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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PAUL MONPLAISIR, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

INTEGRATED TECH GROUP, LLC and
ITG COMMUNICATIONS LLC,

Defendants.

Case No. 3:19-cv-01484-WHA

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR CONDITIONAL
CERTIFICATION AND TO FACILITATE
NOTICE PURSUANT TO 29 U.S.C. §
216(b); MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Judge: Hon. William Alsup
Date: July 25, 2019
Time: 8:00 a.m.
Ctrm.: 12, 19th Floor

Complaint Filed: March 21, 2019
Trial Date: None

PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR CONDITIONAL CERTIFICATION AND TO
FACILITATE NOTICE PURSUANT TO 29 U.S.C. § 216(B); MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF

Monplaisir, et al. v. Integrated Tech Group, LLC, et al., Case No. 3:19-cv-01484-WHA

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and putative Class

1 TO ALL PARTIES AND ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on July 25, 2019, at 8:00 a.m. in Courtroom 12, 19th
3 Floor, before Judge William Alsup of the United States District Court, Northern District of
4 California, Plaintiff Paul Monplaisir (“Plaintiff”) moves the Court, pursuant to 29 U.S.C. § 216(b)
5 of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), for conditional certification to
6 proceed as a collective action and facilitate notice (“Section 216(b) Motion”) to the following
7 proposed collective:

8 All current and former non-exempt hourly employees of Defendants
9 Integrated Tech Group, LLC and ITG Communications LLC working
10 as technicians throughout the United States during the time period
three years prior to the filing of the complaint until resolution of this
action (“Collective” or “Technicians”).

11 This Section 216(b) Motion is based on this notice; the following supporting authority and
12 arguments; the Declaration of Ori Edelstein in Support of Plaintiff’s Motion for Conditional
13 Certification and to Facilitate Notice Under 29 U.S.C. § 216(b); the declarations of the named
14 Plaintiff who has opted in to this case, the declarations of opt-in plaintiffs John Cason, Marcus
15 Byrdie, Sterling Francois, Joel Gauthier, Robenson Jean Pierre, Raphael Parris, Jacky Charles, and
16 Eliezer Vermeille; and any other argument the Court may consider.

17 Accompanying this motion are also: (1) Plaintiff’s Proposed Order Granting Plaintiff’s
18 Motion for Conditional Class Certification and to Facilitate Notice under 29 U.S.C. § 216(b); (2)
19 Plaintiff’s Proposed Notice of Collective Action Lawsuit, attached as Exhibit D to the Edelstein
20 Declaration; (3) Plaintiff’s Proposed Opt-in Consent Form, attached as Exhibit E to the Edelstein
21 Declaration; and (4) Plaintiff’s Proposed short form Notice for facilitation via text message,
22 attached as Exhibit F to the Edelstein Declaration.

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PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR CONDITIONAL CERTIFICATION AND TO
FACILITATE NOTICE PURSUANT TO 29 U.S.C. § 216(B); MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF

Monplaisir, et al. v. Integrated Tech Group, LLC, et al., Case No. 3:19-cv-01484-WHA

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1 such work, thereby violating FLSA record-keeping requirements. These violations occur across
2 ITG’s business – regardless of geographic region, state, or specific location within the state.

3 Under the FLSA, individuals may bring collective actions on behalf of all others “similarly
4 situated.” 29 U.S.C. § 216(b). The FLSA is a remedial statute that uses a two-stage certification
5 process designed to facilitate notice to proposed members of employee collectives so that they may
6 decide at an early stage whether they would like to adjudicate their claims as part of a collective.

7 Plaintiff easily meets the lenient standard used to determine if notice is appropriate to inform
8 potential Opt-In Plaintiffs of their rights. The detailed allegations in the Complaint and the
9 declarations from Technicians who worked in nearly a dozen different locations across four
10 different states and who have all described ITG’s common violations of the FLSA. This is all that
11 is required at this stage.

12 This case is ideally suited for collective action. It involves modest hourly wage earners who
13 do not have the means to individually challenge their employer’s compensation policies. ITG’s
14 Technicians are the kind of workers that the FLSA was designed to protect.¹ To date, over fifty
15 potential Opt-In Plaintiffs who worked in nearly one dozen different ITG locations across eight
16 different states have already submitted consent forms to join the lawsuit. Hundreds of other
17 employees are likely eligible to join this Collective action. These hundreds of other employees,
18 like the proposed Collective members, are similarly situated because they all: (1) are subject to the
19 same illegal compensation and overtime policies regardless of geographic location that violate the
20 FLSA, and (2) have the same job duties, responsibilities, work hours, and compensation.

21 Because there are many other Technicians who may not be aware of this lawsuit or their right
22 to proceed in this forum, Plaintiff respectfully requests that the Court conditionally certify the
23 proposed Collective and direct notice to be sent to the proposed Collective members.

