The California Coordination Statute, like an FLSA collective action, still allows for each plaintiff to proceed with different claims.[5] Coordination may be proper even if certain issues might be "heavily individualized." *Ford Motor Co. v. Superior Ct.*, 218 Cal. Rptr. 3d 185, 197 (Ct. App. 2017). Like the FLSA's use of the term "party plaintiffs," the California Coordination Statute defines the parties to the coordinated action as each of the parties to the constituent actions. *See* Cal. St. Rules of Court 3.501(13).

Based on this, the California Coordination Statute is better understood as a species of joinder rather than a class action device. *See*, *e.g.*, *Jasmine Networks, Inc. v. Superior Ct.*, 103 Cal. Rptr. 3d 426, 436–37 (Ct. App. 2009) (comparing Cal. Civ. Proc. § 404 to joinder and intervention). Courts, including this one, have similarly described the FLSA collective action device as a species of joinder. *See*, *e.g.*, *Genesis Healthcare Corp.*, 569 U.S. at 70 n.1 (describing Section 216 as a "joinder process"); *Mineo v. Port Auth. of N.Y. & N.J.*, 779 F.2d 939, 941

[5] *See, e.g., McGhan Med. Corp. v. Superior Ct.*, 14 Cal. Reptr. 2d 264, 271 (Ct. App. 1992) (noting that even though the products at issue in a coordinated suit are "[s]everal and differ in terms of manufacture, design and content" and the exact claims differed, coordination was appropriate because "depositions, interrogatories, admissions, collection of physical data, etc., will be better achieved if done in a coordinated manner").

n.5 (3d Cir. 1985) (describing § 216 as a form of "permissive joinder"); *Campbell*, 903 F.3d at 1104–05 ("The natural parallel [for FLSA named and opt-in plaintiffs] is to plaintiffs initially named or later added under the ordinary rules of party joinder."). This comparative dissimilarity between the FLSA collective action and the California Coordination Statute on one hand, and Rule 23 class actions on the other, indicates Appellant's analogy to class actions is inapt.

3.

The history of the FLSA collective action device further supports our conclusion that it should not be treated as a class action. Courts around the time of the FLSA's establishment read the statute to merely create a system of "permissive joinder" rather than creating "so-called class actions." *Fink v. Oliver Iron Mining Co.*, 65 F. Supp. 316, 318 (D. Minn. 1941) (collecting cases); *see also Pentland v. Dravo Corp.*, 152 F.2d 851, 854–55 (3d Cir. 1945) (characterizing the FLSA collective action as a form of permissive joinder or a spurious class action rather than a "true class suit"), *superseded by statute on other grounds as recognized in Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012). And when Rule 23 was brought into the modern era in 1966, the Advisory Committee took pains to explain their changes did not affect § 216. *See* Fed. R. Civ. P. 23 advisory committee's note, *reprinted in* 39 F.R.D. 69, 104 (1966) ("The present provisions of 29 U.S.C. § 216(b) are not intended to be affected by Rule 23, as

amended."). The Advisory Committee also distinguished the modern Rule 23 class actions from the historic spurious class actions on which the FLSA collective action device was based which were not supposed to "adjudicate the rights or liabilities of any person not a party" and only provided an invitation to intervene.[6] *Id.* at 99.

Over fifty years have passed since then, and Congress has had opportunities to revise the FLSA collective action device to bring it in line with the modern Rule 23. Congress has revised § 216 multiple times, including as recently as 2018. *See, e.g.*, Consolidated Appropriations Act, Pub. L. No. 115- 141, Div. S, Title XII, § 1201(b), 132 Stat. 1148 (2018). The fact Congress has chosen not to bring § 216 in line with Rule 23, indicates the statute should not be read to conform to Rule 23. *See Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 174 (2009) ("When Congress amends one statutory provision but not another, it is presumed to have acted intentionally . . . .").

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[6] Appellants suggest the historical inclusion of spurious class actions in Rule 23 is a reason we should view opt-in collective actions as a species of representative suit. We disagree. The explicit exclusion of spurious class actions from modern Rule 23 illustrates a line the drafters intended to draw between devices which would remain under the umbrella of Rule 23 and those which would not. *See Taylor*, 553 U.S. at 901 (disapproving of "*de facto* class actions" that lack the procedural protections of, for example, Rule 23 (quoting *Tice*, 162 F.3d at 973)).

4.

Given all this, it is unsurprising that the weight of prior decisions supports finding that FLSA collective actions cannot be analogized to Rule 23 class actions as Appellants urge. When the Supreme Court has had occasion to compare the two devices, it has stated "Rule 23 actions are fundamentally different from collective actions under the FLSA." *Genesis Healthcare Corp.*, 569 U.S. at 74. This principle has been echoed by many of our sister courts. *See Canaday*, 9 F.4th at 402 (stating that the significant differences between Rule 23 and the FLSA "require different approaches to personal jurisdiction"); *Scott*, 954 F.3d at 519 (noting differences between "the language and structure of § 216(b) and the modern Rule 23, which bear little resemblance to each other"); *Campbell*, 903 F.3d at 1105 (stating a collective action "is not a comparable form of representative action" and "is more accurately described as a kind of mass action, in which aggrieved workers act as a collective of individual plaintiffs with individual cases—capitalizing on efficiencies of scale, but without necessarily permitting a specific, named representative to control the litigation"); *Grayson v. K. Mart Corp.*, 79 F.3d 1086, 1106 (11th Cir. 1996) ("There is a fundamental, irreconcilable difference between the class action described by Rule 23 and that provided for by FLSA [§ 216(b)].") (quoting *LaChapelle v. Owens-Ill., Inc.*, 513 F.2d 286, 289 (5th Cir. 1975)); *Donovan v. Univ. of Tex. at El Paso*, 643 F.2d 1201, 1206 (5th Cir. 1981) (finding a

§ 216(b) collective action "cannot be deemed a representative action on behalf of the individual employees of the type governed by a Rule 23 action").

All told, the text, history, and weight of the case law uniformly supports the view that FLSA collective actions are fundamentally different from Rule 23 class actions. At bottom, an FLSA collective action proceeds "as a kind of mass action, in which aggrieved workers act as a collective of *individual* plaintiffs with *individual* cases." *Campbell*, 903 F.3d at 1105. In contrast, a Rule 23 class action, once certified, is directed by the named plaintiff and class counsel, representing the absent class members, under the supervision of the court. *See Canaday*, 9 F.4th at 403; *Lyngaas*, 992 F.3d at 435. The Supreme Court has cautioned that courts "must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 393 (2008). We would be doing that if we were to expand the allowances given to class actions due to their carefully balanced structure, to the FLSA collective action device. Accordingly, we believe an FLSA collective action should operate like an individual in personam suit for purposes of personal jurisdiction, meaning the district court must have personal jurisdiction over the defendant with respect to each opt-in plaintiff's individual claim.

D.

Having determined courts need personal jurisdiction over a defendant with respect to all plaintiffs' claims in FLSA actions, we need to decide what is required of a federal district court to do so. Under Fed. R. Civ. P. 4(k)(1)(A), we first ask whether Pennsylvania's service of process rules permit the exercise of personal jurisdiction with respect to opt-in plaintiffs' claims. Here, because the out-of-state plaintiffs' claims do not arise out of or relate to FedEx's minimum contacts with Pennsylvania, the District Court did not have personal jurisdiction under Rule 4(k)(1)(A) broad enough to reach those claims.

We then consider alternative theories whereby opt-in plaintiffs might use § 216 to establish personal jurisdiction directly with respect to opt-in plaintiffs' claims, without relying on the initial service of a summons under Rule 4(k)(1)(A). Because opting in to an FLSA collective action is akin to a species of joinder, Appellants suggest a variety of possible reasons a court might be free to exercise broader personal jurisdiction than what is authorized under Rule 4(k)(1)(A). While we agree that a federal law could authorize broader personal jurisdiction when parties join a suit as compared to the initial filing of a suit, we disagree that § 216 is an example of a federal law that does so. And we are not aware of any other general Civil Rule which changes this analysis by authorizing the exercise of

personal jurisdiction over FedEx with respect to the opt-in plaintiffs' claims here.

1.

At the highest level, the potential outer limits of the personal jurisdictional authority of a federal court are defined by the Due Process Clause of the Fifth Amendment. *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 368–69 (3d Cir. 2002). By contrast, the potential outer limits of the personal jurisdictional authority of a state court are defined by the Due Process Clause in the Fourteenth Amendment. *Bristol-Myers*, 137 S. Ct. at 1779 (collecting cases).

Appellants contend that in the absence of a source of law which limits personal jurisdiction, federal courts are free to exercise jurisdiction to the maximum extent permissible under the Fifth Amendment.[7] But the personal jurisdictional limits in the Fifth and Fourteenth Amendments are not self-executing. *See S.E.C. v. Ross*, 504 F.3d 1130, 1140 (9th Cir. 2007) ("The power to exercise jurisdiction nationwide is not self-executing. Mere contacts with the jurisdiction, even when coupled with some kind of actual notice, are not sufficient to invest the district court with *in personam* jurisdiction over a party-in-interest."). For a court to exercise personal jurisdiction over a defendant, the

[7] The basis for subject matter jurisdiction in this suit is federal question jurisdiction, because the suit was brought under the FLSA.

defendant must be served process, alerting the defendant to the pendency of the suit and the nature of the claims against her. *See Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987) ("[S]ervice of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served.") (quoting *Miss. Publ'g Corp. v. Murphree*, 326 U.S. 438, 444–45 (1946)); *Volkswagenwerk Aktiengessellschaft v. Schlunk*, 486 U.S. 694, 700 (1988) ("Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action."); Wright & Miller, Federal Practice & Procedure, § 1063 (describing the primary function of service of process as "provid[ing] the mechanism for bringing notice of the commencement of an action to the defendant's attention and to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit").

In *Omni Capital*, the Supreme Court held, in the context of establishing personal jurisdiction over a defendant at the inception of a suit where the defendant had not been served or consented to jurisdiction, federal courts could not look directly to the Fifth Amendment to assess if jurisdiction would be proper. *See Omni Capital*, 484 U.S. at 104 ("Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied."). Accordingly, "before a court may exercise personal jurisdiction over a defendant," in

the absence of consent, "there must be authorization for service of summons on the defendant," even in situations where the Fifth Amendment itself does not prohibit the exercise of personal jurisdiction. *Omni Capital*, 484 U.S. at 104. Specifically, the Court identified Rule 4 of the Federal Rules of Civil Procedure as the primary Congressionally authorized mechanism by which a federal court could serve process and thus exercise personal jurisdiction over a defendant. *Id.* at 104–05. It would appear, therefore, the Supreme Court declined to fashion a personal jurisdiction rule unique to federal courts in the absence of authorization from Congress, even if the rule would satisfy the Fifth Amendment. *Id.* at 104. And the Court declined to exercise common law authority to craft a jurisdictional rule where Congress had not authorized common law rulemaking, because "the weight of authority, both in the cases and in the commentary, considers statutory authorization necessary to a federal court's service of summons." *Id.* at 109 (citations omitted) (internal quotation marks omitted); *accord Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 297 (3d Cir. 1985) (noting that "in the absence of a governing federal statute we have found no authority for exercising personal jurisdiction" over a defendant based on contacts with a state other than that in which the federal court sits); *cf. Omni Capital*, 484 U.S. at 108 ("[I]t is unclear at this time whether it is open to us to fashion a rule authorizing service of process.").

