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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-5947

LAURA CANADAY, Individually and on Behalf of All Others Similarly Situated,

Plaintiff - Appellant,

v.

THE ANTHEM COMPANIES, INC.,

Defendant - Appellee.

Appeal from United States District Court for the Western District of Tennessee at Jackson
No. 1:19-cv-01084—S. Thomas Anderson, District Judge.

Argued: June 10, 2021
Decided and Filed: August 17, 2021

Before: SUTTON, Chief Judge; McKEAGUE and DONALD, Circuit Judges.

COUNSEL

ARGUED: Adam W. Hansen, APOLLO LAW LLC, Minneapolis, Minnesota, for Appellant. Brett C. Bartlett, SEYFARTH SHAW LLP, Atlanta, Georgia, for Appellee. **ON BRIEF:** Adam W. Hansen, Colin R. Reeves, APOLLO LAW LLC, Minneapolis, Minnesota, Rachhana T. Srey, Caroline E. Bressman, NICHOLS KASTER, PLLP, Minneapolis, Minnesota, William B. Ryan, DONATI LAW FIRM, PLLC, Memphis, Tennessee, for Appellant. Brett C. Bartlett, Kevin M. Young, Lennon B. Haas, SEYFARTH SHAW LLP, Atlanta, Georgia, James M. Harris, SEYFARTH SHAW LLP, Los Angeles, California, for Appellee. Scott L. Nelson, PUBLIC CITIZEN LITIGATION GROUP, Washington, D.C., Nicole A. Saharsky, MAYER BROWN LLP, Washington, D.C., for Amici Curiae.

SUTTON, C.J., delivered the opinion of the court in which McKEAGUE, J., joined. DONALD, J. (pp.16–32), delivered a separate dissenting opinion.

OPINION

Sutton, Chief Judge. Anthem provides health insurance. To ensure that it pays only for medically necessary procedures, it hires nurses to review insurance claims. The company pays those nurses a salary but does not pay them overtime. Laura Canaday, an Anthem nurse who lives in Tennessee, filed a proposed collective action under the Fair

Labor Standards Act in federal court in Tennessee, claiming that the company misclassified her and others as exempt from the Act's overtime pay provisions. A number of Anthem nurses in other States opted into the collective action. But the district court dismissed the out-of-state plaintiffs on personal jurisdiction grounds. We affirm.

I.

A.

Enacted in 1938, the Fair Labor Standards Act creates a federal minimum wage, child labor protections, and overtime compensation requirements. 29 U.S.C. §§ 206, 207, 212. The overtime provisions require an employer to pay employees at least 150% of their hourly pay rate when they work more than 40 hours in a week. *Id.* § 207(a)(1). The Act provides two key enforcement mechanisms. It authorizes the Secretary of Labor to initiate an FLSA action on behalf of employees "in any court of competent jurisdiction." *Id.* § 216(c). And it authorizes employees to sue "in any Federal or State court of competent jurisdiction" on "behalf of ... themselves and other employees similarly situated." *Id.* § 216(b).

Under the second option, the one in play here, "similarly situated" employees may join a collective action by filing a "consent in writing," after which they become "party plaintiff[s]." *Id.* Once they file a written consent, opt-in plaintiffs enjoy party status as if they had initiated the action. The Act says that each similarly situated employee who opts in

amounts to an "individual claimant," whose lawsuit counts as "commenced" on the day the employee files her written consent to join the collective action. *See id.* § 256.

B.

From its headquarters in Indiana, Anthem offers a host of health-related insurance policies. To ensure that the insurance company pays only covered claims, Anthem subsidiaries pay nurses to conduct what have come to be called "utilization reviews." In conducting these reviews, nurses assess the necessity of medical procedures under each health plan. Anthem treats these nurses as exempt from the FLSA's overtime provisions.

Since 2017, Laura Canaday has worked for Anthem as a review nurse in Tennessee. Two years into her tenure, Canaday filed this proposed collective action in federal court in Tennessee, alleging that the company misclassified her and other review nurses as exempt from the federal overtime rules. Dozens of nurses opted into the action by filing written consent forms with the federal court. Some worked for Anthem in Tennessee. Others worked for the company in other States across the country.

Canaday moved to certify a collective action of all utilization review nurses that Anthem classified as exempt from overtime. Anthem moved to dismiss all out-of-state nurses for lack of personal jurisdiction. The district court dismissed the

nonresident plaintiffs without prejudice, leaving a collective action of Tennessee-based nurses.

Canaday sought to certify this order for interlocutory appeal. *See* 28 U.S.C. § 1292(b). The district court granted Canaday her request, and so did we.

II.

Federal law empowers and constrains federal courts in two salient ways. One turns on subject matter jurisdiction, the types of cases federal courts may hear, whether by granting them power to resolve only "Cases" or "Controversies," U.S. Const. art. III, § 2, or enabling them to hear matters of federal law, 28 U.S.C. § 1331, or enabling them to hear matters of state law under certain circumstances, *id.* §§ 1332, 1367. The other turns on personal jurisdiction, the types of litigants the federal courts may bind with their judgments, whether they be plaintiffs or defendants.

This case concerns the second source of power and its constraints. How does a federal court obtain personal jurisdiction over a defendant in a civil lawsuit? At English common law, a writ of *capias ad respondendum* directed the sheriff to take the defendant into custody to secure his appearance before the court. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). Service of process took the old writ's place in the mid-eighteenth century, making a summons rather than an arrest the tool lawyers used to commence a civil lawsuit. *See Int'l Shoe Co. v. Washington*, 326 U.S.

310, 316 (1945). Over time, service of process became a prerequisite for obtaining authority over a defendant, making it appropriate to say that "service of process conferred jurisdiction." *Burnham v. Superior Ct.*, 495 U.S. 604, 613 (1990); *see also Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *Robertson v. R.R. Lab. Bd.*, 268 U.S. 619, 622–23 (1925); *Boswell's Lessee v. Otis*, 50 U.S. (9 How.) 336, 348 (1850).

Today, a fork appears in the road over how Congress authorizes service of process on defendants and how it empowers federal courts to obtain personal jurisdiction over them. One path is for Congress to include a nationwide service of process provision in the regulatory statute itself, one that could permit claimants to sue a defendant in any of the 94 federal district courts in the country. Several statutes take this route. A few prominent examples include The Sherman Act, 15 U.S.C. § 5, The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1965(d), and The False Claims Act, 31 U.S.C. § 3732(a). But that is the less frequently exercised option, and the FLSA does not use it. More often, plaintiffs must look for guidance in the Federal Rules of Civil Procedure, one of five sets of "general rules of practice and procedure" that the Rules Enabling Act authorizes the federal courts to create and that Congress may veto or override with rules of its own. 28 U.S.C. § 2072 (also permitting rules of appellate, bankruptcy, and criminal procedure, and rules of evidence).

Rule 4(k) of the Federal Rules of Civil Procedure, adopted in 1993 and entitled "Territorial Limits of Effective Service," contains the pertinent provision. It says:

> 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.

Two of the options do not apply. Canaday did not join Anthem under Civil Rules 14 or 19. And the FLSA does not contain a nationwide service provision. That leaves the question whether Anthem is subject to jurisdiction in the host State. Tennessee's long-arm statute authorizes its courts to exercise personal jurisdiction "[o]n any basis not inconsistent with the constitution of ... the United States." Tenn. Code Ann. § 20-2-225.

The Due Process Clause of the Fourteenth Amendment sets the key limit, constraining a state court's "power to exercise jurisdiction" over an out-of-state defendant. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). Before 1945, that power was limited to the territory of the State. But that year, the Supreme Court extended the authority to exercise power over an out-of-state

defendant so long as the defendant had such "contacts" with the forum State that "the maintenance of the suit" is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316–317 (quotation omitted). Whether a court has personal jurisdiction over a defendant depends on the defendant's contacts with the State in which the plaintiff filed the lawsuit.

Two types of personal jurisdiction exist for corporations. A court may assert "general," or "all-purpose," jurisdiction over a defendant in its home State, where the defendant is incorporated or headquartered. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). Or a court may exercise "specific," or case-based, jurisdiction over a defendant if the plaintiff's claims "arise[ ] out of or relate[ ] to" the defendant's forum State activities. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quotation omitted).

Anthem is based in Indiana, not Tennessee. General jurisdiction is not an option. That leaves specific jurisdiction. "What is needed ... is a connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1781 (2017). Is there a claim-specific and Anthem-specific relationship between the out-of-state claims and Tennessee?

Bristol-Myers goes a long way to showing why there is not. The case involved a "mass action" under state law against the pharmaceutical company

Bristol-Myers Squibb for alleged defects in Plavix, a blood thinner drug. *Id.* at 1777–78. Residents and nonresidents of California sued the company in California state court, alleging injuries from ingesting Plavix. *Id.* at 1778. The nonresident plaintiffs did not claim any relationship with the forum State. *Id.* They did not purchase Plavix in California or suffer any harm from Plavix in California. *Id.* at 1781. The U.S. Supreme Court reasoned that any similarity between the resident and nonresident plaintiffs' claims offered an "insufficient basis" for exercising specific jurisdiction. *Id.* (quotation omitted). Unless nonresident plaintiffs could demonstrate that their claims arose out of the defendant's contacts with the forum State, personal jurisdiction over the company did not exist, no matter "the extent of a defendant's unconnected activities in the State." *Id.*

The Court acknowledged that its holding would likely splinter the nonresident plaintiffs' lawsuits into separate actions in their respective States. *Id.* at 1783. To the extent the plaintiffs perceived a statewide mass action as too constraining, the Court noted that the claimants could have brought a mass action against Bristol-Myers Squibb in New York (its headquarters) or in Delaware (its place of incorporation). *Id.* at 1777, 1783. Any other inefficiencies for the plaintiffs ran into the imperative that due process mainly concerns "the burden on the defendant." *Id.* at 1780 (quotation omitted).

The principles animating *Bristol-Myers*'s application to mass actions under California law apply with equal force to FLSA collective actions under federal law. As other circuits have acknowledged, an FLSA "collective action is more accurately described as a kind of mass action, in which aggrieved workers act as a collective of individual plaintiffs with individual cases." *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir. 2018) (emphasis omitted). "A mass action is more akin to an opt-in [FLSA collective action] than it is to a class action." *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270, 272 n.1 (3d Cir. 2013). The key link is party status. In an FLSA collective action, as in the mass action under California law, each opt-in plaintiff becomes a real party in interest, who must meet her burden for obtaining relief and satisfy the other requirements of party status. *See* 29 U.S.C. § 216(b).

Have the nonresident plaintiffs in this case satisfied *Bristol-Myers*'s requirements? Have they brought claims arising out of or relating to Anthem's conduct in Tennessee? We think not. Anthem did not employ the nonresident plaintiffs in Tennessee. Anthem did not pay the nonresident plaintiffs in Tennessee. Nor did Anthem shortchange them overtime compensation in Tennessee. Taken together, the claims before us look just like the claims in *Bristol-Myers*. Where, as here, nonresident plaintiffs opt into a putative collective action under the FLSA, a court may not exercise specific personal jurisdiction over claims unrelated to the defendant's conduct in the forum State.

Adherence to this approach, by the way, does not seem likely to disrupt the way FLSA collective actions traditionally have been filed, at least as measured by the fact patterns in U.S. Supreme Court decisions. In collective actions filed by individual employees, the named plaintiff traditionally has filed the action in a jurisdiction that possessed general jurisdiction over the defendant or in the jurisdiction from which the allegations arose. Here are the general jurisdiction cases: *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 710 (1986); *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 730 (1981); *Iowa Beef Packers, Inc. v. Thompson*, 405 U.S. 228, 228 (1972); *Maneja v. Waialua Agric. Co.*, 349 U.S. 254, 256 (1955); *Thomas v. Hempt Bros.*, 345 U.S. 19, 20 (1953); *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695, 698 (1947); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 701 (1945). Here are some examples of specific jurisdiction cases: *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2124 (2016); *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 447 (2016); *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 29 (2014); *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 222–23 (2014); *Christensen v. Harris Cnty.*, 529 U.S. 576, 580 (2000).

III.

Canaday takes on this conclusion in several ways.

First, she contends that the plaintiffs do not have to show that their claims arose out of Anthem's

contacts with Tennessee because they filed federal claims in federal court. All they must show, in her view, is that their claims arose out of Anthem's contacts with the United States as a whole, not Tennessee.

In one sense, Canaday is right, at least potentially right. Congress could empower a federal court to exercise personal jurisdiction to the full reach of the federal government's sovereign authority, as opposed to the limits of Tennessee's authority. "Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011); *see* A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 Fla. L. Rev. 979, 979, 991 (2019). *See generally* Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 Va. L. Rev. 1703 (2020). Had the National Legislature made that choice, any limitation on its authority would arise from the Fifth Amendment's Due Process Clause and its requirements of minimum contacts with the United States, not the Fourteenth Amendment's Due Process Clause and its requirement of minimum contacts with the host State. *See Bristol-Myers*, 137 S. Ct. at 1784 (reserving the question "whether the Fifth Amendment imposes the same restrictions [as the Fourteenth Amendment] on the exercise of personal jurisdiction by a federal court").

But this is not the choice that the FLSA makes or that Rule 4(k) of the Federal Rules of Civil Procedure makes. Many federal laws provide for nationwide service on defendants and personal jurisdiction over them in any federal district court in the country. *See* 15 U.S.C. § 5 (Sherman Act); 15 U.S.C. § 25 (actions by the United States under the Clayton Act); 15 U.S.C. § 53(a)–(b) (Federal Trade Commission enforcement action); 15 U.S.C. § 78aa(a) (Securities Exchange Act of 1934); 15 U.S.C. § 80a-43 (Investment Company Act of 1940); 18 U.S.C. § 1965(d) (Racketeer Influenced and Corrupt Organizations Act); 29 U.S.C. § 1132(e)(2) (Employee Retirement Income Security Act); 28 U.S.C. § 1391(e) (Mandamus and Venue Act of 1962); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1655 (actions to assert rights in property when the defendant cannot be served within the State); 28 U.S.C. § 1695 (service of process on a corporation in a shareholder's derivative action); 28 U.S.C. § 2361 (Federal Interpleader Act); 31 U.S.C. § 3732(a) (False Claims Act); 42 U.S.C. § 9613(b), (e) (Comprehensive Environmental Response, Compensation, and Liability Act); 45 U.S.C. § 362(b) (Railroad Unemployment Insurance Act). The FLSA, however, does not offer nationwide service of process.