24 ¹ See DANIEL C. LOPEZ, *Collective Confusion: FLSA Collective Actions, Rule 23 Class Actions, and*
25 *the Rules Enabling Act*, 61 HASTINGS L.J. 275, 281 (2009) (citing The Fair Labor Standards Act 3-
26 9 (Ellen C. Kearns et al. eds., 1999) and H.R. Rep. No. 75-2182, at 6 (1937)) (“It was believed that
27 a nationwide statutory floor was needed to ensure humane working conditions for workers on the
lowest rung of the socio-economic ladder and that state laws would be toothless without this federal
floor. Large employers would suppress wages, lower the price of their goods, and ultimately find
a market for those cheap goods in states that attempted to maintain high labor standards.”)).

1 **II. FACTUAL BACKGROUND**

2 **A. ITG Employs Non-Exempt Technicians Across the Country Who Are**
 3 **Subject to Similar Policies and Procedures**

4 ITG is a national fulfillment contractor providing cable and communication equipment
 5 installations on behalf of cable operators throughout the United States.² To carry out its installation
 6 services, ITG employs “Technicians” – who are classified as non-exempt employees.³

7 Plaintiff worked as a Technician for ITG between 2017 and 2018.⁴ Plaintiff and other
 8 Technicians’ duties include, but are not limited to: driving to customer locations; installing cable,
 9 telephone, and internet service; making repairs; troubleshooting; and educating customers.⁵

10 Prior to working as ITG Technicians, Plaintiff and other Technicians are required to attend
 11 an orientation session and field training. Technicians first attend a day-long, mandatory orientation
 12 session in order to familiarize Technicians to ITG’s policies and practices.⁶ Technicians then
 13 accompany an experienced ITG Technician for one to four weeks in order to learn the job
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19 ² See Dkt. No. 39, First Amended Collective and Class Action Complaint (“Pl.’s Compl.”), ¶ 24;
 20 see also ITG homepage, located at <https://i-t-g.net/> (noting “MULTIPLE SERVICE LOCATIONS
 21 NATIONWIDE” in California, Oklahoma, Texas, Alabama, Florida, Tennessee, South Carolina,
 22 Pennsylvania, New York, and Connecticut) (last accessed May 21, 2019).

23 ³ See Pl.’s Compl., ¶¶ 2, 25.

24 ⁴ See Pl.’s Compl., ¶ 17; Declaration of Paul Monplaisir (“Monplaisir Decl.”) ¶3.

25 ⁵ See Pl.’s Compl., ¶ 26; Monplaisir Decl. ¶5; Declaration of John Cason (“Cason Decl.”) ¶5;
 26 Declaration of Marcus Byrdie (“Byrdie Decl.”) ¶5; Declaration of Sterling Francois (“Francois
 27 Decl.”) ¶5; Declaration of Joel Gauthier (“Gauthier Decl.”) ¶5; Declaration of Robenson Jean Pierre
 28 (“Jean Pierre Decl.”) ¶5; Declaration of Raphael Parris (“Parris Decl.”) ¶5; Declaration of Jacky
 Charles (“Charles Decl.”) ¶5; Declaration of Eliezer Vermeille (“Vermeille Decl.”) ¶5. Plaintiff
 and other Technicians are former employees of Defendant. For ease of reading, all facts are
 presented in the present tense for Plaintiff and other Technicians.

⁶ See Pl.’s Compl., ¶¶ 27-28; Monplaisir Decl. ¶25; Cason Decl. ¶25; Byrdie Decl. ¶24; Francois
 Decl. ¶24; Gauthier Decl. ¶25; Jean Pierre Decl. ¶24; Parris Decl. ¶25; Charles Decl. ¶24; Vermeille
 Decl. ¶25.

1 assignments.⁷ Technicians are not compensated for all hours worked during this orientation and
 2 field training.⁸

3 **B. ITG Technicians Perform Similar Duties Regardless of Location**

4 Technicians are required to report to ITG's warehouse on a daily basis.⁹ At the warehouse,
 5 Technicians gather equipment they will need for the day.¹⁰ Technicians must wait in line with the
 6 other Technicians to gather this equipment.¹¹ This pre-shift work is not recorded.¹² Approximately
 7 once per week, Technicians are required to report to the warehouse even earlier so that ITG could
 8 perform inventory check-ins.¹³ This pre-shift work was also not recorded.¹⁴

9 At least once a week, Technicians are also required to attend a mandatory, weekly
 10 performance meeting at the warehouse for thirty minutes to one hour.¹⁵ During this time, ITG
 11 reviews Technicians' installations and productivity – for example, their performance the previous
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16 ⁷ See Pl.'s Compl., ¶¶ 27-28; Monplaisir Decl. ¶26; Cason Decl. ¶26; Byrdie Decl. ¶25; Francois
 17 Decl. ¶25; Gauthier Decl. ¶26; Jean Pierre Decl. ¶25; Parris Decl. ¶26; *see also* Charles Decl. ¶¶25-
 18 26; Vermeille Decl. ¶26.

19 ⁸ See Pl.'s Compl., ¶ 27; Monplaisir Decl. ¶26; Cason Decl. ¶¶25-26; Byrdie Decl. ¶¶24-25;
 20 Francois Decl. ¶¶24-25; Gauthier Decl. ¶26; Jean Pierre Decl. ¶¶24-25; Parris Decl. ¶¶25-26;
 21 Charles Decl. ¶25; Vermeille Decl. ¶¶25-26.

22 ⁹ See Pl.'s Compl., ¶ 30; Byrdie Decl. ¶8; Francois Decl. ¶8; Gauthier Decl. ¶8; Jean Pierre Decl.
 23 ¶8; Parris Decl. ¶8; Charles Decl. ¶8; Monplaisir Decl. ¶8; Cason Decl. ¶8; Vermeille Decl. ¶8.

24 ¹⁰ See Pl.'s Compl., ¶ 30; Byrdie Decl. ¶8; Francois Decl. ¶8; Gauthier Decl. ¶8; Jean Pierre Decl.
 25 ¶8; Parris Decl. ¶8; Charles Decl. ¶8; Monplaisir Decl. ¶8; Cason Decl. ¶8; Vermeille Decl. ¶8.

26 ¹¹ See Pl.'s Compl., ¶ 30; Byrdie Decl. ¶8; Francois Decl. ¶8; Gauthier Decl. ¶8; Jean Pierre Decl.
 27 ¶8; Parris Decl. ¶8; Charles Decl. ¶8; Monplaisir Decl. ¶8; Cason Decl. ¶8; Vermeille Decl. ¶8.

28 ¹² See Pl.'s Compl., ¶ 30; Byrdie Decl. ¶8; Francois Decl. ¶8; Gauthier Decl. ¶8; Jean Pierre Decl.
 ¶8; Parris Decl. ¶8; Charles Decl. ¶8; Monplaisir Decl. ¶8; Cason Decl. ¶8; Vermeille Decl. ¶8.

¹³ See Monplaisir Decl. ¶9; Cason Decl. ¶9; Byrdie Decl. ¶9; Francois Decl. ¶9; Gauthier Decl. ¶9;
 Jean Pierre Decl. ¶9; Parris Decl. ¶9; Charles Decl. ¶9; *see also* Vermeille Decl. ¶9.

¹⁴ See Monplaisir Decl. ¶9; Cason Decl. ¶9; Byrdie Decl. ¶9; Francois Decl. ¶9; Gauthier Decl. ¶9;
 Jean Pierre Decl. ¶9; Parris Decl. ¶9; Charles Decl. ¶9; Vermeille Decl. ¶9.

¹⁵ See Pl.'s Compl., ¶ 31; Monplaisir Decl. ¶10; Cason Decl. ¶10; Byrdie Decl. ¶10; Francois Decl.
 ¶10; Gauthier Decl. ¶10; Jean Pierre Decl. ¶10; Parris Decl. ¶10; Charles Decl. ¶10; Vermeille Decl.
 ¶10.

1 week, including how many jobs were completed, how many callbacks, and reviews from customers.¹⁶ Technicians are not compensated for this pre-shift activity.¹⁷

3 Technicians receive their first job assignments for the day between 6:30 and 7:00 a.m.¹⁸
 4 Technicians' first job of the day is typically scheduled for 8:00 a.m.¹⁹ Technicians are generally
 5 assigned six to fifteen jobs per day.²⁰ Most jobs take between one and four hours to complete,
 6 however, some jobs can take an entire day.²¹ Each job involves different work and can present
 7 unforeseen situations requiring additional work time.²²

8 Regardless, ITG expects and schedules a maximum of 2 hours to complete each job.²³
 9 Oftentimes, ITG schedules more than one job during a two-hour period, forcing Technicians to run
 10 behind schedule and work extra hours each day to complete all the assigned jobs – for example,
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 12

13 ¹⁶ See Pl.'s Compl., ¶ 31; Monplaisir Decl. ¶10; Cason Decl. ¶10; Byrdie Decl. ¶10; Francois Decl.
 14 ¶10; Gauthier Decl. ¶10; Jean Pierre Decl. ¶10; Parris Decl. ¶10; Charles Decl. ¶10; Vermeille Decl.
 ¶10.

15 ¹⁷ See Pl.'s Compl., ¶ 31; Monplaisir Decl. ¶10; Cason Decl. ¶10; Byrdie Decl. ¶10; Francois Decl.
 16 ¶10; Gauthier Decl. ¶10; Jean Pierre Decl. ¶10; Parris Decl. ¶10; Charles Decl. ¶10; Vermeille Decl.
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17 ¹⁸ See Pl.'s Compl., ¶ 29; Monplaisir Decl. ¶¶6-11; Cason Decl. ¶¶6-11; Byrdie Decl. ¶¶6-11;
 18 Francois Decl. ¶¶6-11; Gauthier Decl. ¶¶6-11; Jean Pierre Decl. ¶¶6-11; Parris Decl. ¶¶6-11;
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19 ¹⁹ See Pl.'s Compl., ¶ 32; Monplaisir Decl. ¶¶6-11; Cason Decl. ¶¶6-11; Byrdie Decl. ¶¶6-11;
 20 Francois Decl. ¶¶6-11; Gauthier Decl. ¶¶6-11; Jean Pierre Decl. ¶¶6-11; Parris Decl. ¶¶6-11;
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21 ²⁰ See Pl.'s Compl., ¶ 32; Monplaisir Decl. ¶¶6-11; