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

JENNY SHIPTOSKI, et al.,	:	
	:	
Plaintiffs,	:	
v.	:	**3:16-CV-01216**
	:	**(JUDGE MARIANI)**
SMG GROUP, LLC,	:	
	:	
Defendant.	:	

ORDER

AND NOW, THIS 5th **DAY OF MARCH, 2018,** upon de novo review of Magistrate Judge Carlson's Report and Recommendation ("R&R") (Doc. 35), Defendant's Objections thereto (Doc. 36), and all other relevant documents, **IT IS HEREBY ORDERED THAT:**

1. Defendant's Objections (Doc. 36) are **OVERRULED**. Defendant's arguments in support of its objections are completely without merit and run counter to the substantial body of case law within this Circuit correctly summarized by Magistrate Judge Carlson in his R&R (Doc. 35, at 4-6) and recently reiterated in *Cambridge v. Sheetz Inc.*, 2018 U.S. Dist. LEXIS 26256 (M.D. Pa. 2018). To wit:

> Although the statute does not define "similarly situated," "the majority of our circuit's trial courts have required the plaintiff to make a 'modest factual showing,' that the proposed recipients of opt-in notices are similarly situated." [*Symczyk v. Genesis Healthcare Corp.*, 656 F.3d 189, 192 (3d Cir. 2011)] (citing *Wright v. Lehigh Valley Hosp.*, No. Civ. A 10-431, 2010 WL 3363992, at *3-4 (E.D.Pa. Aug. 24, 2010) (canvassing cases)). The "modest factual showing" standard only requires that a plaintiff "produce some evidence, 'beyond pure speculation,' of a factual nexus between the manner in which the employer's alleged policy affected her and the

> manner in which it affected other employees." *Id.* at 193 (quoting *Smith v. Sovereign Bancorp, Inc.*, No. 03-2420, 2003 WL 22701017, at *3 (E.D.Pa. Nov. 13, 2003)). At the first tier, a plaintiff's burden to demonstrate that the named class is similarly situated is "relatively light," *Stainslaw v. Erie Indemnity Co.*, C.A. No. 07-1078, 2009 WL 426641, at *1 (W.D.Pa. Feb. 20, 2009), and "the initial determination usually results in conditional certification." *Woodard v. FedEx Freight East, Inc.*, 250 F.R.D. 178, 191 (M.D.Pa. Feb. 19, 2008).

Cambridge, 2018 U.S. Dist. LEXIS 26256, at * 4-5.

2. The R&R (Doc. 35) is **ADOPTED** for the reasons set forth therein.

3. Plaintiff's Motion for Conditional Certification (Doc. 15) is **GRANTED**.

4. This action is conditionally certified, pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), on behalf of the following collective: All individuals who, during any time within the past three years, were employed by SMG Group, LLC or any of its affiliated companies as salaried Store Managers and classified as overtime-exempt.

5. Within **seven (7) business days** of the entry of this Order, the parties must jointly submit to the Court proposed language for a notification form to be approved by the Court informing all Putative Collective Members of their right to join this action as party plaintiffs. In drafting the proposed notification language, the parties should "be scrupulous to respect judicial neutrality" and "take care to avoid even the appearance of judicial endorsement of the merits of the action." *See Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165, 174 (1989).

6. Within **seven (7) business days after** the entry of this Order, Defendant shall produce to Plaintiff's counsel a spreadsheet (preferably in Excel format) listing the name, last known address, and last known phone number of every individual falling within the collective, as defined in paragraph 4 above.

Robert D. Mariani
United States District Judge