Accordingly, to determine if personal jurisdiction is proper in a traditional in personam suit we begin with the source of law authorizing the service of process whereby plaintiffs seek to establish personal jurisdiction, which in federal courts is Rule 4.[8] If the source of law authorizing service of process permits the exercise of personal jurisdiction with regard to the claims at issue, personal jurisdiction will be proper so long as it does not violate the outer limits permissible under the Constitution. But, if no source of law authorizing service of process permits the exercise of personal jurisdiction with regard to the claims at issue, we are unable to exercise personal jurisdiction over those claims, regardless of what the outer limits of the Constitution might theoretically permit.

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[8] Rule 82, which explicitly provides that the Civil Rules cannot be used "to extend or limit the jurisdiction of the district courts," Fed. R. Civ. P. 82, does not change our analysis. We think the mention of "jurisdiction" in Rule 82 only refers to subject matter jurisdiction, not personal jurisdiction. *See* Fed. R. Civ. P. 82 advisory committee notes to 2001 amendment (noting that a prior version of the rule, which stated the Civil Rules do not "extend or limit the jurisdiction of the United States district courts," would have been "a flat lie if 'jurisdiction' includes personal or quasi-in rem jurisdiction"); *Mississippi Pub. Corp. v. Murphree*, 326 U.S. 438, 445 (1946) ("Rule 4(f) [now Rule 4(e)] serves only to implement the jurisdiction *over the subject matter* which Congress has conferred, by providing a procedure by which the defendant may be brought into court at the place where Congress has declared that the suit may be maintained.") (emphasis added).

2.

Rule 4(k)(1)(A) is the traditional source of personal jurisdiction in federal courts. Under Rule 4(k)(1)(A), Fischer's service of a summons on FedEx established personal jurisdiction over FedEx to the extent it is "subject to the jurisdiction" of Pennsylvania's courts. Fed. R. Civ. P. 4(k)(1)(A). Fischer established specific personal jurisdiction over FedEx based on certain minimum contacts between FedEx and Pennsylvania. Because the opt-in plaintiffs' claims do not arise out of or relate to those minimum contacts, the initial service of a summons cannot be used to exercise jurisdiction over FedEx under Rule 4(k)(1)(A) with regard to those claims.

Rule 4(k)(1) sets out situations in which "[s]erving a summons . . . establishes personal jurisdiction over a defendant." Rule 4(k)(1)(A) provides that one such situation is when the summons is served on a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." State, but not federal, courts are courts of general jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

For a defendant to be "subject to the jurisdiction" of a state court, the exercise of personal jurisdiction must be authorized by state law, such as by the state's long-arm statute, and must comport with the requirements of the Fourteenth Amendment. *See*

Wright & Miller, Federal Practice & Procedure § 1069. Pennsylvania's long-arm statute allows the Commonwealth to exercise jurisdiction "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b); *see Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 1998). Where a federal court relies on such a state rule authorizing jurisdiction to the fullest extent permitted by the Constitution, Rule 4(k)(1)(A) incorporates the constitutional limits on jurisdiction imposed by the Fourteenth Amendment. *See Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (analyzing personal jurisdiction under the Fourteenth Amendment because "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons") (citing Fed. R. Civ. P. 4(k)(1)(A). The reason federal courts are limited by the Fourteenth Amendment in such cases is not because a federal court exercising broader personal jurisdiction would violate the Constitution, but because Rule 4(k)(1)(A) does not authorize jurisdiction broader than what would be permissible for a state.

The Fourteenth Amendment permits two types of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011). As the names suggest, general personal jurisdiction is broader than specific

personal jurisdiction, reaching all potential claims against the defendant regardless of their connection to the state. By contrast, specific personal jurisdiction only reaches claims that arise out of or relate to the minimum contacts a plaintiff can demonstrate between the defendant and the forum state. *See Bristol-Myers,* 137 S. Ct. at 1781 ("What is needed . . . is a connection between the forum and the specific claims at issue.").

Here, the Appellants cannot establish general personal jurisdiction over FedEx under Rule 4(k)(1)(A). For a corporation, general jurisdiction is only proper in states where the corporation is fairly regarded as "at home," which generally is restricted to the corporation's state of incorporation or the state of its principal place of business. *Daimler*, 571 U.S. at 122; *Goodyear Dunlop Tires Ops., S.A.*, 564 U.S. at 924. Accordingly, FedEx, which is incorporated in Delaware and has a principal place of business in Tennessee, is not "at home" in Pennsylvania.

And Appellants fare no better with specific personal jurisdiction. Fischer was able to establish personal jurisdiction over FedEx with respect to her claims in Pennsylvania because FedEx operates locations in Pennsylvania (i.e., there were sufficient minimum contacts with the state), and her claims arose out of her work for FedEx in the Pennsylvania locations (i.e., the claims arose out of or related to the minimum contacts). By contrast, the opt-in plaintiffs lived in New York and Maryland. They

were employed by FedEx in New York and Maryland. And they do not contend they had any connection to, let alone injury arising from, FedEx's activities in Pennsylvania. Their claims entirely relate to their treatment by FedEx in their respective home states.

Appellants claim this application of Rule 4(k)(1)(A) would require "all opt-in plaintiffs who join the suit via written consent [to] comply with the service-of-process requirements set forth in Rule 4." Appellants' Br. 37. But our holding in this appeal does not require independent service any time a plaintiff would seek to join a suit, or, relatedly, any time a plaintiff seeks to amend or add claims herself. A defendant who is "subject to the jurisdiction" of a state's courts, pursuant to Rule 4(k)(1)(A), would be so not only for the verbatim claims alleged in the initially filed complaint but also for other potential claims that might be asserted. In the case of general personal jurisdiction, once the court asserts personal jurisdiction over a defendant through service of process under Rule 4(k)(1)(A), the defendant is subject to the jurisdiction of the court with regard to any and all claims that might be brought. *See Goodyear Dunlop Tires Ops., S.A.*, 564 U.S. at 919 ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." (quoting *International Shoe v. Washington*, 326 U.S. 310, 317 (1945))). Accordingly, if an additional plaintiff seeks to join the suit, or if

the original plaintiff seeks to add or amend claims, there is no need to serve the defendant again because the defendant is already subject to the court's jurisdiction. The same principle is true for specific personal jurisdiction, though the family of claims that might be asserted is narrower: A defendant is subject to the jurisdiction of the state's courts only with regard to those claims that arise out of or relate to the defendant's minimum contacts with the state. *See Goodyear Dunlop Tires Ops., S.A.*, 564 U.S. at 919 ("In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.") (internal quotation marks and citation omitted). For this reason, if an additional plaintiff seeks to join the suit bringing her own claims, or if the original plaintiff seeks to add or amend claims, there is no need to serve the defendant again as long as the new claims arise out of or relate to the defendant's minimum contacts with the forum state, because the defendant would already be subject to the jurisdiction of the court with respect to those claims.

Appellants make two arguments in attempting to tie the claims of the opt-in plaintiffs to FedEx's contacts with Pennsylvania. Both are precluded by *Bristol-Meyers*. *First*, Appellants contend that all plaintiffs "suffered the same harm stemming from the same unlawful policy." Appellants' Br. at 56. The Supreme Court in *Bristol-Myers* considered an analogous argument and concluded that the mere

fact that other plaintiffs allegedly suffered the same injury from the same source "does not allow the [forum] to assert specific jurisdiction over the nonresidents' claims." 137 S. Ct. at 1781. What is required is a showing that the out-of-state plaintiffs' injuries have a connection to the forum state, not just that the injuries are similar to those of in-state plaintiffs. *Second*, Appellants assert that by creating the FLSA collective action device, Congress has defined a legal relationship between out-of-state opt-in plaintiffs and in-state plaintiffs, such that the out-of-state plaintiffs' claims, once joined in the suit, are related to the employer's activities in the forum state. But merely being named a party in a suit cannot alone constitute a legal relationship sufficient to establish personal jurisdiction. Indeed, *Bristol-Myers* forecloses this argument: The legal relationship between the plaintiffs defined by the California mass action device at issue in the case made no difference for the Court's personal jurisdiction analysis.

For these reasons, we believe that in an FLSA collective action where personal jurisdiction is asserted under Rule 4(k)(1)(A), each opt-in plaintiff must demonstrate that the court has personal jurisdiction over the defendant with regard to her claims. The opt-in plaintiffs have failed to do so here. The District Court correctly found that service of process did not establish personal jurisdiction over the defendant under Rule 4(k)(1)(A) with respect to the claims of the opt-in plaintiffs. As the Sixth Circuit observed in *Canaday* regarding another

FLSA collective action "[t]aken together, the claims [of out-of-state plaintiffs] look just like the claims in *Bristol- Myers*." 9 F.4th at 397.

3.

Separate from personal jurisdiction tied to the initial service of process under Rule 4(k)(1)(A), opt-in plaintiffs might also be able to independently establish jurisdiction over the defendant with regard to their claims if a federal law directly authorized it. *See* Fed. R. Civ. P. 4(k)(1)(C) (providing that serving a summons establishes personal jurisdiction "when authorized by a federal statute"). But to use Rule 4(k)(1)(C), opt-in plaintiffs would need to identify a federal statute that authorizes the exercise of personal jurisdiction. And the federal statutory provision at issue here, § 216(b) of the FLSA, does not do so.

Congress can provide federal courts a statutory mechanism through which to establish personal jurisdiction, so long as that exercise does not exceed the bounds of the Fifth Amendment. Personal jurisdiction established pursuant to Rule 4(k)(1)(C) traditionally involves a federal statute authorizing nationwide service of process and is constitutionally limited only by the Fifth Amendment (i.e., a nationwide minimum contacts analysis), not the Fourteenth Amendment. *See Laurel Gardens, LLC v. Mckenna*, 948 F.3d 105, 122 (3d Cir. 2020) ("Where Congress has statutorily authorized nationwide service of process, such service

establishes personal jurisdiction, provided that the federal court's exercise of jurisdiction comports with Fifth Amendment due process.") (quoting *Cory v. Aztec Steel Building, Inc.*, 468 F.3d 1226, 1229 (10th Cir. 2006)). Congress can also provide different jurisdictional rules for different parties in the same suit. For example, under the Racketeer Influenced and Corrupt Organizations statute, so long as jurisdiction is proper over at least one defendant according to the traditional, state-bound minimum contacts test, other parties may be served nationwide. *See Laurel Gardens*, 948 F.3d at 120 (explaining the implications for personal jurisdiction of 18 U.S.C. § 1965(a) and (b)).

