

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SHIRLEY GUZMAN-REINA, on behalf of herself,  
individually, and on behalf of all others similarly-  
situated,

Plaintiff,

-against-

ABCO MAINTENANCE, INC, and JAMES VIRGA,  
individually, THOMAS VIRGA, individually,  
and PETE GHAZARIAN, individually,

Defendants.

Civil Action No.: 17-cv-01299  
(ILG)(PK)

**STIPULATION AND PROPOSED ORDER**

Plaintiff, Shirley Guzman-Reina, (“Plaintiff”), on the one hand, and Defendants, ABCO Maintenance, Inc., James Virga, Thomas Virga, and Pete Ghazarian, (collectively as “Defendants”), on the other hand, (Plaintiff and Defendants, together, as “the parties”), through their respective counsel, hereby stipulate, and the Court hereby orders, that:

1. The First Claim for Relief in Plaintiff’s Complaint (paragraphs 32-38 thereof) shall be conditionally certified pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”), with respect to a collective action consisting of certain individuals employed by the Defendants at any time between March 7, 2014 and the present (“Relevant Period”). Specifically, the parties stipulate to the following collective, which supersedes the definition of the collective stated in paragraph 13 of the Complaint:

Current and former employees of Defendants, who during the applicable FLSA limitations period, performed any work for Defendants as dispatchers, and who consent to file a claim to recover damages for overtime compensation that is legally due to them (the “FLSA Plaintiffs”).

2. Plaintiff's counsel shall distribute the Notice and Opt-In Form attached hereto as **Exhibit A** to the FLSA Plaintiffs via USPS first class mail, email (in accordance with the provisions set forth below), and text message (in accordance with the provisions set forth below), after receiving from Defendants' counsel a full and complete list of the FLSA Plaintiffs' names, all known mailing addresses, all known email addresses, all known cell phone numbers, dates of employment, and for each person identified, all known languages spoken. Defendants' counsel shall provide said information within fourteen days of this stipulation being so-ordered by the Court, in a text searchable format.

3. Further, Plaintiff's counsel is permitted to send a reminder notice, attached hereto as **Exhibit B**, to each FLSA Plaintiff via USPS first class mail, e-mail in the form set forth below, and text message in the form set forth below, on or after thirty days of the original distribution of the Notice and Opt-In Form.

4. Plaintiff reserves the right to make an application to the Court for social security numbers for all individuals whose notice is returned as undeliverable.

5. Plaintiff's counsel is permitted to provide notice in the form of an email attachment sent to FLSA Plaintiffs, in addition to the other forms of notice referenced herein. The email shall have attached the Notice and Opt-In Form, referenced herein as **Exhibit A**, or the Reminder Notice (when applicable), referenced herein as **Exhibit B**, and shall have the following subject line: "COURT AUTHORIZED MESSAGE: Guzman-Reina v. ABCO Maintenance, Inc. et al., Case No.1:17-cv-01299 (ILG)(PK) (E.D.N.Y.)".

6. The body of the initial email shall include the following content, which may, at Plaintiff's option, be translated into any language identified as spoken by any FLSA Plaintiff:

If you worked as a dispatcher for ABCO Maintenance, Inc. at any time between March 7, 2014 and March 5, 2018, you might be entitled to join a lawsuit seeking back pay for overtime wages. For additional information about the case, including how to join, please open and review the attached documents.

THIS ELECTRONIC NOTICE AND ITS CONTENTS ARE NOT SPAM OR A SOLICITATION TO JOIN A LAWSUIT. THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY MAGISTRATE JUDGE PEGGY KUO OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.

7. The reminder email shall contain the same subject line and body, and shall include as an attachment **Exhibit B**.

8. Plaintiff's counsel is also permitted to provide notice in the form of a text message sent to FLSA Plaintiffs, in addition to the other forms of notice referenced herein. The text message shall contain a link to a copy of the Notice and Opt-in Form referenced herein as **Exhibit A**, and the Reminder Notice (when applicable) referenced herein as **Exhibit B**, hosted on Plaintiff's Counsel's website, and shall state in English and any other identified language:

If you worked as a dispatcher for ABCO Maintenance, Inc. at any time between March 7, 2014 and March 5, 2018, you might be entitled to join a lawsuit seeking back pay for overtime wages. For additional information about the case, including how to join, visit [insert URL linking to a copy of the court-authorized notice form and/or the court-authorized reminder notice, when applicable].

THIS ELECTRONIC NOTICE AND ITS CONTENTS ARE NOT SPAM OR A SOLICITATION TO JOIN A LAWSUIT. THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY MAGISTRATE JUDGE PEGGY KUO OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.




9. The Opt-In period shall be a sixty (60) day period commencing the day after Plaintiff's mailing of the original Notice and Opt-In Form. Plaintiff's counsel will advise Defendants' counsel of the day on which this occurs, on the day that it occurs.

10. Plaintiff's counsel is permitted to translate **Exhibits A and B** into the identified language of any FLSA Plaintiff and to distribute **Exhibits A and B** in English and in any identified language. In the event that Plaintiff decides to provide any of the notices or forms in a language other than English, Plaintiff shall provide the translated version to Defendants for review and approval at least three business days prior to sending.

11. Nothing set forth herein shall be construed as a stipulation by Defendants that Plaintiff and the individuals to whom such Notices shall be sent are, in fact, "similarly situated" under the law. Nor shall this stipulation be construed as waiving or impairing Defendants' right to challenge the propriety of proceeding as a collective action and/or the inclusion of any individual who opts into the collective action at the second stage of the two-step procedure endorsed by the Second Circuit for certification of a collective action under the FLSA. *See Myers v. Hertz Corp.*, 624 F.3d 537, 554 (2d Cir. 2010).

By:   
 Jeffrey R. Maguire, Esq.  
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*Attorneys for Plaintiffs*

Dated: February 23, 2018,

By:   
 Michael D. Hamersky, Esq.  
 Griffin Hamersky, LLP  
 420 Lexington Avenue, Suite 400  
 New York, New York 10170  
*Attorneys for Defendants*

Dated: February 23, 2018

SO ORDERED, on 5th day of March, 2018, Brooklyn, New York:

  
 THE HONORABLE PEGGY KUO, U.S.M.J.