Civil Rule 4(k) does not fill this gap. It places territorial limits on a defendant's amenability to effective service of a summons by a federal district court, tying personal jurisdiction over a defendant to the host State's jurisdiction over it. *Daimler*, 571 U.S. at 125 (noting that the federal rules ordinarily

require federal courts to "follow state law in determining the bounds of their jurisdiction over persons"). "Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Cap.*, 484 U.S. at 104. Any suggestion that Civil Rule 4(k) does not implicate jurisdiction or does not apply to federal claims is belied by the rule's reference to "personal jurisdiction" in Civil Rule 4(k)(1) and its reference to federal claims involving defendants not subject to "any state's courts of general jurisdiction" in Civil Rule 4(k)(2).

It may be true that Congress, whether directly by a statute or indirectly through the rulemaking process, could broaden a federal court's authority to assert personal jurisdiction over defendants throughout the country. And it may be true that the due-process requirements of the Fifth Amendment would permit such service. *See* A. Benjamin Spencer, *Nationwide Personal Jurisdiction for our Federal Courts*, 87 Denv. U. L. Rev. 325, 325, 328 (2010) (noting that Civil Rule 4(k)(1)(A)'s "limitation is a voluntary rather than obligatory restriction, given district courts' status as courts of the national sovereign"); Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 Nw. U. L. Rev. 1301, 1316 (2014) ("Congress could grant nationwide jurisdiction to all federal courts ...."). But Civil Rule 4(k) does not permit such authority. Neither does any general federal statute or any specific provision of the FLSA.

While the FLSA shows no reticence in setting nationwide labor standards, it does not establish nationwide service of process. That silence rings loudly when juxtaposed with the many other instances in which Congress included nationwide service of process provisions in laws enacted before and after the FLSA's passage in 1938. What indeed would be the point of these provisions if Civil Rule 4(k) already allowed jurisdiction and service? Because "Congress knows how to authorize nationwide service of process when it wants to provide for it," the absence of express language in the statute "argues forcefully that such authorization was not its intention." *Omni Cap.*, 484 U.S. at 106.

Second, Canaday claims that, even if the "named plaintiff"—namely she—must comply with the Fourteenth Amendment, the nonresident plaintiffs need not. Under her view, a collective action may proceed with all similarly situated plaintiffs regardless of where the nonresident plaintiffs' injuries occurred, so long as the named plaintiff complies with Civil Rule 4(k). We disagree.

After Anthem appeared in the case in response to Canaday's service of the complaint, it is true, the nonresident plaintiffs served their "written notices" under Civil Rule 5(a)(l)(E) on Anthem to opt into the collective action, and they had no additional service obligation under Civil Rule 4(k). *See* Fed. R. Civ. P. 5(a)(l)(E) ("Unless these rules provide otherwise, each of the following papers must be served on every party: ... (E) a written notice,

appearance, demand, or offer of judgment, or any similar paper."). But that reality does not eliminate Civil Rule 4(k)'s requirement that the defendant be amenable to the territorial reach of that district court for that claim. The federal court's authority to assert personal jurisdiction over the defendant with respect to the nonresident plaintiffs' claims remains constrained by Civil Rule 4(k)(1)(A)'s territorial limitations. *See Handley v. Ind. & Mich. Elec. Co.*, 732 F.2d 1265, 1269 (6th Cir. 1984); *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007); *see also* A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction Over Absent Class Member Claims Explained*, 39 Rev. Litig. 31, 44 (2019) (noting that "the personal jurisdiction limitations of the district court that are imposed by Rule 4(k) remain the operative constraints that district courts apply to ... new claims by newly joined parties") (quotation and emphasis omitted). Otherwise, Civil Rule 4(k)'s territorial constraints would come to naught. These core limitations on judicial power would be one amended complaint—with potentially new claims and new plaintiffs—away from obsolescence. That is not how it works. Even with amended complaints and opt-in notices, the district court remains constrained by Civil Rule 4(k)'s—and the host State's—personal jurisdictional limitations. *See Tamburo v. Dworkin*, 601 F.3d 693, 700–01 (7th Cir. 2010). Otherwise, *Bristol-Myers* would have permitted California to evade the decision by the mere expedient of adding an out-of-state opt-in provision to its mass action statute.

Third, in a variation on that theme, Canaday presses us to analyze personal jurisdiction at the level of the suit rather than at the level of each claim. But the Supreme Court has said otherwise. "What is needed" for a court to exercise specific personal jurisdiction "is a connection between the forum and the *specific claims* at issue." *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis added). Supreme Court caselaw preceding *Bristol-Myers* supports the claim-specific inquiry. *See Int'l Shoe*, 326 U.S. at 317 (noting that a plaintiff may not "su[e] on causes of action unconnected with [a defendant's] activities" in the forum); *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 415 n.10 (1984) (noting that specific personal jurisdiction requires a "relationship between the cause of action and [the defendant's] contacts"); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 444–45 (1952) (noting that a tribunal may adjudicate only those "cause[s] of action arising out of the corporation's activities within the state of the forum").

Fourth, Canaday laments the inefficiencies created by this approach, noting that plaintiffs are challenging a single policy and that this same policy applies in similar fashion to employees across the country. No doubt, Civil Rule 4(k) and an absence of nationwide personal jurisdiction under the FLSA create jetties, cross currents, and other obstacles to prompt relief for the plaintiffs. The short answer is that these limitations are designed principally to protect defendants, not to facilitate plaintiffs' claims. They are designed "to protect the particular interests of the [defendant]" whose rights hang in

the balance, no matter the "efficiency" concerns that cut in the other direction. *Fuentes v. Shevin*, 407 U.S. 67, 90 n.22 (1972). Even then, employees may file a nationwide collective action under the FLSA so long as they do so in a forum that may exercise general jurisdiction over the employer—namely its principal place of business or its place of incorporation. It is not obvious, at any rate, that state-based collective actions are necessarily inefficient. Congress apparently did not think so. It gave the federal and state courts authority to hear FLSA claims, noting that collective actions may be filed "in any Federal or State court of competent jurisdiction." 29 U.S.C. § 216(b). In the face of that choice and in the face of Congress's decision not to add a nationwide service of process provision to the FLSA, it would be odd to attribute to the National Legislature a desire to confine state court FLSA actions to the conventional Fourteenth Amendment rules and sotto voce to permit nationwide service for the same FLSA action in federal court.

Fifth, Canaday suggests that pendent personal jurisdiction offers another way to establish jurisdiction over the nonresident plaintiffs' claims and Anthem. But our court has never recognized this exception to these due-process limitations. *Wiggins v. Bank of Am.*, 488 F. Supp. 3d 611, 624 (S.D. Ohio 2020). We see no good reason to do so now.

The idea comes in two forms—pendent claim and pendent party personal jurisdiction. *See* Louis J. Capozzi III, *Relationship Problems: Pendent Personal Jurisdiction After* Bristol-Myers Squibb, 11

Drexel L. Rev. 215, 223–24 (2018). Pendent *claim* personal jurisdiction says that a court's exercise of personal jurisdiction over one defendant as to one claim allows it to exercise personal jurisdiction with respect to related claims that it could not adjudicate in the anchor claim's absence. *See, e.g.*, *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180–81 (9th Cir. 2004); *United States v. Botefuhr*, 309 F.3d 1263, 1272–73 (10th Cir. 2002). But when courts have applied this approach, that was usually because the underlying federal statute, in contrast to the FLSA, authorized nationwide service of process and the plaintiff filed claims related to the federal anchor claim. *See, e.g.*, *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1056 (2d Cir. 1993); *Laurel Gardens, LLC v. Mckenna*, 948 F.3d 105, 123 (3d Cir. 2020); *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617, 628 (4th Cir. 1997); *see also* Linda Sandstrom Simard, *Exploring the Limits of Specific Personal Jurisdiction*, 62 Ohio St. L.J. 1619, 1626 (2001) ("Federal courts are far more willing to adjudicate pendent counts where personal jurisdiction over the anchor count is based upon a federal nationwide service of process provision than where personal jurisdiction over the anchor count is based upon a state long-arm statute.") (quotation omitted). That is not this case.

Pendent *party* personal jurisdiction recognizes that a court's exercise of personal jurisdiction over one defendant as to a particular claim by one plaintiff allows it to exercise personal jurisdiction with respect to similar claims brought

by other plaintiffs. But this approach is hard to reconcile with *Bristol-Myers*. That is exactly what California's "mass action" process allowed and precisely what the Supreme Court rejected. *See* Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 Nw. U. L. Rev. 1, 29 (2018). Any relatedness of claims did not suffice in *Bristol-Myers*, as the Court dismissed for lack of jurisdiction the nonresident plaintiffs' claims that could not show a "connection between the forum and the[ir] specific claims at issue." 137 S. Ct. at 1781. If pendent party personal jurisdiction exists, *Bristol-Myers* should have come out the other way.

No less importantly, no federal statute or rule authorizes pendent claim or pendent party personal jurisdiction. *See* 4A Charles A. Wright, Arthur R. Miller & Adam N. Steinman, *Federal Practice and Procedure* § 1069.7 (4th ed. 2021) ("Since there is no federal statute on this subject, it seems clear that if it exists, pendent personal jurisdiction must be a creature of federal common law, or 'judge made,' as one court put it."). No such law exists—not in 28 U.S.C. § 1367, the supplemental jurisdiction statute, not in the Federal Rules of Civil Procedure. *See Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 (5th Cir. 2006) (stressing that a rule allowing a court to exercise "specific jurisdiction over one claim to justify the exercise of specific jurisdiction over a different claim that does not arise out of or relate to the defendant's forum contacts would violate the Due Process Clause").

Sixth, Canaday claims that the same personal jurisdiction rules for class actions apply to FLSA collective actions. Our circuit, it is true, recently held that a district court may exercise personal jurisdiction over a defendant with respect to all of the claims brought by class members because only the named plaintiff in a class action must satisfy personal jurisdiction requirements. *Lyngaas v. Curaden Ag*, 992 F.3d 412, 433 (6th Cir. 2021); *see also Mussat v. IQVIA, Inc.*, 953 F.3d 441, 445–48 (7th Cir. 2020). Collective actions and class actions, it is also true, share similarities. They both begin with a single plaintiff's (or a few plaintiffs') lawsuit. They both proceed through a certification process. *Monroe v. FTS USA, LLC*, 860 F.3d 389, 397 (6th Cir. 2017). They both streamline aggregate litigation by permitting large numbers of individuals to litigate similar claims with similar proof. They both in short are mass actions.

But Civil "Rule 23 actions are fundamentally different from collective actions under the FLSA," *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 74 (2013), and those differences require different approaches to personal jurisdiction. A Rule 23 class action is representative, while a collective action under the FLSA is not. From 1938 until 1947, the FLSA "gave employees and their 'representatives' the right to bring actions to recover amounts due under the FLSA. No written consent requirement of joinder was specified by the statute." *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165 (1989). In response to excessive representative litigation, Congress added the opt-in provision to the FLSA in

1947. *Id.*; *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 255 (3d Cir. 2012) (noting that the amendment "banned what it termed 'representative actions' "); *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502, 519 (2d Cir. 2020) ("Congress amended § 216(b) in 1947 expressly to put an end to representational litigation in the context of actions proceeding under § 216(b)."). The amendment served the "purpose of limiting private FLSA plaintiffs to employees who asserted claims in their own right and freeing employers of the burden of representative actions." *Hoffmann-La Roche*, 493 U.S. at 173. A collective action brought under it "cannot be deemed a representative action on behalf of the individual employees of the type governed by a Rule 23 action." *Donovan v. Univ. of Tex. at El Paso*, 643 F.2d 1201, 1206 (5th Cir. 1981).

That means all plaintiffs in an FLSA collective action must affirmatively choose to "become parties" by opting into the collective action. *Genesis Healthcare*, 569 U.S. at 75; *accord Bigger v. Facebook, Inc.*, 947 F.3d 1043, 1047 n.1 (7th Cir. 2020). Once they opt in, these plaintiffs become "party plaintiff[s]," 29 U.S.C. § 216(b), enjoying "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). That is a distant cry from how a Rule 23 class action works.

Class actions also include procedural protections that collective actions do not. Rule 23 requires plaintiffs to establish numerosity, commonality, typicality, and adequacy of

representation. Fed. R. Civ. P. 23(a). Plaintiffs in an FLSA collective action need only show that their employment makes them similarly situated to one another. *See* 29 U.S.C. § 216(b); *see also O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567, 584 (6th Cir. 2009) ("While Congress could have imported the more stringent criteria for class certification under Fed. R. Civ. P. 23, it has not done so in the FLSA."); *Swales v. KLLM Transp. Servs., L.L.C.*, 985 F.3d 430, 433 (5th Cir. 2021).

Statutes of limitations also operate differently in the two settings, confirming that the two actions represent distinctions in kind, not degree. In the class-action context, filing the named party's claim stops the clock for all members of a putative class action. *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 353–54 (1983). That is not true for FLSA actions after the 1947 amendment, confirming yet again their individual nature. *See* 29 U.S.C. §§ 255(a), 256; 61 Stat. 88. To like effect, Rule 23 classes must be represented by "class counsel," Fed. R. Civ. P. 23(g), while opt-in plaintiffs in an FLSA collective action have "the right to select counsel of [their] own choosing," *Fenley v. Wood Grp. Mustang, Inc.*, 170 F. Supp. 3d 1063, 1073 (S.D. Ohio 2016). With this option of separate counsel, collective actions permit individualized claims and individualized defenses, "in which aggrieved workers act as a collective of *individual* plaintiffs with *individual* cases." *Campbell*, 903 F.3d at 1105. Class actions, on the other hand, present "a unitary, coherent claim" that moves through litigation at the

named plaintiff's direction and pace. *Lyngaas*, 992 F.3d at 435 (quotation omitted).

All of this explains why a final judgment in the class action context binds all nonparticipating parties unless they have opted out. *See* Fed. R. Civ. P. 23(c)(2). Class litigation thus marks "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979). A final judgment in the FLSA collective action context, by contrast, binds only those parties who have opted in. *See Swales*, 985 F.3d at 435.

All in all, the representative nature of class actions may create an exception to the general rules of personal jurisdiction recognized in *Bristol-Myers* for "mass actions" and applicable to collective actions under the FLSA. But that exception does not apply here.

Seventh, Canaday worries that, by applying *Bristol-Myers* to this FLSA collective action, we will create obstacles to some types of multidistrict litigation. And those obstacles, she urges, may be more imposing than they are for FLSA actions. Most FLSA actions involve one defendant, allowing the plaintiff to use general personal jurisdiction to file a nationwide action in the State in which the company is incorporated or does most of its business. Some multidistrict litigation, however, involves several defendants, making it less likely that one State will have general jurisdiction for all of them. That is a fair point. But the answer is that our decision today

by no means resolves the application of *Bristol-Myers* to multidistrict litigation. Multidistrict litigation implicates a different statute, *see* 28 U.S.C. § 1407(a), a different history, *see* Andrew D. Bradt, *The Looming Battle for Control of Multidistrict Litigation in Historical Perspective*, 87 Fordham L. Rev. 87 (2018), and a different body of caselaw, *see In re FMC Corp. Pat. Litig.*, 422 F. Supp. 1163, 1165 (J.P.M.L. 1976); *In re Delta Dental Antitrust Litig.*, 509 F. Supp. 3d 1377, 1380 (J.P.M.L. 2020); *Howard v. Sulzer Orthopedics*, 382 F. App'x 436 (6th Cir. 2010). Those material differences may lead to a distinct approach, just as the differences between class actions and collective actions required different approaches today.

We affirm.

DISSENT

BERNICE BOUIE DONALD, Circuit Judge, dissenting. The question presented to us today is whether a federal court may assert jurisdiction over a defendant in an FLSA collective action when nonresident opt-in plaintiffs who form the collective allege that they were harmed by the defendant outside of the forum state in which the federal court is located. In the first 79 years since the enactment of the FLSA, the answer to that question was simple: "Yes."

However, in 2017, employers began arguing that the Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773 (2017) prohibited federal courts from exercising specific personal jurisdiction over defendants with respect to claims brought by out-of-state plaintiffs in FLSA collective actions. In *Bristol-Myers*, the Supreme Court concluded that the Due Process Clause of the Fourteenth Amendment prohibited California's *state* courts from exercising personal jurisdiction over the claims of nonresident plaintiffs in a mass tort action, where the nonresident plaintiffs' claims had no connection to California other than the fact that the California plaintiffs alleged the same injuries. The Supreme Court explained that "[b]ecause a state court's assertion of jurisdiction exposes defendants to the State's coercive power, it is subject to review for compatibility with the Fourteenth Amendment's Due Process Clause, which limits the power of a state court to render a valid personal judgment against a nonresident defendant." *Id.* at 1779. (internal quotations and citations omitted). The Court concluded that "California courts [could not] claim specific jurisdiction" because "[t]he relevant plaintiffs [were] not California residents and [did] not claim to have suffered harm in that State[,]" and "all the conduct giving rise to the nonresidents' claims occurred elsewhere[.]" *Id.* at 1782.

Bristol-Myers is inapplicable to this case, which was filed in *federal* court and is based on a *federal* statute that permits representative action. The *Bristol-Myers* Court simply addressed the

limitations of state courts in their exercise of personal jurisdiction over nonresidents with respect to matters of state law. The majority, however, stretches *Bristol-Myers* to conclude that it strips federal courts of their ability to assert specific jurisdiction over claims brought by nonresident plaintiffs in an FLSA collective action. In doing so, the majority concludes that the district court correctly granted Anthem's motion to dismiss three out-of-state nurses for lack of personal jurisdiction based on those nurses' failure to demonstrate any connection between their injuries and Anthem's activities in Tennessee, the forum state in which the district court sits. I disagree with the majority's application of *Bristol-Myers* and would conclude that the district court should have denied Anthem's motion to dismiss. Accordingly, I respectfully dissent.

I.

The Fair Labor Standards Act ("FLSA") outlines the collective action procedure as follows:

> 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.

29 U.S.C. § 216(b).

Plaintiff Laura Canaday ("Canaday") is a utilization management review nurse for Anthem in Tennessee. Canaday filed a proposed FLSA collective action in the district court, alleging that Anthem misclassified her and other "similarly situated" Anthem nurses "whose primary job was to perform medical necessity reviews" as exempt from overtime pay. (R. 1 at PageID 1). Several nurses (collectively "plaintiffs") opted into the collective by filing written consent with the district court and then moved for conditional class certification. Anthem moved to dismiss three out-of-state opt-in plaintiffs ("the nonresident opt-in plaintiffs") for lack of personal jurisdiction. Adopting a Magistrate Judge's recommendation, the district court concluded that *Bristol-Myers* required the nonresident opt-in plaintiffs to demonstrate that their claims were related to or arose from Anthem's activities in Tennessee. Because the nonresident opt-in plaintiffs could not make this showing, the district court dismissed them without prejudice for lack of personal jurisdiction. The district court did, however, grant conditional certification with respect to the in-state putative plaintiffs. Canaday then moved to certify the district court's order for interlocutory appeal. The district court granted her motion, and so did this Court.

Anthem argues that the district court correctly dismissed the nonresident opt-in plaintiffs, because *Bristol-Myers* and Rule 4 of the Federal Rules of Civil Procedure impose limitations on the district court's ability to hear their claims. Plaintiffs argue that *Bristol-Myers* does not apply to FLSA

collective actions in federal court and that basic principles of personal jurisdiction should have permitted the district court to exercise specific personal jurisdiction over the claims of the non-resident opt-in plaintiffs. Integral to Plaintiffs' arguments is our recent decision in *Lyngaas v. Curaden Ag*, 992 F.3d 412 (6th Cir. 2021), where we held that *Bristol-Myers* does not apply to Rule 23 class actions. Plaintiffs contend that *Lyngaas* requires us to conclude that *Bristol-Myers* should likewise not apply to FLSA collectives. I address each of these arguments in turn.

II.

We review *de novo* the district court's dismissal of the nonresident opt-in plaintiffs' claims for lack of personal jurisdiction. *Parker v. Winwood*, 938 F.3d 833, 839 (6th Cir. 2019).

Because the parties' arguments hinge in large part on the applicability of *Bristol-Myers* to the present case, some background as to that case is necessary. In *Bristol-Myers,* a group of plaintiffs, made up of mostly out-of-state residents, filed eight separate complaints in California state court against the defendant for product liability concerning the pharmaceutical drug Plavix. 137 S. Ct. at 1777. Under a unique California procedural rule, the trial court consolidated eight separate lawsuits into a singular mass tort action, even though a majority of the plaintiffs were not California residents, were not prescribed Plavix in California, and did not consume Plavix in California. *Id.* The defendant's only

connection to California was that it sold Plavix in the state. *Id.* at 1778. In asserting personal jurisdiction over the nonresident plaintiffs' claims, the California Supreme Court used a "sliding scale approach" to conclude that "the strength of the requisite connection between the forum and the specific claims at issue [was] relaxed if the defendant ha[d] extensive forum contacts that are unrelated to those claims." *Id.* at 1781. The Supreme Court admonished the "sliding scale approach" and reversed, explaining that there was no "connection between the forum and the specific claims at issue." *Id.* Specifically, the Court explained that "[t]he mere fact that [some] 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 arriving at this conclusion, the Court stressed that "restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation[;] [t]hey are a consequence of territorial limitations on the power of the respective States.' " *Id.* at 1780 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). The Court did, however, "leave open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." *Id.* at 1784.

District courts have been split as to whether *Bristol-Myers* applies to FLSA collective actions. The district courts that find *Bristol-Myers* inapplicable to FLSA collective actions tend to follow the reasoning

in *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780 (N.D. Cal. Nov. 10, 2017), where a California federal district court explained:

> Unlike the claims at issue in *Bristol-Myers*, we have before us a federal claim created by Congress specifically to address employment practices nationwide. *See* 29 U.S.C. [§§] 202, 207(a). Congress created a mechanism for employees to bring their claims on behalf of other employees who are "similarly situated," and in no way limited those claims to in-state plaintiffs. 29 U.S.C. [§] 216(b). Thus, our circumstances are far different from those contemplated by the Supreme Court in *Bristol-Myers*.

Id. at *2.

Courts that find *Bristol-Myers* applicable to FLSA collective actions tend to follow reasoning similar to that expressed in *Maclin v. Reliable Reports of Texas, Inc.*, 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018), where an Ohio federal district court held that *Bristol-Myers* "divests courts of specific jurisdiction over the FLSA claims of [nonresident] plaintiffs against [a nonresident defendant]."

I agree with the *Swamy* line of cases and will address herein why I believe *Bristol-Myers* does not apply to this case. But distinguishing *Bristol-Myers* does not, in itself, permit the district court to exercise personal jurisdiction over Anthem. Rather, we must first assess whether "[t]he party seeking to assert personal jurisdiction [has met its] burden of

demonstrating that such jurisdiction exists." *Youn v. Track, Inc.*, 324 F.3d 409 (6th Cir. 2003). I turn to that inquiry next.

III.

A. The district court should have asserted personal jurisdiction over Anthem with respect to the nonresident opt-in plaintiffs' claims.

1. The district court can exercise personal jurisdiction over Anthem as to the entire "suit."

The debate at the heart of this appeal is whether Canaday's claims—or, more generally—the claims of a named plaintiff in an FLSA collective action, standing alone, are sufficient to confer personal jurisdiction over a corporate defendant *as to the entire lawsuit*.

Canaday first argues that because she filed this action in federal court, we should conduct our personal jurisdiction analysis under the limitations of the Fifth Amendment rather than the Fourteenth Amendment. However, even if the Fifth Amendment is the applicable constitutional limitation on a federal court's authority to exercise personal jurisdiction, "[t]here also must be a basis for the defendant's amenability to service of summons." *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). That requires us to look to Rule 4(k)(1) of the Federal Rules of Civil Procedure, which

imposes territorial limits on service of process. Rule 4(k)(1) states as follows:

> 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.

The FLSA does not explicitly authorize nationwide service of process (Rule 4(k)(1)(c)) nor did Canaday join Anthem under Federal Rule 14 or 19 (Rule 4(k)(1)(b)). We are thus left with only Rule 4(k)(1)(A), which tells us that our personal jurisdiction analysis is guided by whether the forum state—in this case, Tennessee—could assert personal jurisdiction over Anthem. Tennessee's long-arm statute (Tenn. Code Ann. § 20-2-214(a)(6)) permits Tennessee courts to exercise jurisdiction to the full extent allowable under the Due Process Clause of the Fourteenth Amendment. *Intera Corp. v. Henderson*, 428 F.3d 605, 616 (6th Cir. 2005). Therefore, even though we are in federal court, Rule 4 requires us to conduct our personal jurisdiction analysis under the Fourteenth Amendment.[1]

[1] Canaday argues that if the Fifth Amendment—rather than the Fourteenth Amendment—sets the outer boundaries of a

The Due Process Clause of the Fourteenth Amendment permits state courts to exercise personal jurisdiction over an out-of-state defendant only if the defendant had "certain minimum contacts" with the forum state, "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation and citation omitted). As to corporate defendants, the Fourteenth Amendment permits two forms of personal jurisdiction: general and specific. To invoke general jurisdiction, a plaintiff must show that the defendant is "at home" in the forum state, meaning that the defendant is incorporated or has its principal place of business there. *Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014).

Anthem is headquartered in Indiana and is not "at home" in Tennessee, meaning that general jurisdiction is lacking. Thus, we must look to specific jurisdiction, in which our analysis "focuses on the relationship among the defendant, the forum, and *the litigation*." *Walden v. Fiore*, 571 U.S. 277 (2014) (emphasis added) (internal quotation marks

federal court's jurisdiction, then Canaday would need only demonstrate that Anthem has contacts with "the *United States* as a whole[ ]" in order for the district court to exercise personal jurisdiction over the entire collective. (Appellant Br. at 5) (emphasis in original) (internal quotations and citations omitted). We need not address this argument, because, as mentioned above, the requirements of Rule 4 mandate that we conduct our personal jurisdiction analysis under the Fourteenth Amendment in this case.

omitted). To invoke specific jurisdiction, we require the following:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Means v. United States Conf. Catholic Bishops, 836 F.3d 643, 649 (6th Cir. 2016) (quoting *Southern Mach. Co. v. Mohasco Indus., Inc.,* 401 F.2d 374, 381 (6th Cir. 1968)).

Here, Canaday worked for Anthem in Tennessee, and the claims set forth in her complaint were based on Anthem's conduct in Tennessee. Further, by conducting business in Tennessee, Anthem has purposefully availed itself of the privilege of acting in the state. Anthem does not dispute these points, nor does it contest that the district court had specific personal jurisdiction over Anthem with respect to Anthem's alleged failure to pay *Canaday* for her overtime pay.

Anthem argues, however, that the district court's authority to exercise personal jurisdiction over Anthem as to Canaday's claims is not enough to confer personal jurisdiction over Anthem as to the entire collective. The majority agrees with Anthem and states that, for the district court to exercise

personal jurisdiction over Anthem as to the entire action, "there [must be] a claim-specific and Anthem-specific relationship between the out-of-state claims and Tennessee." Maj. Op. at 5. However, the majority's framing of the jurisdictional inquiry is at odds with the Supreme Court's instructions that we are to examine personal jurisdiction at *the level of the suit*, not at the level of any particular claim or party. *See Bristol-Myers*, 137 S. Ct. at 1780 ("In order for a state court to exercise specific jurisdiction, *the suit* must arise out of or relate to the defendant's contacts with the *forum*.") (emphasis in original) (internal quotations and citations omitted).[2] An FLSA collective action is designed to be a single lawsuit throughout the entire litigation process. The singularity of the lawsuit does not change simply because new plaintiffs with the same or similar claims as to the named plaintiff might join the collective at a later time.[3] Therefore,

[2] The *Bristol-Myers* Court could not examine personal jurisdiction at the level of one lawsuit, because, in the mass tort context at issue in that case, the consolidated lawsuit was comprised of claims spread across *separate and distinct* lawsuits.

[3] Section 216(b)'s "similarly situated" requirement provides assurance that the collective retains its singular character. Although the FLSA itself does not provide a definition for "similarly situated," we have said that "plaintiffs are similarly situated when they suffer from a single, FLSA-violating policy, and when proof of that policy or of conduct in conformity with that policy proves a violation as to all the plaintiffs." *O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567, 585 (6th Cir. 2009), abrogated on other grounds by *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016). The "similarly situated" requirement is also satisfied if the employees' claims are "unified by common

in this case, the only lawsuit is between Canaday and Anthem, and the specific jurisdiction analysis must be conducted at the level of Canaday's claims. The district court already has personal jurisdiction over those claims through the original complaint. Thus, even if the nonresident opt-in plaintiffs would not be able to independently establish personal jurisdiction over Anthem in Tennessee, they need not do so here.[4]

2. Rule 4(k)(1)(A) does not require each opt-in plaintiff to individually serve Anthem.

Anthem contends that there is an implied requirement in Rule 4(k)(1)(A) that each opt-in plaintiff in an FLSA collective action *individually* establish personal jurisdiction over the defendant by service of process. As Anthem would have it, the district court would have to conduct a separate personal jurisdiction analysis for each party as if each party had filed their own unique complaint. But a careful examination of Rule 4 contains only

theories of defendants' statutory violations[.]" *Id.* Those statutory safeguards ensure that a collective will always be a singular lawsuit, not an aggregation of unrelated claims.

[4] Additionally, Anthem must already defend against Canaday's claims in Tennessee, so it can hardly claim that there is anything unreasonable or unfair about having to litigate the entire action in the same forum. If anything, proceeding in a single unified action benefits Anthem. Instead of having to litigate multiple FLSA actions across different jurisdictions, Anthem can defend the same employment policy in one single proceeding.

one operative command: "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 4(c)(1). Rule 4(b) ties that command to "*the* plaintiff" who has filed a complaint. Fed. R. Civ. P 4(b). (emphasis added). We know from our above analysis that valid service of 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." *Id.* 4(k)(1)(A). Thus, the only logical reading of Rule 4 is that service is deemed effective based *only* on whether the *original named plaintiff* complies with Rule 4. Anthem does not argue that Canaday failed to comply with this requirement, and because Canaday represents the entire suit, *see Bristol-Myers*, 137 S. Ct. at 1780, it does not matter that additional plaintiffs from different locations might eventually opt in to the collective. Once Canaday properly served Anthem with the complaint, the district court could assert personal jurisdiction over the entire action. Rule 4(k)(1)(A) imposes no additional requirements.[5]

[5] Anthem's demands that each opt-in plaintiff satisfy unwritten Rule 4(k)(1)(A) requirements ring hollow in light of the text of the FLSA, which requires that opt-ins need only provide "consent in writing" to join the "action." 29 U.S.C. 216(b). *See also Mickles v. Country Club, Inc.*, 887 F.3d 1270, 1278 (11th Cir. 2018) ("The plain language of § 216(b) supports that those who opt in become party plaintiffs upon the filing of a consent and that *nothing further* ... is required.") (emphasis added). The Supreme Court has further recognized that Section 217(b) "grant[s] the court [with] the requisite procedural authority to manage the process of joining multiple parties in a manner that is orderly, sensible, and not otherwise contrary to statutory commands or the provisions of the Federal Rules of Civil Procedure." *Hoffmann-La Roche v.*

3. Alternatively, the non-resident opt-in plaintiffs' claims still "relate to" Anthem's conduct in Tennessee.

Even if we conducted our personal jurisdiction analysis at the "claim" level rather than the "suit" level, the district court could still exercise personal jurisdiction over the non-resident opt-in plaintiffs' claims. Although it is true that the nonresident plaintiffs did not actually suffer injuries in Tennessee, we only require that they demonstrate that the "defendant's contacts with the forum state are *related to* the operative facts of the controversy" in order to "deem[ ] [an action] to have arisen from those contacts." *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 1996) (emphasis added). "We have said this is a 'lenient standard,' requiring only that the cause of action have a 'substantial connection' to the defendant's activity in the state." *MAG IAS Holdings, Inc. v. Schmuckle*, 854 F.3d 894, 899 (6th Cir. 2017) (quoting *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002)).

Even though the nonresident plaintiffs were allegedly injured by Anthem's nationwide conduct in states outside the forum, it does not mean that their claims do not "relate to" Anthem's conduct in

Sperling, 493 U.S. 165, 170 (1989). Anthem's understanding of Rule 4(k)(1)(A) is hardly compatible with this directive. There is nothing "orderly" or "sensible" about permitting FLSA collective litigation but requiring that each member of the action effectively initiate a separate lawsuit in order to participate.

Tennessee. Presumably, Anthem employed the challenged overtime classification policy full well knowing that any of its employees, regardless of their residence, could initiate a collective action challenging that policy under the FLSA. That Canaday was simply the first employee to file suit does not mean that another Anthem employee in another state could not have initiated the very same lawsuit in a different federal court. Because the nonresident plaintiffs' injuries stem from the exact same policy under which Canaday brings her individual claims, they have demonstrated the requisite "connect[ion] with" Anthem's conduct in Tennessee. *Int'l Shoe*, 326 U.S. at 319.

Accordingly, the district court should have exercised personal jurisdiction over Anthem as to the nonresident opt-in plaintiffs' individual claims.

B. *Bristol-Myers* does not require dismissal of the nonresident opt-in plaintiffs.

Anthem contends that *Bristol-Myers* compels dismissal of the nonresident opt-in plaintiffs' claims, because, in Anthem's view, an FLSA collective action is similar to the problematic mass tort action that was front and center in *Bristol-Myers*. Anthem makes a faulty comparison, and in doing so, overstates the import of *Bristol-Myers*.

The primary focus of the *Bristol-Myers* Court was simply to reaffirm two long-standing and uncontroversial principles of horizontal federalism:

(1) that each state court system retains a degree of exclusivity in adjudicating state-law claims arising out of activities within its own borders, and (2) that due process protects a non-resident defendant from having to submit to the coercive power of a *state* court that lacks a legitimate *state* interest in hearing particular claims against that defendant. This case does not implicate either of those concerns.

Contrary to Anthem's position, *Bristol-Myers* did not mark a major shift in our jurisprudence on personal jurisdiction. Indeed, the Supreme Court itself referred to the decision as a "straightforward application ... of settled principles of personal jurisdiction[.]" 137 S. Ct. at 1783. Just this year, the Court clarified that its primary concern in *Bristol-Myers* was that the nonresident plaintiffs in that case were "engag[ing] in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1031 (2021) (citing *Bristol-Myers*, 137 S. Ct. at 1782-83). This strategy, the *Bristol-Myers* Court held, offended principles of interstate federalism, because California's courts were effectively aggrandizing their power at the expense of the states where the injuries of the nonresident plaintiffs actually occurred. *See Bristol-Myers*, 137 S. Ct. at 1777 (explaining that personal jurisdiction analysis "encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question."). When this case was before the California

Supreme Court, Justice Werdegar pointedly examined this problem in her dissenting opinion:

> California has no discernable sovereign interest in providing an Ohio or South Carolina resident a forum in which to seek redress for injuries in those states caused by conduct occurring outside California. A mere resemblance between the nonresident plaintiffs' claims and those of California residents creates no sovereign interest in litigating those claims in a forum to which they have no substantial connection.

Bristol-Myers Squibb Co. v. Superior Ct., 377 P.3d 874, 899 (2016) (Werdegar, J., dissenting).

This concern and respect for state sovereignty made sense in *Bristol-Myers*. When the defendant in that case sold Plavix outside of California to a non-California resident, the defendant could have hardly contemplated that it might be haled into California state court—and *subjected to California state law*—based on that transaction. The states where the nonresident plaintiffs' injuries occurred would have had a stronger interest in resolving those claims. The fact that a nonresident's lawsuit was similar to that of a California resident did not, in itself, obviate the need for California's courts to assert jurisdiction over the entire consolidated action.

But the "territorial limitations on the power of the respective States" are not present in this case. *Bristol-Myers*, 137 S. Ct. at 1780. This case arises entirely under federal law, and federal power is not

limited by state lines. The home states of the nonresident opt-in plaintiffs do not have any greater interest than Tennessee does in hearing this case, because the only sovereign whose interests are at issue in this case is the United States. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion) (explaining that the federal government has "its own direct relationship, its own privity, its own set of mutual rights and obligations to people who sustain it and are governed by it.") (internal quotation and citation omitted). Thus, even if the district court exercised jurisdiction over the entire collective action, including the claims of the nonresident opt-in plaintiffs, it would not encroach on the sovereignty of any state. *See Handley v. Indiana & Michigan Elec. Co.*, 732 F.2d 1265, 1271 (6th Cir. 1984) ("When a federal court is hearing and deciding a federal question case there are no problems of 'coequal sovereigns.' ") (quoting *World-Wide Volkswagen*, 444 U.S. at 292). To that end, Anthem cannot credibly argue that, by having to defend the entire action in Tennessee, it is being haled into an unfamiliar or coercive forum "solely as a result of random, fortuitous, or attenuated contacts[.]" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotations and citations omitted). Nor can Anthem complain that it is a victim of forum-shopping because federal law is to be implemented and interpreted uniformly throughout the nation in *all* courts. *See Handley*, 732 F.2d at 1269 ("When a court, state or federal, adjudicates a federal claim, the federalism issue is of no relevance, for the court determines the parties' rights and liabilities under

uniform, national law.") (quoting *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 292 (3d Cir. 1981) (Gibbons, J., dissenting)). Neither state law nor state courts are involved in this case, so Anthem is not more or less likely to receive a particular result based on the federal court where the lawsuit originates.

The mass action in *Bristol-Myers* also differs from the FLSA collective action in a critical way—each individual plaintiff in *Bristol-Myers* was a real party in interest and each individual lawsuit retained a separate identity. The mass action was not so much one lawsuit with several different plaintiffs, but actually several different lawsuits consolidated as one action. That consolidation would not have created any sense of efficiency. If anything, it might have made matters more complicated for the California trial court that could have potentially been forced to address a litany of burdensome choice-of-law issues that might have led to divergent outcomes. *See Gulf Oil v. Gilbert*, 330 U.S. 501, 509 ("There is an appropriateness ... in having the trial ... in a forum that is at home with the *state* law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.") (emphasis added).

In contrast, an FLSA collective action is not a consolidated series of separate lawsuits; rather, it is a single representative action, which proceeds on the basis that one (or more) named plaintiff(s) represents the claims of the entire collective. More importantly, the collective action is part of a

comprehensive federal regulatory scheme that contemplates and strives for efficient resolution of FLSA claims. *See Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1264 (11th Cir. 2008) (explaining that "purposes of § 216(b) actions under the FLSA [are] (1) reducing the burden on plaintiffs through the pooling of resources, and (2) efficiently resolving common issue of law and fact that arise from the same illegal conduct."). These critical differences—coupled with the fact that *Bristol-Myers* did not proscribe any limitations on federal jurisdiction over federal collective actions—requires us to conclude that *Bristol-Myers* does not prevent the district court's assertion of personal jurisdiction over Anthem.

C. This Court recently held that *Bristol-Myers* does not apply to class action lawsuits. The same reasoning requires us to conclude that *Bristol-Myers* does not apply to collective actions.

Our recent decision in *Lyngaas* forecloses Anthem's argument that *Bristol-Myers* applies to collective actions in federal court. In *Lyngaas*, we held that *Bristol-Myers* does not prevent federal courts from exercising personal jurisdiction over non-resident defendants in Rule 23 class actions if the named plaintiff's claim arises out of or relates to the defendant's forum contacts. *Id.* at 433. The *Lyngaas* Court explained that in mass tort actions, like those at issue in *Bristol-Myers*, "individual issues might present significant variations such that

a defense would require different legal theories or different evidence." *Id.* at 435 (quotation and citation omitted). In a class action, however, the Court explained that "the defendant is presented with a unitary, coherent claim to which it need respond only with a unitary, coherent defense." *Id.* (quotation omitted).

The majority contends that *Lyngaas* carves out an exception to *Bristol-Myers* that applies only to class actions, but not to collectives. That is, the majority argues, because collective actions more closely resemble mass-tort actions in that they are of an "individual nature," unlike class actions, which are of a "representative nature."

True, as the majority points out, that unlike in a Rule 23 class action, whose members are bound by the judgment unless they "opt-out," members of an FLSA collective action must affirmatively "opt-in" to the action to be bound. However, that distinction speaks only to a difference in procedural mechanics, not as to any underlying substantive differences between classes and collectives. The "opt-out" vs. "opt-in" distinction does not detract from the fact that both class and collective actions are single representative lawsuits. More importantly, missing from the majority's analysis is any explanation as to why that distinction is relevant to the applicability of *Bristol-Myers*, which, as mentioned above, was a decision rooted in

concerns over federalism and the territorial reach of *state* courts.[6]

To support its position, the majority claims that since 1947, the FLSA, by its own terms, has not permitted "representative litigation." Maj. Op. at 402. But this is a mischaracterization of the 1947 amendments to § 216(b) of the FLSA. Under the pre-1947 version of § 216(b), individuals who did "not themselves possess[ ] claims[,]" such as union officials, were permitted to file collective actions on behalf of employees. *Hoffmann-La Roche*, 493 U.S. at 173. These "representatives" had vast power to initiate collective actions and could file them even without the authorization of the affected employees. *Id.* In response to a feared surge in litigation by named plaintiffs who "lack[ed] a personal interest in the outcome" of the litigation, Congress enacted the Portal-to-Portal Act of 1947 to ban these "representative" actions and required that each employee provide consent in writing in order to be a party to the case. *See* Portal-to-Portal Act of 1947, Ch. 52, 61 Stat. 84; *Hoffmann-La Roche*, 493 U.S. at 173. During the 1947 Congressional debates on the FLSA amendments, Senator Donnell, the chairman

[6] For similar reasons, I conclude that the other differences the majority highlights are also merely mechanical distinctions—such as (1) the different "procedural protections" afforded to defendants in each type of action, (2) the different treatment of statutes of limitations in the class vs. collective context, (3) the limitations on who can legally represent class members vs. collective members. These distinctions neither alter a collective's status as a single representative action nor do they bear on any due process concerns expressed in *Bristol-Myers*.

of the drafting subcommittee, remarked that the new opt-in requirement in § 216(b) was merely part of an effort to eliminate the "unwholesome" practice of allowing suits under the FLSA which were "not brought with the actual consent or agency of the individuals for whom an ostensible plaintiff filed the suit." 93 Cong. Rec. 538, 2182 (1947). But more tellingly, at least for purposes of the case before us, Senator Donnell explained that the subcommittee had "no objection" to "a suit brought by one collectively *for himself* and others." *Id.* (emphasis added). Senator Donnell's comments underscore that Congress was simply trying to ban spurious representative actions, not eliminate the representative nature of collective actions altogether. *See also Knepper v. Rite Aid Corp.*, 675 F.3d 249, 257 (3d Cir. 2012) (explaining that Portal-to-Portal Act's enforcement scheme "largely codified the existing rules governing spurious class actions, with special provisions intended to redress the problem of representative actions brought by unions under earlier provisions of the FLSA and the problem of 'one-way' intervention."). A "representative"—in the context of the 1947 amendments—merely referred to someone who did not stand to personally receive an award in an FLSA collective action; it did not literally encompass all "representatives" as that term might be understood today. The 1947 amendments are better understood as clarifying *who* could represent the collective, not that collectives lost their character as singular, representative actions. *See Swales v. KLLM Transp. Servs., L.L.C.*, 985 F.3d 430, 435 (5th Cir. 2021) ("The Portal-to-Portal Act takes into account the

dual goals of collective actions: (1) enforcement (by preventing violations and letting employees pool resources when seeking relief); and (2) efficiency (by resolving common issues in a *single action*).") (emphasis added).

Anthem still contends that a collective action is more like a mass tort action simply because putative plaintiffs obtain "party" status once they opt in. *See* 29 U.S.C. 216(b) ("[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.") (emphasis added). Anthem has not explained how the "party" label changes the representative nature of the collective, and there does not appear to be much guidance on that issue. *See, e.g.*, *Halle v. W. Penn Allegheny Health Sys. Inc.*, 842 F.3d 215, 225 (3d Cir. 2016) ("This prompts the as-yet unanswered question of what 'party status' means in a collective action, particularly before a district court has considered whether those who have filed consent forms are in fact 'similarly situated' to the named plaintiff for purposes of § 216(b)."). Moreover, the Supreme Court has informed us that individuals can be "parties" for some purposes but not for others. *Devlin v. Scardelletti*, 536 U.S. 1, 9-10 (2002) ("The label 'party' does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context.").

I do not find any support in the text of the FLSA or in case law that would suggest that "party" status makes a collective action more like a mass tort action or meaningfully different from a class action. In the context of the 1947 amendments, the most likely reading of the "party" label is that Congress meant to codify the existing rules permitting the actual parties in interest—the employees—to participate in the collective and to emphasize that "representatives"—such as union leaders—could no longer participate in such actions. At most, the "party" label appears to be nothing more than a judicial housekeeping measure to confirm that opt-in plaintiffs are on equal footing with the named plaintiff once they join the collective. *See, e.g.*, *Prickett v. DeKalb Cty.*, 349 F.3d 1294, 1297 (11th Cir. 2003) ("[B]y referring to them as 'party plaintiff[s]' Congress indicated that opt-in plaintiffs should have the same status in relation to the claims of the lawsuit as do the named plaintiffs."). Whatever status the "party" label might confer on opt-in plaintiffs, it does not radically alter the overall representative character and nature of the collective, which retains its status as a single lawsuit. Accordingly, I find that it does not change our personal jurisdictional analysis.[7]

[7] Canaday also argues that pendent personal jurisdiction provides another source for the district court's authority to hear the nonresident opt-in plaintiffs' claims. "Pendent personal jurisdiction is a common law doctrine that recognizes the inherent fairness of exercising personal jurisdiction over claims asserted against a Defendant over whom the Court already has personal jurisdiction with respect to another claim or claims arising out of the same nucleus of operative facts." *J4 Promotions, Inc. v. Splash Dogs, LLC*, No. 08 CV 977, 2009 WL

IV.

Today's decision ignores that Congress developed the collective-action mechanism as a tool of efficiency, to promote the expedient resolution of FLSA claims in a single proceeding. Given Congress' aims of uniformity and efficiency, "broad coverage [of the FLSA] is essential to accomplish the goal of outlawing from interstate commerce goods produced under conditions that fall below minimum standards of decency." *Tony and Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 296 (1985). Courts thus "consistently construe[ ] the Act 'liberally to apply to the furthest reaches consistent with congressional direction.' " *Id.* (quoting *Mitchell v. Lublin, McGaughy & Assocs.*, 358 U.S. 207, 211 (1959)). The majority dismisses and downplays these policy aims, and its decision minimizes our longstanding embrace and value placed on representative litigation.

Less than a decade after the FLSA became law, the Supreme Court described the collective

385611, at *21 (N.D. Ohio Feb. 13, 2009). Dismissal of those claims "would create inefficiencies by forcing claims arising out of a common nucleus of operative facts to be tried in different jurisdictions." *Capitol Specialty Ins. Corp. v. Splash Dogs LLC*, 801 F. Supp. 2d 657, 667 (S.D. Ohio 2011). However, as the majority points out, this Court has not explicitly recognized this doctrine. Moreover, because I have already concluded that the Fourteenth Amendment does not limit the district court's exercise of personal jurisdiction over Anthem as to the nonresident plaintiffs' claims, I find it unnecessary to determine whether pendent personal jurisdiction applies in this case.

action as "a common-sense and economical method of regulation" that "puts directly into the hands of the employees ... the means and ability to assert and enforce their rights," so that they "will not suffer the burden of an expensive lawsuit." *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 n.16 (1945) (quoting 83 Cong. Rec. 9264 (1938)). And in the years since, courts have consistently praised the collective action as one of the most powerful tools in the effective resolution of FLSA claims and the promotion of judicial economy against the backdrop of an increasingly complex national economy. *See Hoffmann-La Roche*, 493 U.S. at 170 (explaining that by "lower[ing] individual costs to vindicate rights by the pooling of resources," Congress sought to encourage "efficient resolution [of FLSA claims] in one proceeding."); *Bigger v. Facebook, Inc.*, 947 F.3d 1043, 1049 (7th Cir. 2020) ("The twin goals of collective actions are enforcement and efficiency: enforcement of the FLSA, by preventing violations of the overtime-pay requirements and by enabling employees to pool resources when seeking redress for violations; and efficiency in the resolution of disputes, by resolving in a single action common issues arising from the same alleged illegal activity."); *Halle v. W. Allegheny Health Sys. Inc.*, 842 F.3d at 223 ("By permitting employees to proceed collectively, the FLSA provides employees the advantages of pooling resources and lowering individual costs so that those with relatively small claims may pursue relief where individual litigation might otherwise be cost-prohibitive. It also yields efficiencies for the judicial system through resolution in one proceeding of common issues

arising from the same allegedly wrongful activity affecting numerous individuals.").

The effect of today's decision is quite stark. By holding that a federal district court may not assert personal jurisdiction over claims brought by nonresident opt-in plaintiffs as part of an FLSA collective action, the majority forces those plaintiffs to file separate lawsuits in separate jurisdictions against the same employer based on the same or similar alleged violations of the FLSA. Actions that combined hundreds of claims based on similar violations of the FLSA will now be splintered into dozens, if not hundreds, of lawsuits all over the country. Under that regime, nobody wins. Not the courts, not employees, and not employers. The practice will undoubtedly result in piecemeal litigation, potentially divergent outcomes for similarly situated plaintiffs, and major inefficiencies for the federal courts.

Congress could never have intended collective actions to be fractured in this way, and I fear that the majority has cloaked nationwide employers with unwarranted jurisdictional-armor to fend off FLSA collective action litigation.

I respectfully dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION

LAURA CANADAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 1:19-cv-**
	)	**01084-STA-jay**
THE ANTHEM COMPANIES, INC.,	)	
	)	
Defendant.	)	

ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING PARTIAL MOTION TO DISMISS

Before the Court is Plaintiffs' Motion for Conditional Class Certification. (ECF No. 36.) Simultaneously before the Court is Defendant's partial Motion to Dismiss. (ECF No. 52.)

This Court referred the Motion for Conditional Class Certification to the United States Magistrate Judge, and the Magistrate Judge issued his Report and Recommendation. (ECF No. 65.) Plaintiff Canaday timely objected to the Report and

Recommendation to which Defendant responded. (ECF Nos. 66, 67.) For the reasons set forth below, this Court **ADOPTS** the Report and Recommendation and **GRANTS IN PART AND DENIES IN PART** Plaintiff's Motion for Conditional Class Certification.

Plaintiff responded in opposition to Defendant's Motion to Dismiss, (ECF No. 59) to which Defendant replied. (ECF No. 60.) For the reasons discussed below, this Court **GRANTS** Defendant's partial Motion to Dismiss.

BACKGROUND

The Magistrate Judge has reported the following background facts, which the Court hereby adopts as its own findings. Canaday and the putative plaintiffs work for Anthem and/or Anthem's subsidiaries. Anthem is incorporated in and has its principal place of business in Indiana. (ECF No. 1 at p. 2, ¶ 8.) Canaday and the putative plaintiffs are categorized as "Medical Management Nurses." [1] Canaday's primary responsibility is to conduct utilization/medical necessity reviews. (ECF No. 36-5 at p. 152–53, ¶¶ 5–6.) The type of utilization/medical necessity reviews conducted by Canaday and the other putative plaintiffs differs depending on their employment assignment. (ECF

[1] Initially, Plaintiff sought to include Medical Management Nurses, Utilization Review Nurses, Nurse Reviewers, and Nurse Review Associates as putative members of the collective. However, Plaintiff agreed to limit the putative members to employees assigned to the "Medical Management Nurse job family." (ECF No. 57, at p. 457–58.)

No. 54-4 at p. 398–99, ¶¶ 7–10.) For example, some Medical Management Nurses conduct inpatient reviews, some conduct outpatient reviews, and some conduct subacute reviews. (*Id.* at p. 388, 400–01, ¶¶ 7, 15,18.)

As part of such reviews, Medical Management Nurses apply standardized guidelines, standardized criteria, and Anthem's policies and procedures. (ECF No. 36-5 at p. 153, ¶ 7.) The type of guideline used by a Medical Management Nurses is based upon the type of review they are conducting. (ECF No. 53-4 at p. 401, ¶ 18.) For example, Medical Management Nurses apply Milliman's Care guidelines when reviewing inpatient procedures or conditions and InterQual guidelines when reviewing sub-acute services. (*Id.*)

Anthem acknowledges that, between October 10, 2016, and October 11, 2019, it employed 2,575 people as Medical Management Nurses. (ECF No. 53-1 at p. 347–48, ¶¶ 4–7.) These Medical Management Nurses work across the country with "fewer than 100" working in Tennessee.[2] (*Id.* at ¶

[2] Plaintiff's Motion for Conditional Class Certification includes the declarations of the following opt-in plaintiffs: Mary Bishop, who works out of her home in St. Louis, Missouri, and reports to Defendant's office in Chicago, Illinois; Jean Elmore, who works out of Defendant's office in Roanoke, Virginia; Latrice Gainey, who works out of her home in Conyers, Georgia, and reports to Defendant's office in Atlanta, Georgia; Kewanna Gordon, who works out of her home in Indianapolis, Indiana, and reports to Defendant's office in Ohio; Patrice LeFlore, who works out of her home in

7.) Other than 100 nurses working in "Post Service Clinical Claim Review," all Medical Management Nurses are classified as exempt under the FLSA. (*Id.* at p. 347, ¶ 6.)

Canaday works from home in Tennessee. (ECF No. 36-5 at p. 152, ¶ 3.) Canaday asserts that although she works overtime hours, she does not receive overtime pay. (ECF No. 36-5 at p. 153, ¶¶ 12–13.) She also claims that "other Utilization Management Review Nurses" do not receive overtime pay. (*Id.* at p. 154, ¶ 15.) Canaday seeks conditional certification of "All persons who worked as Medical Management Nurses who were paid a salary and treated as exempt from overtime laws and were primarily responsible for performing medical necessity reviews for [Anthem] at any time since three years prior to filing this Complaint." (ECF No. 57 at p. 457–58.)

STANDARDS OF REVIEW

I. Motion for Conditional Class Certification

This Court reviews the Magistrate Judge's Report and Recommendation *de novo*. The Magistrate Judge may issue a report and

Atlanta, Georgia, and reports to Defendant's office in Atlanta, Georgia; Leah Maas, who works in Defendant's office in Atlanta, Georgia, and remotely from Kathleen, Georgia; Winifred Midkiff, who works out of her home in Chesapeake, Virginia, and reports to Defendant's office in Chesapeake, Virginia; and Janice Vialpando, who works out of her home in Virginia Beach, Virginia.

recommendation for any dispositive motion. 28 U.S.C. § 636(b)(1)(B). The Court must "make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made." § 636(b)(1)(C). After reviewing the evidence, the Court is free to accept, reject, or modify the proposed findings or recommendations of the Magistrate Judge. *Id.* The Court need not review, under a *de novo* or any other standard, those aspects of the report and recommendation to which no specific objection is made. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Rather, the Court may simply adopt the findings and rulings of the Magistrate Judge to which no specific objection is filed. *Id.* at 151.

While the Court reviews the Magistrate Judge's recommendations on dispositive issues like certification and equitable tolling *de novo*, the Court reviews the Magistrate Judge's non-dispositive procedural recommendations on notice under a far more deferential standard. The Magistrate Judge's recommendations on the form of notice are non-dispositive matters subject to the clearly erroneous or contrary to law standard of review. Pursuant to 28 U.S.C. § 636(b), a district court shall apply a "clearly erroneous or contrary to law" standard of review to orders on "nondispositive" preliminary matters. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)); *see also* 28 U.S.C. § 636(b)(1). Federal Rule Civil Procedure 72(a) states that a district judge "shall consider" objections to a magistrate judge's

order on a non-dispositive matter and "shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *Bell v. Int'l Broth. of Teamsters*, No. 96-3219, 1997 WL 103320, at *4 (6th Cir. Mar. 6, 1997).

"The clearly erroneous standard applies only to factual findings made by the Magistrate Judge, while legal conclusions will be reviewed under the more lenient contrary to law standard." *E.E.O.C. v. Burlington N. & Santa Fe Ry. Co.*, 621 F. Supp. 2d 603, 605 (W.D. Tenn. 2009) (quotation omitted). "When examining legal conclusions under the contrary to law standard, the Court may overturn any conclusions of law which contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent." *Doe v. Aramark Educ. Res., Inc.*, 206 F.R.D. 459, 461 (M.D. Tenn. 2002) (citing *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), aff'd, 19 F.3d 1432 (6th Cir. 1994) (internal quotation marks omitted)); *see also* 32 Am. Jur. 2d Federal Courts 143 (2008) ("A magistrate judge's order is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure").

II. Motion to Dismiss for Lack of Personal Jurisdiction

When a defendant challenges personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), "[t]he plaintiff bears the burden of making a prima facie showing of the court's personal

jurisdiction over the defendant." *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir. 2005). A plaintiff "can meet this burden by 'establishing with reasonable particularity sufficient contacts between [a defendant] and the forum state to support jurisdiction.' " *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 887 (6th Cir. 2002) (quoting *Provident Nat'l Bank v. Cal. Fed. Sav. Loan Ass'n*, 819 F.2d 434, 437 (3d Cir. 1987)).

ANALYSIS

I. Motion for Conditional Class Certification

The Magistrate Judge has recommended that the Court grant in part and deny in part Canaday's Motion for Certification. The Magistrate Judge reasoned that in applying the personal jurisdiction principles articulated in *Bristol-Myers Squibb Co. v. California*, 137 S.Ct. 1773 (2017), this Court does not have specific personal jurisdiction over any claims against Defendant made by out-of-state putative plaintiffs. The Magistrate Judge concluded that Plaintiff has met her lenient burden at this stage in the case to show that she is similarly situated to the putative class she seeks to represent to the extent she seeks to conditionally certify a collective consisting of any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40)

hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016. The Magistrate Judge therefore recommended that this Court issue an order:

> 1. conditionally certifying a collective action including-any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016;
>
> 2. requiring Anthem to disclose each putative plaintiff's: (1) name, (2) job title, (3) last known address, (4) last known personal email address, (5) dates of employment, and (6) location(s) of employment in an electronic and importable format within such time frame as determined by the Court;
>
> 3. requiring the parties to submit joint proposed notice or separate proposed notices, with support for their differing positions, for the Court's consideration within fourteen (14) days of the Court's order or such other deadline as the Court deems appropriate;

4. authorizing the notice via first-class mail and email only.

Plaintiff objected to the Magistrate Judge's Report and Recommendation, arguing that *Bristol-Myers* does not apply to collective actions under the FLSA. Plaintiff contends that the court need only look at the named Plaintiff for purposes of personal jurisdiction. Plaintiff also objected to the Magistrate Judge's denying the use of a reminder notice.

A. Application of *Bristol-Myers*

As a threshold inquiry, the Court must first determine whether it may exercise personal jurisdiction over potential plaintiffs' claims. Defendant does not dispute that this court has personal jurisdiction over claims by potential plaintiffs that work for Defendant in Tennessee. However, Defendant contends that pursuant to *Bristol-Myers Squibb Co. v. California*, 137 S.Ct. 1773, 1781 (2017), this Court does not have specific personal jurisdiction over the out-of-state putative plaintiffs' FLSA claims.[3] *See Rafferty v. Denny's, Inc.*, No. 5:18-cv-2409, 2019 WL 2924998 at *7 (N.D. Ohio July 8, 2019); *Turner v. UtiliQuest, LLC*, No. 3:18-cv-00294 (M.D. Tenn. July 16, 2019); *Maclin v. Reliable Reports of Tex., Inc.*, 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018); *Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 62

[3] There is no dispute that this Court does not have general jurisdiction over Defendant, as it is incorporated in and has its principal place of business in Indiana.

(D. Mass. 2018). However, Plaintiff argues that *Bristol-Myers* is inapplicable to collective actions under the FLSA. *See Mason v. Lumber Liquidators, Inc.*, No. 17-CV-4780 (MKB) (RLM), 2019 WL 3940846 at *7, (E.D.N.Y. Aug. 19, 2019); *Garcia v. Peterson*, 319 F. Supp. 3d 863, 880 (S.D. Tex. 2018); *Hickman v. TL Transp., LLC*, 317 F. Supp. 3d 890, 899 n.2 (E.D. Pa. 2018); *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780 at *2 (N.D. Cal. Nov. 10, 2017).

Specific jurisdiction arises from or is related to a defendant's contacts with the forum state. *Intera Corp. v. Henderson*, 428 F.3d 605, 615 (6th Cir. 2005).

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state. Second, *the cause of action must arise from the defendant's activities there.* Finally, the acts of defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Means v. United States Conf. Catholic Bishops, 836 F.3d 643, 649 (6th Cir. 2016) (emphasis added) (quoting *Southern Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968)). "Failure to meet any one of the three prongs means that personal jurisdiction may not be invoked." *Maclin*, 314 F. Supp. 3d at 849–50. In 2017, the Supreme

Court of the United States decided *Bristol-Myers*, a consolidated products liability action brought pursuant to state law by individual plaintiffs, filed in California state court. The Court held that, regarding out-of-state plaintiffs, "specific jurisdiction is confined to adjudication of issues deriving from, or connect with, the very controversy that establishes jurisdiction. *Bristol-Myers*, 137 S.Ct. 1773, 1778 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011)). Therefore, the Court held that the Due Process Clause of the Fourteenth Amendment precluded California from exercising jurisdiction over nonresident plaintiffs' claims because the claims did not arise from the defendant's activity within California. *Bristol-Myers*, 137 S.Ct. at 1780–84. The Court explicitly left "open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." *Id.* at 1783.

As illustrated by the parties' arguments, District Courts across the country are split on whether *Bristol-Myers* applies to FLSA collective actions. Some courts liken potential plaintiffs in an FLSA action to members of a class action, while others hold them more akin to individual plaintiffs and apply *Bristol-Myers.*

Courts that have declined to apply *Bristol-Myers* to FLSA collective actions reason that opt-in plaintiffs are more like members of a class action.[4]

[4] Plaintiff here states specific differences between FLSA collective members and individual mass tort litigants: (1) "the

"Most district court cases since *Bristol-Myers* have held that that case does *not* apply in the federal class action context." *Turner v. Utiliquest, LLC*, No. 3:18-cv-00294, 2019 WL 7461197 (M.D. Tenn. July 16, 2019) (emphasis in original) (citing *Swinter Group, Inc. v. Service of Process Agents, Inc.*, No. 4:17-CV-2759, 2019 WL 266299, at * 2–3 (E.D. Mo. Jan. 18, 2019); *Leppert v. Champion Petfoods USA, Inc.*, No. 18 C 4347, 2019 WL 216616, at * 4 (N.D. Ill. Jan. 16, 2019)). These courts also reason that applying *Bristol-Myers* in these cases 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 employees' rights." *Swamy*, 2017 WL 5196780 at *2.

On the other hand, courts that have applied *Bristol-Myers* to FLSA collective actions reason that opt-in plaintiffs are more like individual plaintiffs. These courts have reasoned that out-of-state opt-in plaintiffs in an FLSA collective action have even less of a connection to the forum than the out-of-state plaintiffs in the *Bristol-Myers mass tort action*. *See, e.g., Maclin*, 314 F. Supp. 3d at 850. The Middle District of Tennessee recently joined

FLSA's 'similarly situated' standard is 'less stringent than Rule 20(a)'s requirement that claims arise out of the same action or occurrence for joinder to be proper[;]' " (2) FLSA opt-in plaintiffs may provide representative evidence at trial rather than engaging in individualized discovery and proof at trial; (3) mass tort plaintiffs must effectuate service of summons on defendants in order to bring a claim, rather than the consent-to-join form required for FLSA opt-in plaintiffs. (ECF No. 66 at p. 10.)

the faction of District Courts that apply *Bristol-Myers* to FLSA collective actions. *Turner v. Utiliquest, LLC*, No. 3:18-cv-00294, 2019 WL 7461197 (M.D. Tenn. July 16, 2019). The court held that "FLSA collective actions are not the same as class actions" and that "opt-in" plaintiffs are more like individual plaintiffs than members of a Rule 23 certified class. *Id.* at *3. The court finds that this approach is correct.

Having reviewed the Magistrate Judge's report and recommendation *de novo* and Plaintiff's objections to the report, this court finds good cause to adopt the Magistrate Judge's recommendation to apply *Bristol-Myers*. Because Defendant is not subject to general jurisdiction in Tennessee, the exercise of personal jurisdiction in this case requires each opt-in plaintiff to demonstrate that her claim arose from or is sufficiently related to Defendant's conduct/activity within Tennessee. The record does not demonstrate that any of the putative out-of-state plaintiffs' wages were in any way related to Defendant's activities in Tennessee. This Court, thus, does not have personal jurisdiction over any out-of-state potential plaintiffs. Therefore, this Court **ADOPTS** the Magistrate Judge's recommendation and Plaintiff's Motion for Conditional Certification is **DENIED IN PART** with respect to out-of-state potential plaintiffs.

B. Conditional Certification of a Collective of Putative In-State Plaintiffs

The Court must now determine whether the named Plaintiff has shown that she is similarly situated to the putative class of Tennessee plaintiffs she seeks to represent. Having reviewed the Magistrate Judge's Report and Recommendation *de novo*, with no objection having been made to this recommendation, the Court finds good cause to **GRANT IN PART** Plaintiff's Motion to Conditionally Certify with respect to in-state putative plaintiffs. Canaday claims she and other Medical Management Nurses were wrongfully classified as exempt under the FLSA and wrongfully denied overtime payments. Plaintiff has discharged her lenient burden to show how she is similarly situated to the other Anthem employees she seeks to represent. The named Plaintiff as well as the opt-in Plaintiffs have shown through the pleadings and their supporting declarations that their "claims are unified by common theories of [Anthem's] statutory violations." *Monroe v. FTS USA, LLC*, 860 F.3d 389, 398 (6th Cir. 2017).

Therefore, the Magistrate Judge's recommendation to certify conditionally the collective action is **ADOPTED**, and Plaintiffs' Amended Motion to Certify is **GRANTED IN PART**. The Court hereby certifies this case as a collective action with the putative class defined as follows:

> any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical

> Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016.

C. Reminder Notice to Putative Class

Finally, this Court must address Plaintiff's objection regarding the reminder notice. The Magistrate Judge recommended that this Court decline to authorize a reminder notice, as it could be construed as encouraging putative plaintiffs to join this action. *See, e.g.*, *Davis v. Colonial Freight Systems, Inc.*, No. 3:16-CV-674-TRM-HBG, 2018 WL 2014548, at *3–4 (E.D. Tenn. Apr. 30, 2018). Plaintiff contends that because courts within the Sixth Circuit have allowed reminder notices, this recommendation is in error. However, this Court will employ a clearly erroneous standard of review for recommendations regarding notice. This Court finds that the Magistrate Judge's recommendation is not clearly erroneous, as reminder notices are duplicative and unnecessary. *See id.* Therefore, Plaintiff's objection on this point is overruled, and the Magistrate Judge's recommendation is **ADOPTED**.

II. Motion to Dismiss

For the reasons discussed above, this Court **GRANTS** Defendant's partial Motion to Dismiss

claims by out-of-state opt-in plaintiffs Latrice Gainey, Mary Bishop, and Patrice LeFlore.[5] This Court does not have personal jurisdiction over claims by out-of-state opt-in plaintiffs. In their Declarations, none of these opt-in plaintiffs establish that their claims claim arose from or are sufficiently related to Defendant's conduct/activity within Tennessee. Mary Bishop worked for Defendant out of her home in Saint Louis, Missouri, and reported to Defendant's office in Chicago, Illinois. (ECF No. 36-6 at p. 2.) Latrice Gainey worked for Defendant out of her home in Conyers, Georgia, and reported to Defendant's office in Atlanta, GA. (ECF No. 36-6 at p. 8.) Patrice LeFlore worked out of her home in Atlanta, Georiga, and reported to Defendant's office in Atlanta, Georgia. (ECF No. 36-6 at p. 14.) Therefore, this Court does not have personal jurisdiction over their claims. Defendant's Motion to Dismiss is **GRANTED** and claims by opt-in plaintiffs Latrice Gainey, Mary Bishop, and Patrice LeFlore are **DISMISSED** without prejudice.

CONCLUSION

Plaintiff's Amended Motion to Certify is **GRANTED IN PART AND DENIED IN PART**. The court hereby orders as follows:

(1) The court authorizes this case to proceed as a collective action of a putative class defined as follows:

[5] The Court limits its holding to the three out-of-state opt-in plaintiffs enumerated in Defendant's Motion to Dismiss.

> Any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016;

(2) Defendant will disclose each putative plaintiff's (1) name, (2) job title, (3) last known address, (4) last known personal email address, (5) dates of employment, and (6) location(s) of employment in an electronic and importable format within 21 days of the entry of this order;

(3) Counsel for the parties are to confer and file a mutually acceptable notice, or in the alternative separate proposals for the notice, with support for their differing positions, for the Court's consideration within 14 days of the entry of this order;

(4) Once the Court has approved the form of the notice, the notice shall be mailed (at Plaintiff's expense) via first-class mail and email to each putative plaintiff so each can assess their claims on a timely basis as part of this litigation.

Further, Defendant's Motion to Dismiss is **GRANTED**, and claims by Plaintiffs Latrice

Gainey, Mary Bishop, and Patrice LeFlore are **DISMISSED** without prejudice.

IT IS SO ORDERED.

s/ **S. Thomas Anderson**
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: February 3, 2020.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

LAURA CANADAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 1:19-cv-
	)	01084-STA-jay
THE ANTHEM	)	
COMPANIES, INC.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

On September 9, 2019, the Plaintiff, Laura Canaday,[1] filed a Motion for Conditional Collective Action Certification and Court-Authorized Notice (Docket Entry ("D.E.") 36), a Memorandum of Law in Support (D.E. 36-1), and a bevy of other supporting documents (D.E. 36-2 to D.E. 36-12).[2] Canaday seeks conditional certification of a collective action under the Fair Labor Standards

[1] Hereinafter referenced as "Canaday."

[2] Hereinafter referenced collectively as "Motion for Certification."

Act ("FLSA"). (D.E. 36-1, PageID 121.) On October 16, 2019, the Defendant, the Anthem Companies, Inc.,[3] filed a Response in Opposition (D.E. 53) and a host of other supporting documents (D.E. 53-1 to D.E. 53-9). [4] Canaday, after receiving leave of Court, filed a Reply (D.E. 57) and supporting documents (D.E. 57-1 to 57-3).[5] Subsequently, Chief United States District Court Judge S. Thomas Anderson referred the Motion for Certification to the undersigned for a Report and Recommendation. (D.E. 38.) For the reasons set forth below, I recommend that Canaday's Motion for Certification be granted in part and denied in part.