But the drafters of the FLSA did not provide any such mechanism to establish personal jurisdiction in § 216(b). There is no mention in § 216(b) of service of process. And the only explicit mention of jurisdiction in this provision is the requirement that the court in which an action is brought be "of competent jurisdiction."

The "similarly situated" language in § 216 cannot be read as a grant of personal jurisdiction with regard to opt-in plaintiffs' claims. This requirement directly follows the instruction that the court must be "of competent jurisdiction," indicating "similarly situated" was not meant to provide an independent basis for jurisdiction. Moreover, the "similarly situated" requirement governs all FLSA collective actions without distinguishing between those in state versus federal court.

For these reasons, we see no plausible way to read § 216(b) as independently granting jurisdiction for federal courts to exercise personal jurisdiction over a defendant with regard to opt-in plaintiffs' claims. Accordingly, Rule 4(k)(1)(C) cannot be used directly by opt-in plaintiffs to independently establish personal jurisdiction because doing so has not been authorized by federal law.

4.

Since Rule 4(k) does not authorize the exercise of personal jurisdiction over the out-of-state plaintiffs' claims at issue here, Appellants suggest that "[t]he text of Rules 4 and 5 impose no . . . obligation" for opt-in plaintiffs to serve a summons according to Rule 4. Appellants' Br. 41. Appellants contend that opt-in plaintiffs in FLSA actions have not traditionally been required to serve a summons under Rule 4, instead serving "written notice" under Rule 5.[9] Fed. R. Civ. P. 5(a)(1)(E). Even if opt-in plaintiffs were required to serve a new complaint stating their claims, that complaint might be considered "a pleading filed after the original

[9] Rule 5 permits certain papers to be served on an opposing party with less formality than what is required under Rule 4. Rule 5 covers a wide range of papers that might be served on a defendant once the defendant has been given notice of the pendency of a suit through service under Rule 4. Rule 5 provides, for example, "[i]f a party is represented by an attorney, service under this rule must be made on the attorney," which would, for example, streamline the service of routine papers in protracted litigation. Fed. R. Civ. P. 5(b)(1).

complaint," which could also be served under Rule 5. Fed. R. Civ. P. 5(a)(1)(B).

True, unlike Rule 4(k)(1)(A), Rule 5 does not tie personal jurisdiction to a state's service of process and personal jurisdiction rules. And Rule 5 does not specifically exclude FLSA opt-in consent forms from the provisions of the rule. But we think there is an explanation: Rule 5, unlike Rule 4(k), does not authorize the exercise of personal jurisdiction. The fact that Rule 5 is silent on establishing personal jurisdiction—either to authorize or limit the exercise of jurisdiction—merely indicates that Rule 5 does not provide an independent mechanism to establish jurisdiction where Rule 4(k) would not be satisfied. Instead, Rule 5 is better seen as an alternative to Rule 4 to providing notice to an opposing party in circumstances where the court already has personal jurisdiction over the defendant with regard to the plaintiff's claims.

Indeed, we think *Omni Capital* forecloses reading Rule 5 as implicitly authorizing the service of a written notice as a substitute mechanism to establish personal jurisdiction. While *Omni Capital* only directly discussed personal jurisdiction tied to service of a summons, we think the analysis would also apply to an effort to establish personal jurisdiction without service of a summons. *Omni Capital* was written against the backdrop of a long-standing consensus that service of process was more than a mere procedural formality and was instead an essential procedural requirement in all cases for

establishing personal jurisdiction. *Omni Capital*, 484 U.S. at 104. In this context, a lack of authorization to serve a summons would have been understood as synonymous with a lack of authorization to exercise personal jurisdiction.

Consistent with our reading of Rules 4 and 5, some commentators have recognized that it would be unfair to permit Rule 5 to serve as an independent authorization of personal jurisdiction where the personal jurisdiction established under Rule 4(k) is not broad enough to reach the newly added claims. *See* Wright & Miller, Federal Practice & Procedure, § 1146 ("Whenever an additional claim asserted in an amended or supplemental pleading is unrelated to the claim originally asserted against him, fairness may require the court to order that jurisdiction be reasserted over the party himself rather than rely on the service of the amended pleading on his attorney under Rule 5(b)."). For purposes of our decision in this case, we need not resolve how Rule 5 would operate in every case. We need only conclude that Rule 5 cannot independently be used to allow additional plaintiffs to join a suit where their claims do not arise out of the minimum contacts that served the basis for the original exercise of jurisdiction under Rule 4(k)(1)(A).

Ultimately, we interpret the practice of allowing service of notice under Rule 5 for opt-in plaintiffs in FLSA actions not as an endorsement that Rule 5 authorizes the exercise of personal jurisdiction, but rather as evidence that, before *Bristol-Myers*, courts

had not squarely addressed whether personal jurisdiction would be required with regard to opt-in plaintiffs' claims. While this evidence of historical practice has some persuasive value, it is not dispositive of the issues in this case, since it is not based on any rule or statute that authorizes the exercise of jurisdiction.[10]

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[10] Appellants cite Rule 23 class actions as an example where absent class members may be represented in a suit without individually serving process under Rule 4. As explained above, *supra* Section II.B, the personal jurisdiction analysis for Rule 23 class actions diverges from the analysis for FLSA collective actions, because, in a class action, personal jurisdiction is not required over the defendant with respect to absent class members' claims. Personal jurisdiction is not different for class actions because of any requirements in Rule 5, but rather because of the careful and detailed protections set out in Rule 23.

Appellants point to other joinder rules that they suggest do not require service of a summons under Rule 4 to establish personal jurisdiction with respect to joined parties or claims. Appellants' Br. 42 (Rule 24); *see also Waters*, 23 F.4th at 96 (Rule 20). We disagree that joinder rules are categorically exempt from the general requirement for establishing personal jurisdiction under Rule 4(k) with respect to all plaintiffs' claims. Indeed, two joinder rules—Rule 14 (third-party practice) and Rule 19 (required joinder of parties)—have an explicit service of process rule governing personal jurisdiction for joined parties. *See* Fed. R. Civ. P. 4(k)(1)(B). We decline to read other joinder rules as implicitly authorizing the exercise of personal jurisdiction when those rules are silent as to service of process. Instead, we think joinder rules are still governed by the background service of process rules in Rule 4(k)(1)(A) and (1)(B). Specifically, as explained in this opinion, § 216(b) cannot be read to authorize personal jurisdiction beyond the background rules that would otherwise govern in federal court. Labeling § 216(b) a joinder rule does not change this analysis.

***

For these reasons, like the out-of-state plaintiffs in *Bristol-Myers*, the opt-in plaintiffs in FLSA collective actions must satisfy the personal jurisdiction requirements of the Fourteenth Amendment to join the suit. FLSA collective actions are in personam suits and, unlike Rule 23 class actions, are not exempted from traditional personal jurisdiction requirements.

These traditional personal jurisdiction requirements begin with a source of law authorizing the exercise of personal jurisdiction. Where no federal law authorizes the exercise of personal jurisdiction, plaintiffs must satisfy the requirements of Rule 4(k)(1)(A), which can be used to establish personal jurisdiction over a defendant who is subject to the jurisdiction of a state's courts. Because state courts are limited by the Fourteenth Amendment, so too are federal courts relying on Rule 4(k)(1)(A).

The out-of-state opt-in plaintiffs here have not demonstrated their claims arise out of or relate to FedEx's minimum contacts with Pennsylvania as is required by the Fourteenth Amendment. Accordingly, plaintiffs have not established personal jurisdiction over FedEx with respect to their claims and cannot join the suit.

III.

Appellants caution that affirming the trial court's decision would, at best, cause the proliferation of duplicative FLSA actions against the same employer or, at worst, prevent certain meritorious suits from being brought in the first place. But, as an initial matter, potential plaintiffs retain the ability to bring nationwide collective actions in a court that can exercise general personal jurisdiction over their employer. *See Canaday*, 9 F.4th at 400–01. Appellants express concerns about their practical ability to do so. But these same concerns were also raised by Justice Sotomayor in her dissent in *Bristol-Myers*. 137 S. Ct. at 1789 (Sotomayor, J., dissenting). The same argument should not prevail here when it did not do so before the Supreme Court.

Moreover, the Multidistrict Litigation statute also may present a potential avenue for the practical coordination of certain nationwide FLSA suits. The Judicial Panel on Multidistrict Litigation has centralized similar FLSA cases when there is duplicative litigation involving common questions of fact across the country. *See, e.g.*, *In re Lowe's* Cos., *Inc. Fair Labor Standards Act & Wage & Hour Litig.,* 481 F. Supp. 3d 1332 (U.S.J.P.M.L. 2020); *In re Amazon.com, Inc., Fulfillment Ctr. Fair Labor Standards Act & Wage & Hour Litig.*, 999 F. Supp. 2d 1375 (U.S.J.P.M.L. 2014). Indeed, there is evidence to suggest the drafters of the MDL statute envisioned it as a vehicle for these sorts of claims.

See Andrew D. Bradt, "*A Radical Proposal*": *The Multidistrict Litigation Act of 1968*, 165 U. Pa. L. Rev. 831, 867–69 (2017) (explaining the origins of the MDL statute). We agree with the Sixth Circuit that "[m]ultidistrict litigation implicates a different statute, a different history, and a different body of caselaw [than the FLSA]." *Canaday*, 9 F. 4th at 403–04 (internal citations omitted).

IV.

For the foregoing reasons, we will affirm the judgment of the District Court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTA B. FISCHER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.: 5:19-cv-04924-JMG
	)	
FEDERAL EXPRESS CORPORATION, *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

GALLAGHER, J. **December 23, 2020**

I. OVERVIEW

For the better part of the last decade, Christa Fischer and Andre Saunders worked as security specialists at their respective FedEx Ground facility assignments in Pennsylvania and Maryland. Although they are employed by FedEx Express, security specialists provide various loss-prevention and site monitoring services at FedEx Ground locations pursuant to a Professional Services Agreement. Ms. Fischer and Mr. Saunders allege

that, during their time as security specialists, they regularly worked more than 40 hours a week. However, because FedEx Express classified them as salaried employees who were exempt from overtime pay requirements, they were not paid for those extra hours worked. As a result, Ms. Fischer and Mr. Saunders brought suit alleging that, by misclassifying security specialists as exempt employees, FedEx Express failed to pay them proper overtime wages in violation of the Fair Labor Standards Act.

Before the Court is Plaintiffs' Motion for Conditional Certification and Court-Authorized Notice. Under the Fair Labor Standards Act, employees alleging a breach of the Act's provisions by their employer may bring suit on behalf of themselves and any other similarly situated employees. This "collective action" mechanism enables plaintiffs to vindicate their rights under the Act at lower cost to each individual and promotes judicial economy by consolidating each employee's claim into a single proceeding. Ms. Fischer and Mr. Saunders seek conditional certification of a nationwide collective comprised of all security specialists employed by FedEx Express and FedEx Ground who were improperly classified as overtime exempt. However, district courts disagree as to whether the Supreme Court's holding in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*[1] precludes the exercise of personal jurisdiction over opt-in plaintiffs alleging violations that occurred outside of the state. For the

[1] 137 S. Ct. 1773 (2017).

reasons set forth below, the Court will grant conditional certification of Plaintiffs' proposed collective, but will limit its scope to security specialists who worked for FedEx Express in Pennsylvania. Therefore, Plaintiffs' Motion is granted in part.

II. FACTUAL BACKGROUND

a. Allegations

Defendants Federal Express Corporation (FedEx Express) and FedEx Ground Package Systems, Inc. (FedEx Ground) operate in the package delivery industry nationwide. FedEx Express is a federally certified air carrier that operates airline hubs throughout the United States. Defs.' Resp. 2, ECF No. 30. FedEx Ground is a separate business entity which is a federally registered motor carrier engaged in business and residential ground package pickup and delivery services. *Id.* FedEx Express provides security services under a Professional Services Agreement to its parent company, FedEx Corporation, as well as several subsidiaries including FedEx Ground. *Id.* Pursuant to the agreement, FedEx Ground pays a contractor's fee for the security services provided by security specialists. *Id.*

FedEx Express hired Plaintiff Christa Fischer as a part-time Courier on August 22, 2007 and promoted her to the position of Security Specialist III on November 16, 2009. Answer ¶ 26, ECF No. 27. Ms. Fischer was later promoted to Senior Security

Specialist in 2011, a position she held until July 2019. Compl. ¶ 12, ECF No. 1; Answer ¶ 34. FedEx Express hired Plaintiff Andre Saunders in 2011 as a Security Specialist I and promoted him to Senior Security Specialist in 2013. Pls.' Mot., Ex. 2 ¶ 5-6. According to Plaintiffs, the primary duties of security specialists are observing and reporting on the security processes at their assigned locations, in addition to investigating possible instances of theft, pilfering, vandalism, and other similar occurrences. Pls.' Mot. 3.

During the relevant period, Ms. Fischer and Mr. Saunders were "dedicated" FedEx Ground security specialists. Defs.' Resp., Attach. 2 ¶ 5. As a result, they were assigned to and responsible for only FedEx Ground facilities. *Id.* Not all security specialists are FedEx Ground dedicated, since some may be responsible for FedEx Express facilities as well. Defs.' Resp., Attach. 2 ¶ 6. In her final thirteen months of employment, Ms. Fischer was assigned to two FedEx Ground locations in Pennsylvania, one in Lewisberry and the other in Williamsport. *Id.* at ¶ 6. From 2013 to 2019, Mr. Saunders was assigned to three FedEx Ground locations in Maryland, one in Dundalk and two in Beltsville. Pls.' Mot., Ex. 2 ¶ 6.

Plaintiffs allege that they were regularly required to work more than 40 hours a week due to understaffing and the workload requirements of their jobs. Pls.' Mot. 3. In particular, Plaintiffs contend that their "on-call" duties required them to work evenings and weekends outside of their regular work schedules. *Id.* Because they were classified as

salaried employees exempt from FLSA overtime pay requirements, Plaintiffs claim that they were never compensated for their overtime work. *Id.* at 4. Plaintiffs assert that by misclassifying security specialists as exempt employees, Defendants evaded paying proper overtime wages to Plaintiffs and other similarly situated employees in violation of the Fair Labor Standards Act. *Id.*

Defendants counter that, as exempt employees, security specialists may work outside of normal business hours without being entitled to overtime compensation. Defs.' Resp. 4. However, Defendants argue, security specialists do not have a defined 40-hour workweek, nor are they required to work evenings or weekends. *Id.* Defendants claim that specialists set their own schedules and make individual determinations concerning the focus of their security efforts. *Id.* They likewise assert that FedEx Express has no on-call policy. *Id.* at 4-5. Finally, Defendants maintain that they do not have a policy of understaffing specialists. *Id.*

b. Procedural History

Ms. Fischer filed her Complaint in this action on October 22, 2019 (ECF No. 1).[2] On December 21, 2019, Mr. Saunders filed a notice of consent to become a party plaintiff (ECF No. 12). Ms. Fischer filed a Motion for Conditional Certification on May 15, 2020 (ECF No. 24). Defendants' filed their Response in Opposition on July 1, 2020 (ECF No.

[2] This case was reassigned to this Court on March 2, 2020 (ECF No. 17).

30). Plaintiffs filed a Reply to Defendants' Response on July 21, 2020 (ECF No. 34) and Defendants filed a Sur-Reply in Opposition on July 29, 2020 (ECF No. 38). Following a status conference on October 22, 2020, the Court ordered the Parties to file supplemental briefs providing additional arguments concerning conditional certification, jurisdictional limitations that may apply thereto, and the possible joint employer relationship between Defendants (ECF No. 46). The Parties each filed their supplemental briefs on November 20, 2020 (ECF Nos. 48, 49).

III. LEGAL STANDARD

The Fair Labor Standards Act (FLSA) "establishes federal minimum-wage, maximum hour, and overtime guarantees that cannot be modified by contract." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 69 (2013). Under the FLSA's collective action mechanism, an employee alleging that their employer violated these provisions may bring an action "on behalf of himself…and other employees similarly situated" provided that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b). This means that a collective action relies on the participation of opt-in plaintiffs who must affirmatively join the action by filing written notice with the court. *Halle v. W. Penn Allegheny Health Sys. Inc.*, 842 F.3d 215, 225 (3d Cir. 2016). Collective actions enable plaintiffs to vindicate their rights

under the FLSA at lower cost to each individual and promote judicial economy by resolving common issues arising from the same activity in the same proceeding. *Id.* at 223.

The Third Circuit has adopted a two-step process in certifying collective actions. *See Karlo v. Pittsburgh Glass Works, LLC*, 849 F.3d 61, 85 (3d Cir. 2017); *Zavala v. Walmart Stores, Inc.*, 691 F.3d 527, 536 (3d Cir. 2012). During the first stage, known as conditional certification, the court "makes a preliminary determination whether the employees enumerated in the complaint can be provisionally categorized as similarly situated to the named plaintiff." *Symczyk v. Genesis HealthCare Corp.*, 656 F.3d 189, 192 (3d Cir. 2011). Here, plaintiffs need only make a "modest factual showing" that the putative class members are similarly situated. *Karlo*, 849 F.3d at 85 (quoting *Halle*, 842 F.3d at 223). This requires evidence "beyond pure speculation" demonstrating a factual nexus between the manner in which an employer's policy affected the named plaintiff and other members of the collective. *Symczyk*, 656 F.3d at 193 (citing *Smith v. Sovereign Bancorp, Inc.*, No. 03-2420, 2003 WL 22701017, at *3 (E.D. Pa. Nov. 13, 2003)). This is a lenient standard given the minimal evidence available at the early stages of litigation. *Viscomi v. Diner*, No. 13-4720, 2016 WL 1255713, at *3 (E.D. Pa. March 31, 2016).

The lone consequence of conditional certification is the dissemination of court-sanctioned notice to potential members of the collective. *Halle*, 842 F.3d

at 224. Once conditional certification is granted, the court may approve notice and consent forms to be sent to putative class members which advise them of their opportunity to participate in the collective action. *Id.* at 225. The parties then proceed to the next phase of discovery wherein the named plaintiffs may seek contact information concerning other potential opt-in plaintiffs and the parties further assess whether said plaintiffs are "similarly situated." *Id.* at 226-27. At the conclusion of discovery, the parties move to final certification, which is triggered either by the plaintiff's motion for final certification, the defendant's motion for decertification, or both. *Camesi v. University of Pittsburgh Medical Center*, 729 F.3d 239, 243 (3d Cir. 2013). It is at this stage that the Court must engage in a more exacting inquiry and the plaintiffs must satisfy a higher burden to show that the employees are in fact similarly situated. *Karlo*, 849 F.3d at 85.

IV. ANALYSIS

a. Conditional Certification

Plaintiffs seek conditional certification of an FLSA collective consisting of any individual employed by FedEx Express or FedEx Ground as a Security Specialist II, Security Specialist III, or Senior Security Specialist within the past three years that did not receive proper overtime compensation for hours worked over 40 per workweek. *See* Pls.' Mot., Ex. 4. The Court finds that, while it is a close call, Plaintiffs have made a

modest factual showing that they and other putative class members are similarly situated. They have therefore satisfied the requirements for conditional certification. However, Plaintiffs' proposed collective is subject to the strictures of personal jurisdiction and must be conditionally certified in a more limited form than proposed by Plaintiffs. *See infra* Section III.B.

In order to satisfy the "modest factual showing" standard, plaintiffs must provide evidence that putative class members were collectively "the victims of a single decision, policy, or plan." *Ruehl v. Viacom, Inc.*, 500 F.3d 375, 388 (3d Cir. 2007). This burden can be met when the plaintiff shows that they and other similarly situated employees performed the same job duties, were paid in the same manner, and advance claims based on the same allegedly illegal activities. *See, e.g.*, *Garcia v. Vertical Screen, Inc.*, 387 F. Supp.3d 598, 605 (E.D. Pa. 2019). While this is a lenient standard, mere allegations in the complaint are not sufficient to make a modest factual showing. *Drummond v. Herr Foods, Inc.*, No. 13-cv-5991, 2015 WL 894329, at *2 (E.D. Pa. Mar. 2, 2015). The plaintiff must provide additional factual support, such as declarations, affidavits, deposition testimony, or other supporting documents. *Id.*

Here, Plaintiffs allege that they and other putative class members performed similar duties, worked similar schedules, and were subject to the same common pay policies implemented by Defendants. Pls.' Mot. 8-9. According to Plaintiffs,

security specialists were charged with monitoring the sorting of packages and deliveries by drivers. *Id.* Plaintiffs also claim that since they were required to quickly respond to incidents of theft, vandalism, or other legal violations, they were essentially on call at all times. *Id.* Consequently, security specialists often worked in excess of 40 hours a week, including weeknights and weekends. *Id.* Security specialists were all considered salaried employees and classified as overtime exempt. *Id.* Plaintiffs and other similarly situated employees were therefore not paid additional wages for any overtime hours they worked. *Id.*

In support of these allegations, Plaintiffs have submitted sworn declarations describing their job duties, schedules, and FedEx Express pay policies. Pls.' Mot., Ex. 1-2. Plaintiffs attest to having personal knowledge that security specialists in other locations had the same duties, worked similar schedules, and were subject to the same employment classification. Pls.' Mot., Exs. 1-2; Pls.' Reply, Exs. A-B. Courts in this district have held that sworn statements attesting to personal knowledge that plaintiffs and other coworkers were subjected to the same policies and practices satisfy the modest factual showing standard. *See, e.g.*, *Garcia*, 387 F. Supp. 3d at 615. Plaintiffs also submitted "workgroup" conference call notes from the last three years showing that employees were expected to work some evenings and weekends, in addition to responding to communications outside of work hours.[3]Pls.' Reply, Exs. E-I. This tends to show that

[3] Plaintiffs' additional notes from 2013 and 2016 were not

Defendants were aware of the overtime hours worked by Plaintiffs and other putative class members, thereby further bolstering Plaintiffs' modest factual showing. *See Garcia v. Nunn*, No. 13-6316, 2016 WL 1169560, at *4 (E.D. Pa. Mar. 25, 2016).

In response, Defendants offer a litany of arguments challenging the adequacy of Plaintiffs' evidence and the merits of their claims. Defendants argue that Plaintiffs have offered an insufficient quantum of proof and that the evidence provided lacks reliability. Defs.' Resp.6-7. Defendants also assert that Plaintiffs failed to offer any indication of their specific knowledge of other similarly situated individuals. *Id.* at 12-13. Finally, Defendants argue that Ms. Fischer challenges her individual treatment instead of a company-wide policy, thereby necessitating an individualized inquiry unsuited for a collective action. *Id.* at 8-9.

Defendants' arguments are premature at this stage. The Court need not conclusively determine the viability of an FLSA collective during conditional certification. *Weirbach v. Cellular Connection, LLC*, No. 5:19-cv-05310, 2020 WL 4674127, at *2 (E.D. Pa. Aug. 12, 2020). In fact, the Court should not evaluate the merits of the case, consider the weight of the evidence, or resolve factual disputes until final certification. *Id.* Conditional certification only requires a "review of the pleadings and affidavits of the parties to decide if the proposed class consists of

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considered since they refer to events that occurred outside of the relevant time period.

similarly situated employees." *Wright v. Lehigh Valley Hospital*, No. 10-431, 2010 WL 3363992, at *2 (E.D. Pa. Aug. 24, 2010). Arguments concerning the factual basis of a plaintiff's allegations "address the merits of the plaintiff's claims, not the commonality of the alleged policies." *Viscomi*, 2016 WL 1255713, at *5. Likewise, courts should defer disputes regarding individual members and their effect on the case's suitability for collective action until final certification. *Weirbach*, 2020 WL 4674127, at *2. Defendants will have the opportunity to challenge the merits of Plaintiffs' arguments at that time.

b. Scope of the Collective

1. Personal Jurisdiction and Applicable Law

In opposing Plaintiffs' Motion, Defendants argue that if the Court grants conditional certification, it lacks personal jurisdiction over the claims asserted by security specialists who work outside of the state. Defs' Suppl. Br. 6. As a result, any conditional certification by the Court should be limited to claims by plaintiffs employed in Pennsylvania. *Id.* Plaintiffs counter that Defendants' contentions are without merit. Pls.' Suppl. Br. 5. They argue that the FLSA contemplates unified collective actions unconstrained by any geographic limitations. *Id.* According to Plaintiffs, holding otherwise would "splinter most nationwide collective actions, trespass on the expressed intent of Congress, and greatly diminish the efficacy of FLSA collective actions as a means to vindicate employee's rights."

Id. at 4 (quoting *Swamy v. Title Source, Inc.*, No. 17-1175, 2017 WL 5196780, at *2 (N.D. Cal. Nov. 10, 2017)).

Some courts have taken the position that a jurisdictional inquiry at the conditional certification stage is premature. *See, e.g.*, *Warren v. MBI Energy Services, Inc.*, No. 1:19-cv- 00800, 2020 WL 5640617 (D. Colo. Sept. 22, 2020). The Court disagrees. Conditional certification is a district court's exercise of its discretionary power to facilitate sending notice to potential class members. *Symczyk*, 656 F.3d at 189. Authorizing notice to individuals who ultimately could not be included in the collective "would only sow confusion" and subject the parties to unnecessary expense and effort. *Weirbach*, 2020 WL 4674127, at *2. Therefore, the Court should decide this issue during conditional certification.

Absent consent, a federal court must have statutory authorization to serve process on a defendant before it may exercise personal jurisdiction over them. *Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Since the FLSA does not authorize nationwide service of process, service in this case is only effective to the extent that Pennsylvania state courts may exercise jurisdiction over a given defendant. *See* Fed. R. Civ. P. 4(k).[4] Under Pennsylvania's long arm

[4] Absent joinder or authorization by federal statute, "[s]erving a summons…establishes personal jurisdiction over a defendant who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A).

statute, a court may exercise jurisdiction to the fullest extent permitted by the Fourteenth Amendment's Due Process Clause. *See* 42 Pa. C.S.A. § 5322(b). As a result, the sole question becomes whether the Court may exercise jurisdiction pursuant to the Fourteenth Amendment.

The touchstone inquiry of this jurisdictional analysis concerns the defendant's connection to the forum state. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014). Under the Fourteenth Amendment, this relationship can manifest in the form of general or specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). A court has general jurisdiction over a corporate entity that is incorporated in, or maintains its principal place of business in, the forum state. *See Daimler AG v. Bauman*, 571 U.S. 117, 134 (2014). Continuous corporate activity alone "is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *International Shoe Co. v Washington*, 326 U.S. 310, 318 (1945). Therefore, a court may only exercise general jurisdiction over a corporation where it may be "fairly regarded as at home." *Goodyear*, 564 U.S. at 924. A court with general jurisdiction over a defendant may hear any claim against them, including those that arise from activities that occurred outside of the forum state. *Id.*

A court lacking general jurisdiction may nevertheless exercise specific jurisdiction over a defendant if the defendant's contacts with the forum state are the basis of the underlying suit. *Burger*

King Corp. v. Rudzewicz, 471 U.S. 462, 472-73 (1985). In this scenario, the defendant must have "purposely directed his activities at the forum." *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 317 (3d Cir. 2007) (quoting *Burger King*, 471 U.S. at 472). Likewise, the litigation must "arise out of or relate to" those activities. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). In other words, specific personal jurisdiction only allows the court to hear claims against a defendant that arise from the defendant's activities in the state where the case is heard. *Goodyear*, 564 U.S. at 919.

Within the context of FLSA collective actions, district courts differ on whether they may exercise specific personal jurisdiction over claims by nonresident opt-in plaintiffs based on out-of-state conduct. The catalyst for this split is the Supreme Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773 (2017) ("*BMS* "). In *BMS*, a group of California residents and nonresidents joined in filing multiple products liability lawsuits in California state court alleging that an anticoagulant drug damaged their health. 137 S. Ct. at 1778. The manufacturer of the drug, Bristol-Myers Squibb, was incorporated in Delaware, headquartered in New York, and engaged in business activities in several jurisdictions, including California. *Id.* at 1777. Although they allegedly suffered the same harm as California residents, the nonresident plaintiffs neither claimed to have purchased the drug through any California source, nor to have

suffered any injury from the drug in California. *Id.* at 1778. Finding no connection between the nonresident plaintiff's claims and California, the Court held that California courts lacked specific personal jurisdiction over the defendants with respect to nonresident claims that arose entirely outside of the state. *Id.* at 1782-83.

Many courts have applied the Court's holding in *BMS* to FLSA collective action cases, concluding that, like the out-of-state plaintiffs in *BMS*, nonresident opt-in plaintiffs under the FLSA are parties to the case who join with in-state plaintiffs to pursue claims arising from similar conduct that occurred outside of the forum state. *See, e.g.*, *Weirbach*, 2020 WL 4674127, at *4; *McNutt v. Swift Transportation Co. of Arizona, LLC*, No. C18-5668, 2020 WL 3819239, at *8 (W.D. Wash. July 7, 2020); *White v. Steak N Shake Inc.*, No. 4:20-cv-323, 2020 WL 1703938, at *5 (E.D. Mo. Apr. 8, 2020); *Roy v. FedEx Ground Package System, Inc.*, 353 F. Supp. 3d 43, 59-60 (D. Mass. 2018); *Maclin v. Reliable Reports of Texas, Inc.*, 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018). Pursuant to this reasoning, these courts have held that they lacked specific personal jurisdiction over the claims of nonresident opt-in plaintiffs since they bore no relationship to the defendant's activities in the state. *Weirbach*, 2020 WL 4674127, at *4. Plaintiffs urge the Court to reject this approach, and instead hold that FLSA collective actions are more analogous to other forms of aggregate litigation, such as Rule 23 class action lawsuits. Pls.' Suppl. Br. 10; *see also Waters v. Day & Zimmerman NPS, Inc.*, 464 F. Supp. 3d 455, 461

(D. Mass. 2020). This interpretation draws a distinction between FLSA collective actions and amalgamated mass tort lawsuits, reasoning that the jurisdictional inquiry in FLSA collective actions should focus solely on the defendant's activities in the forum state as they relate to the collective's named representative. *See Warren,* 2020 WL 5640617 at *6. As a result, courts need not establish personal jurisdiction over the claims of each individual opt-in plaintiff, but rather the suit as a whole. *Hammond v. Floor and Décor Outlets of America, Inc.*, No. 19-cv-01099, 2020 WL 2473717, at *15 (M.D. Tenn. May 13, 2020).

Plaintiff's interpretation is inconsistent with the plain text of the FLSA and case law within the Third Circuit. The FLSA states in relevant part that "no employee shall be a *party* plaintiff to any such action unless he gives his consent in writing to become such a *party* and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b) (emphasis added). This "opt-in" requirement "is the most conspicuous difference between the FLSA collective action device and a class action under Rule 23." *Halle*, 842 F.3d at 225 (citing *DeAsencio v. Tyson Foods, Inc.*, 342 F.3d 301, 306 (3d Cir. 2003)). In stark contrast to the "opt-out" provisions of Rule 23 class actions, Section 216(b) of the FLSA is a rule of joinder. *Roy*, 353 F. Supp. 3d at 58-59. "This difference means that every plaintiff who opts in to a collective action has party status, whereas unnamed class members in Rule 23 class actions do not." *Reinig v. RBS Citizens, N.A.*, 912 F.3d 115, 123 n. 1 (3d Cir. 2018) (quoting *Halle*, 842 F.3d at 225).

Unlike absent Rule 23 class members represented by a single plaintiff, opt-in plaintiffs in FLSA collective actions each have status as individual parties. *Weirbach*, 2020 WL 4674127, at *5 (citing *Reinig*, 353 F. Supp. 3d at 123). Since specific jurisdiction "depends on the relationship between the claims and contacts," each of these party's claims must be assessed individually. *See Vizant Technologies, LLC v. Whitchurch*, 97 F. Supp. 3d 618, 628 (E.D. Pa. 2015) (quoting *Calder v. Jones*, 465 U.S. 783, 790 (1984)).

In *BMS*, the Court's inquiry centered on whether individual nonresident plaintiffs could assert a claim alleging the same injury as individual in-state plaintiffs, even though their claims resulted from actions that took place outside of the forum state. 137 S. Ct. at 1778. Like the plaintiffs in *BMS*, collective action opt-in plaintiffs are individual parties that join together and allege the same harm against the same defendant. In many collective action cases, including this one, out-of-state plaintiffs file their claims alongside in-state plaintiffs, even though their claims arose outside of the state. These parties are not passively represented by a single named plaintiff. In fact, "the existence of a collective action depends upon the *affirmative participation* of opt-in plaintiffs." *Halle*, 842 F.3d 215, 224 (3d Cir. 2016) (emphasis added). FLSA opt-in plaintiffs are no different than the plaintiffs in *BMS*. Therefore, their claims are subject to the same jurisdictional limitations.

Plaintiffs argue that *BMS* is inapposite because

the Court's jurisdictional analysis was rooted in the Due Process Clause of the Fourteenth Amendment, whereas the applicable standard in this case is the Due Process Clause of the Fifth Amendment. Pls.' Suppl. Br. 7. In federal question cases brought in federal court, Plaintiffs argue, personal jurisdiction is governed by the Fifth Amendment, under which jurisdiction exists "whenever a defendant has sufficient minimum contacts with the United States as a whole." *Id.* at 8. Plaintiffs suggest that this "national contacts" approach is appropriate here since FLSA cases do not implicate the same federalism concerns as cases based on state law. *Id.* at 7. Unfortunately for Plaintiffs, their reasoning does not hold water.

In support of their argument, Plaintiffs rely on the court's dictum in *Max Daetwyler Corp. v. R. Meyer* concerning the rationale for applying the "national contacts" standard, which the court ultimately rejected. 762 F.2d 290, 294-97 (3d Cir. 1985). The plaintiff's argument in *Daetwyler* relied on the principle that the "strictures of the Fourteenth Amendment due process analysis which attempt to prevent encroachment by one state upon the sovereignty of another do not apply with equal force to the adjudication of federal claims in federal court." *Id.* at 294. Notwithstanding this notion of parallel state and federal due process standards, the court reasoned that the Fifth Amendment due process inquiry still must "consider the remaining elements of the minimum contacts doctrine." *Id.* at 295. In conjunction with establishing this "constitutionally sufficient relationship between the

defendant and the forum," the assertion of personal jurisdiction requires notice to the defendant predicated on a legislative grant of authority. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1556 (2017); *Omni Capital*, 484 U.S at 104, 110. Absent federal statutory authorization, Federal Rule of Civil Procedure 4(e) "adopts an incorporative approach requiring that both the assertion of jurisdiction and the service of process be gauged by state amenability standards." *Daetwyler*, 762 F.2d at 295. This in turn "imposes similar Fourteenth Amendment due process restrictions on the jurisdictional reach of courts hearing nondiversity cases."[5] *Id.* at 296.

Plaintiffs further contend that applying the jurisdictional limitations set forth in *BMS* to collective action cases would frustrate the underlying purpose of the FLSA. Pls.' Suppl. Br. 5-6. They argue that the ensuing geographic restrictions would undermine Congress's goal of efficiently resolving common questions of law and fact in a single proceeding. *Id.* at 6. This argument ignores the fact that a territorial limitation would not prevent plaintiffs from bringing collective action lawsuits under the FLSA in complete harmony with congressional intent. If Congress had wanted to subject employers to collective action suits in any

[5] The court goes on to explain that even though "other courts have generally acknowledged the logic of inquiry into a defendant's contacts with the United States when an action is based upon a federally created right, they reason [that] they must have a federal rule or statute authorizing nationwide…service of process before the national contacts theory can be applied." *Daetwyler*, 762 F.2d at 296-97.

state where they had employees, it would have provided for nationwide service of process in the FLSA. *Weirbach*, 2020 WL 4674127, at *5 (citing *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996)). Instead, plaintiffs seeking certification of a nationwide collective must file suit where the defendant is "essentially at home" so that the court may exercise general jurisdiction over the claims of both in-state and out-of-state plaintiffs alike. *See BMS*, 137 S. Ct. at 1783.

2. Joint Employment and General Personal Jurisdiction

Plaintiffs argue that, during the relevant period, FedEx Ground was their joint employer along with FedEx Express. Pls.' Suppl. Br. 19. As a joint employer, FedEx Ground would be jointly and severally liable for any FLSA violations committed by FedEx Express, and vice versa. *Thompson v. Real Estate Mortgage Network*, 748 F.3d 142, 148 (3d Cir. 2014). While FedEx Ground is incorporated in Delaware, it maintains its principle place of business in Pittsburgh, Pennsylvania. *See* Answer 2. Plaintiffs reason that since FedEx Ground is "essentially at home" in this forum, the Court would have general jurisdiction over any claims against it, thereby warranting conditional certification of a nationwide collective.[6] *Id.* at 19.

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[6] Plaintiffs also argue that classifying FedEx Express as Plaintiffs' sole employer would allow Defendants to escape liability by later alleging an exemption from the FLSA. Pls.' Suppl. Br. 18. This contention speaks to the ultimate issue of this case: whether Defendants violated the FLSA by failing to

FedEx Express does not deny that it was Plaintiffs' employer during the relevant period. *See* Defs.' Reply 3. However, Defendants contend that there was no joint employment relationship between FedEx Express and FedEx Ground. Defs.' Suppl. Br. 8. Regardless, Defendants assert that joint employer liability is an insufficient basis for asserting general jurisdiction over claims against FedEx Ground. Defs.' Sur-Reply 5. Before assessing any potential jurisdictional implications of a joint employer relationship, the Court will first determine whether FedEx Express and FedEx Ground were in fact Plaintiffs' joint employers.[7]

In order to determine the existence or nonexistence of a joint employment relationship, courts in the Third Circuit consider: (1) the alleged employer's authority to hire and fire the employees in question; (2) the alleged employer's authority to promulgate rules and assignments, as well as

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pay Plaintiffs overtime wages. This is not an appropriate consideration at the conditional certification stage, since the Court's only task is to render a preliminary determination as to "whether the employees enumerated in the complaint can be provisionally categorized as similarly situated to the named plaintiff." *Symczyk*, 656 F.3d at 192.

[7] Although courts may defer consideration of the joint employment question until final certification, *see, e.g.*, *Gibbs. v. MLK Express Servs., LLC*, No. 2:18-cv-434, 2019 WL 2635746, at *9 (M.D. Fla. June 17, 2019), the Parties' contentions concerning joint employer liability as a basis for conditionally certifying a nationwide collective necessitates resolving the issue at this stage.

conditions of employment like compensation, benefits, and work schedules; (3) the alleged employer's day-to-day supervision and discipline of employees; and (4) the alleged employer's control over employee records, including payroll, insurance, or taxes. *In re Enter. Rent-A-Car Wage & Hour Employment Practices Litig.*, 683 F.3d 462, 469 (3d Cir. 2012).[8] As the Third Circuit has noted, "these factors do not constitute an exhaustive list of all potentially relevant facts, and should not be blindly applied." *Id.* This test considers the "economic realty" of the potential employment relationship and takes into account the expansive definition of

[8] Some circuits distinguish between "vertical" and "horizontal" joint employment relationships to determine whether an entity is an joint employer under the FLSA. *See, e.g.*, *Chao v. A-One Medical Services, Inc.*, 346 F.3d 908, 917 (9th Cir. 2003); *Murphy v. Heartshare Human Services of New York*, 254 F. Supp. 3d 392, 396-99 (E.D. NY. 2017). A "vertical" joint employment relationship may arise where a company has contracted with an intermediary employer for labor services provided by employees of that intermediary. *See* U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter re Fair Labor Standards Act (FLSA), 2016 WL 284582, at *8 (Jan. 20, 2016). A "horizontal" joint employment relationship may exist where employees perform work that simultaneously benefits two or more separate employers or work separate hours for separate employers at different times throughout the workweek. *Id.* at 5-6. The Third Circuit does not make this distinction. *See Enterprise*, 683 F.3d at 469. However, given the purported independent contractor relationship between FedEx Express and FedEx Ground, the "vertical" joint employment analysis would likely be appropriate regardless. Under a "vertical" joint employer analysis, the Court would consider the same factors as those enumerated in *Enterprise* to determine whether there was a joint employment relationship between Defendants. *See* 29 C.F.R. § 791.2(a)(1).

"employer" under the FLSA. *Id.* at 467 (citing *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992)). Under the *Enterprise* framework, the court should consider all relevant evidence suggesting the existence of a joint employment relationship, including that which "does not fall neatly within one of the above factors." *Enterprise*, 683 F.3d at 469.

After assessing the "economic reality" of Plaintiffs' relationship with Defendants, the Court finds that the evidence weighs heavily against the existence of a joint employer relationship between FedEx Express and FedEx Ground. Security specialists are hired by FedEx Express, not FedEx Ground. Defs.' Suppl. Br. 10. FedEx Ground has no authority to hire, fire, or discipline security specialists. Defs.' Sur-Reply 5. FedEx Express interviewed and hired Ms. Fischer. Defs.' Suppl. Br 10. When Ms. Fischer resigned her position, she only notified FedEx Express management. *Id.* at 9-11. According to Ms. Fischer, FedEx Ground never took any actions that she considered to be disciplinary in nature. Pls.' Suppl. Br. 19.

FedEx Ground does not compensate security specialists, nor do they provide input regarding their compensation. Defs.' Suppl. Br. 11. Plaintiff was only paid by FedEx Express. *Id.* FedEx Ground does not train security specialists. *Id* at 10. FedEx Ground does not set the work schedules for security specialists. *Id.* at 11. FedEx Express and FedEx Ground have separate management chains. *Id.* at 10. Ms. Fischer's entire management chain was

employed by FedEx Express. *Id.* FedEx Express assigns security specialists to worksites and instructs them on how to perform their work at those sites. *Id.* FedEx Express supervises security specialist performance at their assigned worksites, and security specialists submit periodic summaries of their activities to FedEx Express. *Id.*

Given the substantial weight of evidence against a joint employment relationship, Plaintiff's assertion that FedEx Express acted directly in the interest of FedEx Ground by supervising security specialists at FedEx Ground worksites does nothing to tip the scale in their favor. *See Katz v. DNC Services Corporation*, No. 16-5800, 2019 WL 4752056, at *6 (E.D. Pa. Sept. 27, 2019). Plaintiffs have offered no "indicia of significant control" suggesting that FedEx Ground could be fairly characterized as their joint employer. *Enterprise*, 683 F.3d at 470. The Court therefore finds that FedEx Ground was not Plaintiffs' joint employer during the relevant period. As a result, the Court need not consider whether joint employer liability confers general jurisdiction over out-state-state claims against FedEx Ground.

3. Pennsylvania Opt-In Plaintiffs and Specific Personal Jurisdiction

A court may exercise specific jurisdiction over a claim against a defendant where there is an "affiliation between the forum and the underlying controversy." *Goodyear*, 564 U.S. at 919. FedEx Express "purposely avail[ed] itself of the privilege of

conducting activities" within Pennsylvania. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Likewise, claims by opt-in plaintiffs who live and work in Pennsylvania alleging harm from FLSA violations by FedEx Express establish a connection between the forum state and the underlying litigation. The existence of these minimum contacts renders jurisdiction presumptively constitutional, absent some compelling argument for why exercising jurisdiction over FedEx Express would be unreasonable. *See Burger King*, 471 U.S. at 477. Defendants have offered no such argument, and the Court can discern no compelling reason to decline exercising specific jurisdiction over claims by Pennsylvania plaintiffs.

On the other hand, out-of-state opt-in plaintiffs do not claim to have suffered harm within the forum state. Those alleged FLSA violations occurred outside of Pennsylvania and, as such, do not form the requisite connection between activities within the state and the case at hand. "[T]he unilateral activity of those who claim some relationship with a nonresident defendant" is not a sufficient basis to establish specific jurisdiction. *O'Connor*, 496 F.3d at 317 (quoting *Hanson*, 357 U.S. at 253). In this case, a Pennsylvania court can only assert specific jurisdiction over claims by Pennsylvania opt-in plaintiffs against FedEx Express. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). Therefore, this Court will certify a collective action consisting of individuals employed by Federal Express in Pennsylvania as a Security Specialist II, Security Specialist III, or Senior Security Specialist

within the past three years who allegedly did not receive proper overtime compensation for hours worked over 40 per workweek.

c. Form of Notice

District courts possess discretion to provide court-sanctioned notice once they conditionally certify a collective action. *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989). Defendants have offered a number of objections to Plaintiffs' proposed Notice and Consent Form to be sent to putative members of the collective. Defs.' Resp. 15-20. "In exercising the discretionary authority to oversee the notice-giving process, courts must be scrupulous to respect judicial neutrality [and]...must take care to avoid even the appearance of judicial endorsement of the merits of the action." *Hoffman-La Roche*, 493 U.S. at 174. Accordingly, disputes regarding the form and content of court-sanctioned notice should be resolved by the Parties. *See Rocha v. Gateway Funding Diversified Mortg. Servs., L.P.*, 15-482, 2016 WL 3077936, at *7-12 (E.D. Pa. June 1, 2016). The Parties therefore will be afforded sufficient time to confer and resolve any objections regarding the form and scope of Plaintiffs' proposed Notice and Consent Form. Should the Parties fail to reach a consensus, they shall submit their proposed language to the Court within the time period prescribed in the accompanying Order and the Court will determine which is the appropriate form of notice, subject to possible modifications.

V. CONCLUSION

Plaintiffs have made a modest factual showing that they and other putative class members are similarly situated. Therefore, the Court will grant the Motion for Conditional Certification, but only for putative opt-in plaintiffs who worked for FedEx Express in Pennsylvania during the relevant period. The Parties shall meet and confer regarding the proper form and scope of notice to be distributed to potential members of the collective. An appropriate Order follows.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

APPENDIX C

29 U.S.C. § 216(b)

§ 216(b). Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages. An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the

court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

APPENDIX D

Federal Rules of Civil Procedure Rule 4

Rule 4. Summons

(a) Contents; Amendments.

(1) ***Contents.*** A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) ***Amendments.*** The court may permit a summons to be amended.

(b) Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly

completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) Service.

(1) ***In General.*** A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) ***By Whom.*** Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) ***By a Marshal or Someone Specially Appointed.*** At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

(d) Waiving Service.

(1) ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons.

The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) ***Failure to Waive.*** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) ***Results of Filing a Waiver.*** When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such

as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in

the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) ***United States.*** To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) ***Agency; Corporation; Officer or Employee Sued in an Official Capacity.*** To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) ***Officer or Employee Sued Individually.*** To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) ***Extending Time.*** The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) ***Foreign State.*** A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) ***State or Local Government.*** A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) Territorial Limits of Effective Service.

(1) ***In General.*** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) ***Federal Claim Outside State-Court Jurisdiction.*** For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) Proving Service.

(1) ***Affidavit Required.*** Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) ***Service Outside the United States.*** Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) ***Validity of Service; Amending Proof.*** Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the

time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

(n) Asserting Jurisdiction over Property or Assets.

(1) ***Federal Law.*** The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) ***State Law.*** On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

APPENDIX E

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX F

U.S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX G: DISTRICT COURT DECISIONS ADDRESSING THE QUESTION PRESENTED

Case Citation	Prevailing Party
Stacy v. Jennmar Construction of Virginia, Inc., No. 1:21CV00015, 2022 WL 3684597 (W.D. Va. August 25, 2022)	Plaintiffs
Bethel v. BlueMercury, Inc., No. 21 Civ. 2743, 2022 WL 3594575 (S.D.N.Y. August 22, 2022)	Defendant
Speight v. Labor Source, LLC, No. 4:21-CV-112, 2022 WL 1164415 (E.D.N.C. Apr. 19, 2022)	Defendant
Ison v. MarkWest Energy Partners, LP, No. 3:21-0333, 2021 WL 5989084 (S.D. W.Va. Dec. 17, 2021)	Plaintiffs
Bone v. XTO Energy, Inc., No. 2:20-CV-00697, 2021 WL 4307130 (D.N.M. Sept. 22, 2021)	Defendant
Parker v. IAS Logistics DFW, LLC, No. 20 C 5103, 2021 WL 4125106 (N.D. Ill. Sept. 9, 2021)	Defendant
Carlson v. United Natural Foods, Inc., No. C20-5476, 2021 WL 3616786 (W.D. Wash. Aug. 14, 2021)	Defendant

Butler v. Adient US, LLC, No. 3:20 CV 2365, 2021 WL 2856592 (N.D. Ohio July 8, 2021)	Defendant
Arends v. Select Med. Corp., No. 20-11381, 2021 WL 4452275 (C.D. Cal. July 7, 2021)	Plaintiffs
Myres v. Hopebridge, LLC, No. 2:20-CV-5390, 2021 WL 2659955 (S.D. Ohio June 29, 2021)	Plaintiffs
Perez Perez v. Escobar Construction, Inc., No. 20 Civ. 8010, 2021 WL 2012300 (S.D.N.Y. May 20, 2021)	Defendant
Harapeti v. CBS Television Stations, Inc., No. 20-CV-20961, 2021 WL 1854141 (S.D. Fla. May 10, 2021)	Plaintiffs
Martinez v. Tyson Foods, Inc., No. 4:20-cv-00528, 2021 WL 1289898 (N.D. Tex. Apr. 7, 2021)	Defendant
Ruffing v. Wipro Ltd., No. 20-5545, 2021 WL 1175190 (E.D. Pa. Mar. 29, 2021)	Defendant
Goldowsky v. Exeter Fin. Corp., No. 15-CV-632A(F), 2021 WL 695063 (W.D.N.Y. Feb. 23, 2021)	Defendant

Fischer v. Fed. Express Corp., No. 5:19-cv-04924, 2020 WL 7640881 (E.D. Pa. Dec. 23, 2020)	Defendant
Hodapp v. Regions Bank, No. 4:18CV1389, 2020 WL 7480562 (E.D. Mo. Dec. 18, 2020)	Defendant
Altenhofen v. Energy Transfer Partners, No. 20-200, 2020 WL 7336082 (W.D. Pa. December 14, 2020)	Plaintiffs
Hutt v. Greenix Pest Control, LLC, No. 2:20-cv-1108, 2020 WL 6892013 (S.D. Ohio Nov. 24, 2020)	Defendant
Greinstein v. Fieldcore Servs. Sols., LLC, No. 2:18-CV-208, 2020 WL 6821005 (N.D. Tex. Nov. 20, 2020)	Defendant
Hager v. Omnicare, Inc., No. 5:19-cv-00484, 2020 WL 5806627 (S.D. W. Va. Sept. 29, 2020)	Plaintiffs
Weirbach v. The Cellular Connection, LLC, No. 5:19-cv-05310, 2020 WL 4674127 (E.D. Pa. Aug. 12, 2020)	Defendant
Chavez v. Stellar Managment Grp. VII, LLC, No. 19-cv-01353-JCS, 2020 WL 4505482 (N.D. Cal. Aug. 5, 2020)	Plaintiffs

McNutt v. Swift Transp. Co. of Arizona, LLC, No. C18-5668, 2020 WL 3819239 (W.D. Wash. July 7, 2020)	Defendant
O'Quinn v. TransCanada USA Services, Inc., No. 2:19-cv-00844, ___ F. Supp. 3d ___, 2020 WL 3497491 (S.D. W.Va. June 29, 2020)	Plaintiffs

Waters v. Day & Zimmermann NPS, Inc., No. 19-11585-NMG, --- F. Supp. 3d ----, 2020 WL 2924031 (D. Mass. June 2, 2020)	Plaintiffs
Hammond v. Floor & Decor Outlets of Am., Inc., No. 3:19-cv-01099, 2020 WL 2473717 (M.D. Tenn. May 13, 2020)	Plaintiffs
Aiuto v. Publix Super Mkts., Inc., No. 1:19-cv-04803, 2020 WL 2039946 (N.D. Ga. Apr. 9, 2020)	Plaintiffs
White v. Steak N Shake, Inc., No. 4:20 CV 323 CDP, 2020 WL 1703938 (E.D. Mo. Apr. 8, 2020)	Defendant
Camp v. Bimbo Bakeries USA, Inc., No. 18-cv-378-SM, 2020 WL 1692532 (D.N.H. Apr. 7, 2020)	Defendant
Warren v. MBI Energy Servs., Inc., No. 19-0800, 2020 WL 937420 (D. Colo. Feb. 23, 2020)	Plaintiffs
Vallone v. The CJS Sols. Grp., LLC, No. 19-1532, 2020 WL 568889 (D. Minn. Feb. 5, 2020)	Defendant
Turner v. Concentrix Servs., Inc., No. 1:18-1702, 2020 WL 544705 (W.D. Ark. Feb. 3, 2020)	Plaintiffs

