

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

<b>Jonathan Wolfe and Margaret</b>	)	
<b>Heklowski, on behalf of themselves</b>	)	
<b>and other similarly situated employees,</b>	)	
<b>Plaintiffs,</b>	)	<b>Case. No. 16 C 11663</b>
v.	)	
	)	<b>Judge Ronald A. Guzmán</b>
<b>TCC Wireless, LLC,</b>	)	
<b>Defendant.</b>	)	

**ORDER**

For the reasons stated below, Plaintiffs’ motion for conditional certification [42] is granted. The Court directs the parties to meet in person within 10 days of the date of entry of this order to discuss the form of notice and consent. They are directed to make every effort to resolve their differences without further court involvement. Within 2 days of the meeting, Plaintiffs shall file a status report indicating whether an agreement has been reached on the form of notice and consent and, if not, identifying what disputes remain. The Court will then issue an appropriate order after reviewing Plaintiffs’ status report.

**STATEMENT**

Plaintiffs allege that TCC Wireless, LLC (“TCC”), which owns and operates T-Mobile retail stores, improperly classified Managers and Assistant Managers as exempt employees, then required them to work in excess of 40 hours per week without overtime pay in violation of the Fair Labor Standards Act (“FLSA”). Plaintiffs seek conditional certification for a collective action of “[a]ll salaried Managers and Assistant Managers who worked at any of Defendant’s T-Mobile retail stores in the prior three (3) years.” (Pls.’ Reply, Dkt. # 48, at 1 n.2.)

“The Fair Labor Standards Act authorizes collective actions by employees on behalf of ‘similarly situated’ employees.” *DeKeyser v. Thyssenkrupp Waupaca, Inc.*, No. 16-2159, 2017 WL 2676765, at \*1 (7th Cir. June 22, 2017) (citing 29 U.S.C. § 216(b)). “The conditional approval process is a mechanism used by district courts to establish whether potential plaintiffs in the FLSA collective action should be sent a notice of their eligibility to participate and given the opportunity to opt in to the collective action.” *Grosscup v. KPW Mgmt., Inc.*, No. 16 C 06501, 2017 WL 2461538, at \*1 (N.D. Ill. June 7, 2017) (citation omitted). “Neither Congress nor the Seventh Circuit has specified the procedure courts should use to decide FLSA certification and notice issues, but collective FLSA actions in this district generally proceed under a two-step process.” *Id.* (citation omitted).

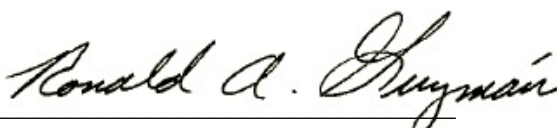
In this, the first step, “plaintiffs have the burden of showing that there are other similarly situated employees who are potential claimants.” *Id.* “[P]laintiffs must make a modest factual

showing sufficient to demonstrate that they and potential plaintiffs together were victims of a common policy or plan that violated the law,” and “[c]ourts use a ‘lenient interpretation’ of the term ‘similarly situated’ in deciding whether plaintiffs meet this burden.” *Id.* In support of their motion for conditional certification, Plaintiffs refer to sworn declarations from ten former retail store managers and assistant managers who worked at nineteen different T-Mobile stores. (Pl.’s Mem. Support Mot. Conditional Cert., Dkt. # 43, Exs. A-J). In these declarations, the former assistant managers and managers state that they were paid a salary, spent almost all of their time working directly with customers performing sales-related (not managerial) tasks, routinely worked over 40 hours a week, and were not paid overtime. (*Id.*)

These affidavits are sufficient to meet the low threshold for conditional certification, despite the fact that there might be differences between the responsibilities of and tasks performed by a manager versus an assistant manager. *See Jirak v. Abbott Labs., Inc.*, 566 F. Supp. 2d 845, 848–49 (N.D. Ill. 2008) (“Plaintiffs do not have to show that the potential class members have *identical* positions for conditional certification to be granted; plaintiffs can be similarly situated for purposes of the FLSA even though there are distinctions in their job titles, functions, or pay.”) (emphasis in original). Therefore, the motion for conditional certification is granted. TCC may raise concerns regarding the lack of similarity between the members of the action at the next step of the certification process.

The parties also dispute certain aspects of the proposed notice of the action and consent forms to be sent to putative opt-in plaintiffs. Plaintiffs indicate in their reply brief that they have made some edits to address certain of TCC’s concerns. Therefore, the Court directs the parties to meet in person within 10 days of the date of entry of this order to discuss the form of notice and consent. They are directed to make every effort to resolve their differences without further court involvement. Within 2 days of the meeting, Plaintiffs shall file a status report indicating whether an agreement has been reached on the form of notice and consent and, if not, identifying what disputes remain. The Court will then issue an appropriate order after reviewing Plaintiffs’ status report.

**Date:** July 12, 2017

  
**Ronald A. Guzmán**  
**United States District Judge**