Proposed Findings of Fact

Canaday and the putative plaintiffs work for Anthem and/or Anthem's subsidiaries. Canaday and the putative plaintiffs are categorized as "Medical Management Nurses." [6] Canaday's primary responsibility is to conduct utilization/medical necessity reviews. (D.E. 36-5, PageID 152-53, ¶¶ 5-6.) The type of utilization/medical necessity reviews conducted by Canaday and the other putative plaintiffs differs

[3] Hereinafter referenced as "Anthem."
[4] Hereinafter referenced collectively as "Response."
[5] Hereinafter referenced collectively as "Reply."
[6] Initially, Plaintiff sought to include Medical Management Nurses, Utilization Review Nurses, Nurse Reviewers, and Nurse Review Associates as putative members of the collective. However, after Defendant filed its Reply, Plaintiff agreed to limit the putative members to employees assigned to the "Medical Management Nurse job family." (D.E. 57, PageID 457-58.)

depending on their employment assignment. (D.E. 54-4, PageID 398-99, ¶¶ 7-10.) For example, some Medical Management Nurses conduct inpatient reviews, some conduct outpatient reviews, and some conduct subacute reviews. (*Id.*, PageID 388, 400-01, ¶¶ 7, 15,18)

As part of such reviews, Medical Management Nurses apply standardized guidelines, standardized criteria, and Anthem's policies and procedures. (D.E. 36-5, PageID 153, ¶ 7.) The type of guideline used by a Medical Management Nurses is based upon the type of review they are conducting. (D.E. 53-4, PageID 401, ¶ 18.) For example, Medical Management Nurses apply Milliman's Care guidelines when reviewing inpatient procedures or conditions and InterQual guidelines when reviewing sub-acute services (Id.)

Anthem acknowledges that, between October 10, 2016, and October 11, 2019, it has employed 2,575 people as Medical Management Nurses. (D.E. 53-1, PageID 347-48, ¶¶ 4-7.) These Medical Management Nurses work across the country with "fewer than 100" working in Tennessee. (*Id.*, ¶ 7.) Other than 100 nurses working in "Post Service Clinical Claim Review," all Medical Management Nurses are classified as exempt under the FLSA. (*Id.*, PageID 347, ¶ 6.)

Canaday works from home in Tennessee. (D.E. 36-5, PageID 152, ¶ 3.) Canaday asserts that although she works overtime hours, she does not receive overtime pay. (D.E. 36-5, PageID 153, ¶¶

12-3.) She also claims that "other Utilization Management Review Nurses" do not receive overtime pay. (*Id.*, PageID 154, ¶ 15.) Canaday seeks conditional certification of "All persons who worked as Medical Management Nurses who were paid a salary and treated as exempt from overtime laws and were primarily responsible for performing medical necessity reviews for [Anthem] at any time since three years prior to filing this Complaint." (D.E. 57, PageID 457-458.)

Standard

Section 216(b) of the FLSA provides:

> An Action [under *§ 206*] 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 on 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.A. § 216(b). Collective actions under the FLSA require putative members to opt into the class. *O'Brien v. Ed Donnelly Enters., Inc.*, 575 F.3d 567, 583 (6th Cir. 2009), *abrogated on other grounds by Campbell-Ewald Co. v. Gomez*, 136 S.

Ct. 663 (2016). Also, in contrast to Rule 23 class actions, an FLSA collective action is not subject to the numerosity, commonality, typicality, and representativeness requirements of a traditional *Rule 23* class action. *Whalen v. United States*, 85 Fed. Cl. 380, 383 (2009).

Plaintiffs in a FLSA collective action must demonstrate that they are "similarly situated." *29 U.S.C.A. § 216(b)*; *O'Brien*, 575 F.3d at 583. Under the FLSA, putative members "whose causes of action under the FLSA accrued at about the time and place and in the approximate manner of the named plaintiff would be similarly situated and can opt into the action." *Miklos v. Golman-Hayden Companies, Inc.*, No. 2:99-CV-1279, 2000 WL 1617969, at *1 (S.D. Ohio, Oct. 24, 2000).

When an FLSA action is based on a defendant's unified and allegedly illegal policy, courts may "conditionally certify" a collective at the early stages of discovery. *See O'Brien*, 575 F.3d at 585-86. This occurs before all plaintiffs have received notice and is based on representations contained in the pleadings and affidavits that the defendant employs a unified policy that has resulted in FLSA violations to all putative members. *See id.* (requiring, at a minimum, an allegation that each putative class member suffered from an FLSA violation); *Pacheco v. Boar's Head Provisions Co., Inc.*, 671 F. Supp. 2d 957, 959, 961 (W.D. Mich. 2009) (noting that there must be allegations that potential plaintiffs were victims of a common plan, but that, at the conditional

certification stage, these allegations can be contained in the pleadings and affidavits of named parties). As Judge Mays explained:

> Several courts have recognized that the named plaintiff's burden at this stage is not a heavy one. *White v. MPW Indus. Servs.*, 236 F.R.D. 363, 367 (E.D. Tenn. 2006); *Swallows v. City of Brentwood, Tenn.*, 2007 U.S. Dist. LEXIS 61130, 2007 WL 2402735, at *2 (M.D. Tenn. Aug. 20, 2007). "[T]he burden of proof is relatively slight at this stage of the case because the Court is not making a substantive determination on the basis of all the evidence but simply adopting a procedure which permits notice to be given to other potential class members." *McDonald v. Madison Township Bd. of Township Trustees*, [2007 WL 2916397, at *2], 2007 U.S. Dist. LEXIS 76450, at *6 (S.D. Ohio Oct. 5, 2007).

Frye v. Baptist Mem'l Hosp., Inc., 2008 WL 6653632, *4, 2008 U.S. Dist. LEXIS 107139, *12-13, (W.D. Tenn. Sept. 16, 2008).

The Sixth Circuit Court of Appeals has also recognized:

> Courts typically bifurcate certification of FLSA collective action cases. At the

> notice stage, conditional certification may be given along with judicial authorization to notify similarly situated employees of the action. *Id.* Once discovery has concluded, the district court—with more information on which to base its decision and thus under a more exacting standard—looks more closely at whether the members of the class are similarly situated.

Monroe v. FTS USA, LLC, 860 F.3d 389, 397 (6th Cir. 2017), cert. denied, 138 S. Ct. 980, 200 L. Ed. 2d 248 (2018). Therefore, at the notice stage, the plaintiff must show that "his position is similar, not identical, to the positions held by the putative class members." *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546-47 (6th Cir. 2006) (quoting *Pritchard v. Dent Wizard Int'l Corp.*, 210 F.R.D. 591, 595 (S.D. Ohio 2002)). Because this determination is made using a "fairly lenient" standard, the Sixth Circuit has recognized that it "typically results in conditional certification of a representative class." *Comer*, 454 F.3d at 547 (quoting *Morisky v. Pub. Serv. Elec. & Gas Co.*, 111 F. Supp. 2d 493, 497 (D.N.J. 2000)). While differences in the factual and employment conditions of each of the collective members may preclude final collective certification, such an analysis is best reserved for the second stage of the certification process. *See Bentz v. UC Synergetic, LLC*, No. 2:16-cv-2700-SHL-egb, 2018 WL 4677786 at *3 (W.D. Tenn. Sept. 28, 2018) (citing *Hoffman v. Kohler Co.*, No. 2:15-cv-01263-

STA-egb, 2017 WL 3865656 at *6 (W.D. Tenn. Aug. 30, 2017)). Finally, trial courts should "not resolve factual disputes or make credibility determinations at the conditional certification stage." *Hayes v. Butts Foods, Inc.*, No. 1:18-cv-01235, 2019 WL 4317644, at *3 (W.D. Tenn. Sept. 11, 2019).

Proposed Conclusions of Law

I conclude: (I) the Court does not have jurisdiction to certify an FLSA collective including putative out-of-state plaintiffs, (II) the Court should conditionally certify a collective for putative in-state plaintiffs, (III) the Court should require Anthem to provide names and contact information for the putative plaintiffs, (IV) the parties should submit a revised proposed notice, and (V) the Court should only authorize notice via first-class mail and electronic mail ("email").

I. The Court cannot exercise jurisdiction over the out-of-state plaintiffs in this FLSA collective action.

Anthem contends that pursuant to *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1781, 198 L.Ed.2d 395 (2017)[7], this Court does not have jurisdiction over the FLSA claims of out-of-state putative plaintiffs. Anthem relies upon the decision of several district courts within the Sixth Circuit to support this argument.[8]

[7] Hereinafter "*Bristol-Myers*."

[8] Defendant relies upon: *Rafferty v. Denny's, Inc.*, No. 5:18-cv-2409, 2019 WL 2924998 at *7 (N.D. Ohio July 8, 2019),

On the other hand, Canaday, citing other district courts throughout the country, contends that *Bristol-Myers* is inapplicable to collective actions under the FLSA.[9]

Neither the United States Supreme Court nor the United States Sixth Circuit Court of Appeals have explicitly addressed whether *Bristol-Myers* applies to collective actions under the FLSA or other collective/class actions based upon federal law. Similarly, this appears to be an issue of first impression for the United States District Court for the Western District of Tennessee. With this lack of controlling precedent concerning the applicability of *Bristol-Myers* to FLSA collective actions in mind, I look to *Bristol-Myers* itself and the decisions of other district courts to reach a conclusion in this case.

A. Bristol-Myers

In *Bristol-Myers*, the United States Supreme Court held that it violates the Due Process Clause

Maclin v. Reliable Reports of Tex., Inc., 314 F. Supp. 3d 845, 850 (N.D. Ohio 2018), and *Turner v. UtiliQuest, LLC*, No. 3:18-cv-00294, 2019 WL 7461197 *6 (M.D. Tenn. July 16, 2019), all courts within the Sixth Circuit, and *Roy v. FedEx Ground Package Sys., Inc.*, 353 F. Supp. 3d 43, 62 (D. Mass. 2018), a court within the First Circuit.

[9] Canaday cites cases such as: *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780 at *2 (N.D. Cal. Nov. 10, 2017), *Garcia v. Peterson*, 319 F. Supp. 3d 863, 880 (S.D. Tex. 2018), *Mason v. Lumber Liquidators, Inc.*, No. 17-CV-4780 (MKB) (RLM), 2019 WL 3940846 at *7, (E.D.N.Y. Aug. 19, 2019), *Hickman v. TL Transp., LLC.*, 317 F. Supp. 3d 890, 899 n.2 (E.D. Pa. 2018).

of the Fourteenth Amendment for a state court to exercise specific jurisdiction over the claims of nonresidents, when such claims did not arise from the defendant's activity within that state. 137 S.Ct. at 1781-84. The *Bristol-Myers* plaintiffs consisted of 86 California residents and 592 residents from other states. *Id.* at 1778. The plaintiffs initiated mass action lawsuits in California Superior Court against Bristol-Myers Squibb Company ("BMS") asserting state law claims of products liability, misleading advertising, and negligent misrepresentation for BMS's manufacturing and distribution of Plavix, a prescription blood thinner. *Id.*

However, BMS was incorporated in Delaware and its principal operations were in New Jersey and New York. *Id.* at 1777-78. Additionally, 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.* at 1778. Therefore, BMS argued that the California state courts lacked personal jurisdiction over the claims of the nonresident plaintiffs. *Id.*

Ultimately, the United States Supreme Court agreed with BMS explaining that "specific jurisdiction is confined to adjudication of issues deriving from, or connect with, the very controversy that establishes jurisdiction." *Id.* (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011))

(internal punctuation omitted). The Court's restriction on the exercises of specific jurisdiction was explicitly motivated by the federalism interests surrounding the "territorial limitations on the power of the respective States." *Bristol-Myers*, 137 S.Ct. at 1780 (citing *Hansen v. Denckla*, 357 U.S. 235, 251, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)) (internal punctuation omitted). Therefore, the Court held that the Due Process Clause of the Fourteenth Amendment precluded California state courts from exercising jurisdiction over the nonresident plaintiffs' claims because the claims did not arise from BMS's activity within California. *Bristol-Myers*, 137 S.Ct. at 1780-84. Finally, the Court expressly declined to decide whether the Fifth Amendment would impose similar jurisdictional limitations on a federal Court. *Id.* at 1783-84.

B. Application of Bristol-Myers by other federal courts to federal class and collective actions.

As set forth above, the Sixth Circuit has not addressed the applicability of *Bristol-Myers* to Rule 23 class actions or FSLA collective actions. In fact, as of the date of this Report and Recommendation, none of the federal courts of appeal have ruled on this issue. Furthermore, district courts split on the application of *Bristol-Myers* to federal class and collective actions.

1. Courts declining to apply Bristol-Myers

In *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780 at *2 (N.D. Cal. Nov. 10, 2017), the United States District Court for the Northern District of California declined to apply *Bristol-Myers* to an FLSA collective action. The court based its ruling on the fact that the FLSA itself does not limit collective actions to "in-state plaintiffs." *See id.* (citing 29 U.S.C. 216(b)). The court further distinguished the federal FLSA claims from the state law claims in *Bristol-Myers. Id.* Finally, the court explained that applying *Bristol-Myers* to FLSA actions would, "[S]plinter most nationwide collective actions, trespass on the expressed intent of Congress, and greatly diminish the efficacy of FLSA collection actions as a means to vindicate employee's rights." *Id.* Based on those concerns, the court declined to apply *Bristol-Myers*.

Other federal district courts, in declining to apply *Bristol-Myers*, have distinguished state mass tort action lawsuits from federal class action lawsuits. *See, e.g., Casso's Wellness Store & Gym, L.L.C. v. Spectrum Laboratory Products, Inc.*, No. 17-2161, 2018 WL 1377608, at *5-6 (E.D. La. Mar. 19, 2018);[10] *In Re: Chinese-Manufactured Drywall Products Liability Litigation*, Civil Action MDL No. 09-2047, 2017 WL 5971622, at *11-22 (E.D. La. Nov. 30, 2017).[11] In *Casso's* the United States District Court for the Eastern District of Louisiana explained that each of the plaintiff in a mass tort action are named plaintiffs; however, in a federal class action, the plaintiff seeking to represent the

[10] Hereinafter "*Casso's.*"
[11] Hereinafter "*Chinese-Manufactured Drywall.*"

class is the only plaintiff named in the complaint. 2018 WL 1377608, at *5-6. Therefore, the court reasoned that only the named plaintiff's claims were relevant for the purposes of personal jurisdiction. *Id.* Finally, the court also noted that there are additional due process safeguards for defendants in federal class actions because of the certification requirements set forth in Federal Rule of Civil Procedure 23. *Id.*

In *Sanchez v. Launch Technical Workforce Solutions, LLC*, 297 F.Supp.3d 1360, 1363-67 (N.D. Ga. 2018)[12], the United States District Court for the Northern District of Georgia followed the same approach as the *Casso's* court. However, the *Sanchez* court went a step further by finding that, unlike in *Bristol-Myers*, there were no federalism concerns with respect to a federal court exercising jurisdiction over a nationwide class. *Id.* at 1366-67. Finally, the *Sanchez* court noted that (1) *Bristol-Myers* explicitly declined to address personal jurisdiction restrictions on federal courts and (2) reaffirmed existing due-process law. *Id.* at 1364, 1369. Therefore, the court declined to apply *Bristol-Myers* to a federal nationwide class action and denied the motion to dismiss non-resident class members. *Id.* at 1362-69.

2. Courts applying Bristol-Myers

[12] In *Sanchez*, the District Court Judge adopted the Magistrate Judge's Report and Recommendation as the opinion of the Court. 297 F.Supp.3d at 1362.

On the other hand, some courts have explicitly held that the *Bristol-Myers* does apply to federal class and/or collective actions. *See, e.g., Maclin v. Reliable Reports of Texas Inc.*, 314 F. Supp.3d 845, 850-51 (N.D. Ohio 2018) ("[T]he Court cannot envisage that the Fifth Amendment Due Process Clause would have any more or less effect on the outcome respecting FLSA claims than the Fourteenth Amendment Due Process Clause, and this district court will not limit the holing in *Bristol-Myers* to mass tort claims or state courts."); *Roy v. FedEx Ground Package System, Inc.*, 353 F.Supp.3d 43, 52-62 (D. Mass 2018); *In re Dental Supplies Antitrust Litigation*, No. 16 Civ. 696 (BMC)(GRB), 2017 WL 4217115, *9 (E.D.N.Y. Sept. 20, 2017). In applying *Bristol-Myers* to federal class actions, the United States District Court for the Eastern District of New York noted "the constitutional requirements of due process does not wax and wane when the complaint is individual or on behalf of class." *In re Dental Supplies Antitrust Litigation*, 2017 WL 4217115, at *9. "Personal jurisdiction in class actions must comport with due process just the same as any other case." *Id.*

In *Roy*, 353 F.Supp.3d at 52-62, the United States District Court for the District of Massachusetts provided an in-depth and compelling analysis of this issue. The court recognized that, pursuant to the Fifth Amendment's Due Process Clause, a federal court may exercise personal jurisdiction in federal question cases based upon a defendant's minimum contacts with the United States as a whole rather

than with a particular state. *Id.* However, the court also explained that when the federal statute governing the action does not authorize nationwide service of process, courts look to state law and the Fourteenth Amendment's Due Process Clause for the limits of their personal jurisdiction. *Id.* at 56. Therefore, the *Roy* court reasoned that, because the FLSA does not authorize nationwide service of process, the Fifth Amendment did not dictate the parameters of due process in its FLSA case. *Id.*

The *Roy* court then explained that, whether presented in a class action or otherwise, due process requires a connection between the forum and specific claims at issue. *Id.* The court also explained its view that the federalism concerns raised by *Bristol-Myers* preclude nationwide class actions in forum where the defendant is not subject to general jurisdiction. *Id.* Distinguishing the pending FLSA collective action from other federal class actions, the court noted that, "[T]he opt-in plaintiffs in an FLSA collective action are more analogous to the individual plaintiffs who were joined as parties in *Bristol-Myers* and the named plaintiffs in putative class actions than to members of a Rule 23 certified class." *Id.* at 59-62. Therefore, the court applied *Bristol-Myers* and declined to issue notice to putative collective members who did not work within Massachusetts. *Id.* at 62.

The United States District Court for the Middle District of Tennessee recently adopted the rationale behind *Roy*. *See Turner v. Utiliquest, LLC*, No. 3:18-cv-00294, 2019 WL 7461197 (M.D.

Tenn. July 16, 2019)[13]. The court held that "opt-in" plaintiffs in FLSA cases are more akin to the individual plaintiffs in mass tort actions. *Id.* Therefore, the court applied *Bristol-Myers* and held that it did not have jurisdiction over the non-Tennessee plaintiffs in an FLSA case. *Id.*

C. Application of Bristol-Myers to this case.

Bristol-Myers does apply to FLSA collective actions. For the reasons articulated in *Roy*, I am convinced that *Bristol-Myers* requires courts to have personal jurisdiction over all opt-in plaintiffs in a FLSA collective action. Like many of the judges and magistrate judges to address this issue, I have concerns about the practical implications of applying *Bristol-Myers* to FLSA collective actions. However, these policy concerns do not obviate my duty and obligation to follow what appears to be binding Supreme Court precedent.

Because Anthem is not subject to general jurisdiction in Tennessee, pursuant to *Bristol-Myers*, the exercise of personal jurisdiction in this case requires each opt-in plaintiff to demonstrate that her claim arose from or is sufficiently related to Anthem's conduct/activity within Tennessee. The record does not demonstrate that any of the putative out-of-state plaintiff's wages were in any way related to Anthem's activities in Tennessee.

[13] This case is not currently accessible on Westlaw or Lexis. However, Defendant filed a copy of the decision. (*See* D.E. 58, PageID 435-447.)

Therefore, I recommend that the District Court deny the Canaday's Motion for Conditional Certification to the extent she seeks to include out-of-state plaintiffs in her collective.

II. The Court should conditionally certify a collective including putative in-state plaintiffs.

Employing the lenient standard applicable to conditional certification prior to discovery, I conclude that Canaday has made a "modest factual showing" that she is similarly situated to the putative in-state plaintiffs. In reaching this decision, I do not rely on the affidavits of the putative out-of-state plaintiffs. Instead, I rely upon Canaday's Affidavit and Anthem's own filings.

In essence, Canaday claims she and other Medical Management Nurses were wrongfully classified as exempt under the FLSA and wrongfully denied overtime payments. Anthem does not dispute that Canaday and other in-state Medical Management Nurses were classified as exempt under the FLSA or that for some Medical Management Nurses their primary responsibility was performing medical necessity reviews. Similarly, Anthem does not appear to dispute that, at times, Canaday and other in-state Medical Management Nurses worked in excess of forty (40) hours a week without overtime compensation. Instead, Anthem contends it properly classified Medical Management Nurses as exempt under the FLSA and Medical Management Nurses day-to-day

activities differ to such an extent that they cannot be considered "similarly situated." Anthem's arguments are unpersuasive.

At this initial certification stage, the Court "does not resolve factual disputes, decide substantive issues going to the ultimate merits, or make credibility determinations." *See Brasfield v. Source Broadband Services, LLC*, 257 F.R.D. 641, 642-43 (W.D. Tenn. 2009); *see also Hughes v. Gulf Interstate Field Services, Inc.*, No. 2:14-cv-000432, 2015 WL 4112312, at * 4 (S.D. Ohio July 7, 2015) ("[D]etermination of whether Plaintiffs and others similarly situated qualify as exempt employees under the FLSA is a merits determination that will be considered at the second phase of certification, not at this initial conditional inquiry.") Here, as in *Hughes*, Anthem's contention regarding the propriety of classifying its Medical Management Nurses as exempt under the FLSA is also a merits determination. Therefore, this contention does not provide a sufficient basis for denying Canaday's request for conditional certification, and it must be reserved for the second certification stage.

Similarly, "Conditional certification is not the time to strictly evaluate the factual differences and details of the purported class members." *See Bentz*, 2018 WL 4677786 at * 3. Instead, while such differences may prevent sustained certification, they "are better reserved for the second stage of the certification evaluation." *Id.* Therefore, Anthem's arguments concerning how its Medical Management Nurses receive different levels of

supervision, apply different guidelines and standards to their reviews, and use different systems are also unpersuasive at this initial certification stage.

Accordingly, I recommend that the Court grant Canaday's Motion for Certification (D.E. 36) to the extent she seeks to conditionally certify a collective consisting of–any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016.[14]

[14] Absent a willful violation by the employer, the statute of limitations for an FLSA claim is two years. *See Archer v. Nabors Truck Service, Inc.*, No. 16-cv-02610-JTF-tmp, 2018 WL 6574796, at *6 (W.D. Tenn. Oct. 12, 2018), *report and recommendation adopted at* 2:16-cv-2610-MSN-tmp, 2019 WL 2070424 (W.D. Mar. 15, 2019) However, if the violation is willful the statute of limitations is three years. *Id.*

Here, Canaday's Complaint alleges that Anthem engaged in willful violations of the FLSA. (D.E. 1, PageID 5, 7, ¶¶ 33, 41) and her Motion for Certification is based upon the three-year statute of limitations. In its Response, Anthem has not addressed the applicability of the two-or three-year statute of limitations. Additionally, at the conditional certification stage, other courts have utilized the three-year period. *See Archer*, 2018 WL 6574796, at *6. Accordingly, at this juncture, I recommend that the Court conditionally certify the collective for up to three years prior to the filing of the Complaint.

III. The Court should require Anthem to provide Canaday some of the requested information for the putative plaintiffs.

Canaday requests an order directing Anthem to provide a list of each putative plaintiff's: (1) name, (2) job title, (3) last known address, (4) last known personal email address, (5) dates of employment, (6) location(s) of employment, (7) employee identification number, and (8) social security number (last four digits only). (D.E. 36-1, PageID 139.) The Court may require employers to release mailing lists in collective actions. *See Archer v. Nabors Truck Service, Inc.*, No. 16-cv-02610-JTF-tmp, 2018 WL 6574796, at *7 (W.D. Tenn. Oct. 12, 2018), *report and recommendation adopted at* 2:16-cv-2610-MSN-tmp, 2019 WL 2070424 (W.D. Mar. 15, 2019.) However, Canaday has not demonstrated a need for the putative plaintiffs' social security or employee identification numbers. Therefore, I do not believe that it is currently appropriate or necessary to require disclosure of the such information. *See Archer*, 2018 WL 6574796, at *7. Accordingly, I recommend that the Court order Anthem to disclose each putative plaintiff's: (1) name, (2) job title, (3) last known address, (4) last known personal email address, (5) dates of employment, and (6) location(s) of employment in an electronic and importable format within such time frame as determined by the Court.

IV. The Court should order the parties to submit a revised proposed notice.

Canaday's original proposed notice is addressed to:

> Any individual who works or worked for the Anthem Companies, Inc., or for one of its subsidiary companies, as a Utilization Review Nurse, Medical Management Nurse, Nurse Reviews, Nurse Reviewer Associate, or in another similar position [Three years prior to the date Notice is Sent] to the present.

However, if the Court adopts this Report and Recommendation, the collective will be limited to:

> Any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016.

Therefore, if the Court adopts the other portions of this Report and Recommendation, the parties should be directed to file a joint proposed notice or separate proposed notices, with support for their

differing positions, for the Court's consideration within fourteen (14) days of the Court's order or such other deadline as the Court deems appropriate.[15]

V. The Court should only authorize notice via first-class mail and email.

Notice in an FSLA case is routinely distributed via first-class mail and email. *See Archer*, 2018 WL 6574796, at *7.) However, when authorizing and approving FLSA notices, courts must avoid encouraging putative plaintiffs to take specific action. *See Wlotkowski v. Michigan Bell Telephone Co.*, 267 F.R.D. 213, 220 (E.D. Mich. 2010). Therefore, some courts refuse to authorize reminder notices or notice via a defendant's own communications system. *See Davis v. Colonial Freight Systems, Inc.*, No. 3:16-CV-674-TRM-HBG, 2018 WL 2014548, at * 3-4 (E.D. Tenn. Apr. 30, 2018) (refusing to authorize reminder notice and/or use of the defendant's own communication system); *but see Kidd v. Mathis Tire & Auto Serv., Inc.*, No. 2:14-cv-02298-JPM-dkv, 2014 WL 4923004, at *3 (W.D. Tenn. Sept. 18, 2014) (authorizing a reminder notice due to the remedial purpose of the FLSA.)

In this case, I conclude that first-class mail and email are sufficient for providing notice to the putative plaintiffs. Therefore, the Court should decline to order the Defendant to post the notice on

[15] The parties joint proposed notice or separate notices should also include a proposed duration for the opt-in period.

its own intranet. Additionally, I conclude that Canaday's proposed reminder notice could be construed as encouraging putative plaintiffs to join this action. Therefore, I recommend that the Court decline to authorize a reminder notice.

Recommendation

For the foregoing reasons, I respectfully recommend that the Court grant in part and deny in part Canaday's Motion for Certification (D.E. 36) by issuing an order:

- conditionally certifying a collective action including-any individual who: (1) worked/works in Tennessee for the Anthem Companies, Inc. (or one of its subsidiaries) in the Medical Management Nurse Family, (2) was/is paid a salary, (3) was/is treated as exempt from overtime laws, (4) worked/works over forty (40) hours during an week, and (5) was/is primarily responsible for performing medical necessity reviews at any time since May 7, 2016;

- requiring Anthem to disclose each putative plaintiff's: (1) name, (2) job title, (3) last known address, (4) last known personal email address, (5) dates of employment, and (6) location(s) of employment in an electronic and importable format within such time frame as determined by the Court;

- requiring the parties to submit joint proposed notice or separate proposed notices, with

support for their differing positions, for the Court's consideration within fourteen (14) days of the Court's order or such other deadline as the Court deems appropriate;

- authorizing the notice via first-class mail and email only.

Respectfully submitted this the 3d day of January, 2020.

s/Jon A. York
United States Magistrate Judge

IF DESIRED, AN APPEAL OF THIS REPORT AND RECOMMENDATION TO THE PRESIDING DISTRICT COURT JUDGE MUST BE FILED WITHIN FOURTEEN (14) DAYS OF THE SERVICE OF A COPY OF THIS REPORT AND RECOMMENDATION. *SEE* 28 U.S.C. § 636(b)(1)(C); LOCAL RULE 72(g)(2). FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.

APPENDIX D

No. 20-5947

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAURA CANADAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
Plaintiff-Appellant,	)	ORDER
v.	)	
THE ANTHEM COMPANIES, INC.,	)	
Defendant-Appellee.	)	

BEFORE: SUTTON, Chief Judge; McKEAGUE and DONALD, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Donald would grant rehearing for the reasons stated

* Judge White recused herself from participation in this ruling.

in her dissent.

ENTERED BY ORDER OF THE COURT

s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX E

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 F

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 G

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 H

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 I: DISTRICT COURT DECISIONS ADDRESSING THE QUESTION PRESENTED

Case Citation	**Prevailing Party**
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