Canaday v. The Anthem Cos., No. 19-cv-01084-STA-jay, --- F. Supp. 3d. ----, 2020 WL 529708 (W.D. Tenn. Feb. 3, 2020) *report and recommendation adopted*, 2020 WL 1891754 (W.D. Tenn. Feb. 3, 2020)	Defendant
Fritz v. Corizon Health, Inc., No. 6:19-CV-03365-SRB, 2020 WL 9215899 (W.D. Mo. Jan. 31, 2020)	Plaintiffs
Hunt v. Interactive Med. Specialists, Inc., No. 1:19CV13, 2019 WL 6528594 (N.D. W. Va. Dec. 4, 2019)	Plaintiffs
Pettenato v. Beacon Health Options, Inc., No. 19-1646, 2019 WL 5587335 (S.D.N.Y. Oct. 25, 2019)	Defendant
Meo v. Lane Bryant, Inc., No. CV 18-6360 (JMA) (AKT), 2019 WL 5157024 (E.D.N.Y. Sept. 30, 2019)	Plaintiffs
Chavira v. OS Rest. Servs., LLC, No. 18-cv-10029-ADB, 2019 WL 4769101 (D. Mass. Sept. 30, 2019)	Defendant
Mason v. Lumber Liquidators, Inc., No. 17-CV-4780 (MKB) (RLM), 2019 WL 3940846 (E.D.N.Y. Aug. 19, 2019)	Plaintiffs

Turner v. UtiliQuest, LLC, No. 3:18-cv-00294, 2019 WL 7461197 (M.D. Tenn. July 16, 2019)	Defendant
Rafferty v. Denny's, Inc., No. 5:18-cv-2409, 2019 WL 2924998 (N.D. Ohio July 8, 2019)	Defendant
Saenz v. Old Dominion Freight Line, Inc., No. 1:18-cv-4718-TCB, 2019 WL 6622840 (N.D. Ga. June 7, 2019)	Plaintiffs
Gibbs v. MLK Express Servs., LLC, No. 2:18-cv-434, 2019 WL 1980123 (M.D. Fla. Mar. 28, 2019), *report and recommendation adopted in part, rejected in part*, 2019 WL 2635746 (M.D. Fla. June 27, 2019)	Plaintiffs
Maclin v. Reliable Reports of Tex., Inc., 314 F. Supp. 3d 845 (N.D. Ohio 2018)	Defendant
Roy v. FedEx Ground Package Sys., Inc., 353 F. Supp. 3d 43 (D. Mass. 2018)	Defendant
Garcia v. Peterson, 319 F. Supp. 3d 863 (S.D. Tex. 2018)	Plaintiffs
Seiffert v. Qwest Corp., No. CV-18-70-GF-BMM, 2018 WL 6590836 (D. Mont. Dec. 14, 2018)	Plaintiffs

Swamy v. Title Source, Inc., No. C 17-01175 WHA, 2017 WL 5196780 (N.D. Cal. Nov. 10, 2017)	Plaintiffs
Thomas v. Kellogg Co., No. C13-5136RBL, 2017 WL 5256634 (W.D. Wash. Oct. 17, 2017)	Plaintiffs

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Bone v. XTO Energy, Inc., No. 2:20-CV-00697, 2021 WL 4307130 (D.N.M. Sept. 22, 2021)	Defendant
Parker v. IAS Logistics DFW, LLC, No. 20 C 5103, 2021 WL 4125106 (N.D. Ill. Sept. 9, 2021)	Defendant
Carlson v. United Natural Foods, Inc., No. C20-5476, 2021 WL 3616786 (W.D. Wash. Aug. 14, 2021)	Defendant

Butler v. Adient US, LLC, No. 3:20 CV 2365, 2021 WL 2856592 (N.D. Ohio July 8, 2021)	Defendant
Arends v. Select Med. Corp., No. 20-11381, 2021 WL 4452275 (C.D. Cal. July 7, 2021)	Plaintiffs
Myres v. Hopebridge, LLC, No. 2:20-CV-5390, 2021 WL 2659955 (S.D. Ohio June 29, 2021)	Plaintiffs
Perez Perez v. Escobar Construction, Inc., No. 20 Civ. 8010, 2021 WL 2012300 (S.D.N.Y. May 20, 2021)	Defendant
Harapeti v. CBS Television Stations, Inc., No. 20-CV-20961, 2021 WL 1854141 (S.D. Fla. May 10, 2021)	Plaintiffs
Martinez v. Tyson Foods, Inc., No. 4:20-cv-00528, 2021 WL 1289898 (N.D. Tex. Apr. 7, 2021)	Defendant
Ruffing v. Wipro Ltd., No. 20-5545, 2021 WL 1175190 (E.D. Pa. Mar. 29, 2021)	Defendant
Goldowsky v. Exeter Fin. Corp., No. 15-CV-632A(F), 2021 WL 695063 (W.D.N.Y. Feb. 23, 2021)	Defendant

Fischer v. Fed. Express Corp., No. 5:19-cv-04924, 2020 WL 7640881 (E.D. Pa. Dec. 23, 2020)	Defendant
Hodapp v. Regions Bank, No. 4:18CV1389, 2020 WL 7480562 (E.D. Mo. Dec. 18, 2020)	Defendant
Altenhofen v. Energy Transfer Partners, No. 20-200, 2020 WL 7336082 (W.D. Pa. December 14, 2020)	Plaintiffs
Hutt v. Greenix Pest Control, LLC, No. 2:20-cv-1108, 2020 WL 6892013 (S.D. Ohio Nov. 24, 2020)	Defendant
Greinstein v. Fieldcore Servs. Sols., LLC, No. 2:18-CV-208, 2020 WL 6821005 (N.D. Tex. Nov. 20, 2020)	Defendant
Hager v. Omnicare, Inc., No. 5:19-cv-00484, 2020 WL 5806627 (S.D. W. Va. Sept. 29, 2020)	Plaintiffs
Weirbach v. The Cellular Connection, LLC, No. 5:19-cv-05310, 2020 WL 4674127 (E.D. Pa. Aug. 12, 2020)	Defendant
Chavez v. Stellar Managment Grp. VII, LLC, No. 19-cv-01353-JCS, 2020 WL 4505482 (N.D. Cal. Aug. 5, 2020)	Plaintiffs

McNutt v. Swift Transp. Co. of Arizona, LLC, No. C18-5668, 2020 WL 3819239 (W.D. Wash. July 7, 2020)	Defendant
O'Quinn v. TransCanada USA Services, Inc., No. 2:19-cv-00844, ___ F. Supp. 3d ___, 2020 WL 3497491 (S.D. W.Va. June 29, 2020)	Plaintiffs

Waters v. Day & Zimmermann NPS, Inc., No. 19-11585-NMG, --- F. Supp. 3d ----, 2020 WL 2924031 (D. Mass. June 2, 2020)	Plaintiffs
Hammond v. Floor & Decor Outlets of Am., Inc., No. 3:19-cv-01099, 2020 WL 2473717 (M.D. Tenn. May 13, 2020)	Plaintiffs
Aiuto v. Publix Super Mkts., Inc., No. 1:19-cv-04803, 2020 WL 2039946 (N.D. Ga. Apr. 9, 2020)	Plaintiffs
White v. Steak N Shake, Inc., No. 4:20 CV 323 CDP, 2020 WL 1703938 (E.D. Mo. Apr. 8, 2020)	Defendant
Camp v. Bimbo Bakeries USA, Inc., No. 18-cv-378-SM, 2020 WL 1692532 (D.N.H. Apr. 7, 2020)	Defendant
Warren v. MBI Energy Servs., Inc., No. 19-0800, 2020 WL 937420 (D. Colo. Feb. 23, 2020)	Plaintiffs
Vallone v. The CJS Sols. Grp., LLC, No. 19-1532, 2020 WL 568889 (D. Minn. Feb. 5, 2020)	Defendant
Turner v. Concentrix Servs., Inc., No. 1:18-1702, 2020 WL 544705 (W.D. Ark. Feb. 3, 2020)	Plaintiffs

Canaday v. The Anthem Cos., No. 19-cv-01084-STA-jay, --- F. Supp. 3d. ----, 2020 WL 529708 (W.D. Tenn. Feb. 3, 2020) *report and recommendation adopted*, 2020 WL 1891754 (W.D. Tenn. Feb. 3, 2020)	Defendant
Fritz v. Corizon Health, Inc., No. 6:19-CV-03365-SRB, 2020 WL 9215899 (W.D. Mo. Jan. 31, 2020)	Plaintiffs
Hunt v. Interactive Med. Specialists, Inc., No. 1:19CV13, 2019 WL 6528594 (N.D. W. Va. Dec. 4, 2019)	Plaintiffs
Pettenato v. Beacon Health Options, Inc., No. 19-1646, 2019 WL 5587335 (S.D.N.Y. Oct. 25, 2019)	Defendant
Meo v. Lane Bryant, Inc., No. CV 18-6360 (JMA) (AKT), 2019 WL 5157024 (E.D.N.Y. Sept. 30, 2019)	Plaintiffs
Chavira v. OS Rest. Servs., LLC, No. 18-cv-10029-ADB, 2019 WL 4769101 (D. Mass. Sept. 30, 2019)	Defendant
Mason v. Lumber Liquidators, Inc., No. 17-CV-4780 (MKB) (RLM), 2019 WL 3940846 (E.D.N.Y. Aug. 19, 2019)	Plaintiffs

Turner v. UtiliQuest, LLC, No. 3:18-cv-00294, 2019 WL 7461197 (M.D. Tenn. July 16, 2019)	Defendant
Rafferty v. Denny's, Inc., No. 5:18-cv-2409, 2019 WL 2924998 (N.D. Ohio July 8, 2019)	Defendant
Saenz v. Old Dominion Freight Line, Inc., No. 1:18-cv-4718-TCB, 2019 WL 6622840 (N.D. Ga. June 7, 2019)	Plaintiffs
Gibbs v. MLK Express Servs., LLC, No. 2:18-cv-434, 2019 WL 1980123 (M.D. Fla. Mar. 28, 2019), *report and recommendation adopted in part, rejected in part*, 2019 WL 2635746 (M.D. Fla. June 27, 2019)	Plaintiffs
Maclin v. Reliable Reports of Tex., Inc., 314 F. Supp. 3d 845 (N.D. Ohio 2018)	Defendant
Roy v. FedEx Ground Package Sys., Inc., 353 F. Supp. 3d 43 (D. Mass. 2018)	Defendant
Garcia v. Peterson, 319 F. Supp. 3d 863 (S.D. Tex. 2018)	Plaintiffs
Seiffert v. Qwest Corp., No. CV-18-70-GF-BMM, 2018 WL 6590836 (D. Mont. Dec. 14, 2018)	Plaintiffs

Swamy v. Title Source, Inc., No. C 17-01175 WHA, 2017 WL 5196780 (N.D. Cal. Nov. 10, 2017)	Plaintiffs
Thomas v. Kellogg Co., No. C13-5136RBL, 2017 WL 5256634 (W.D. Wash. Oct. 17, 2017)	Plaintiffs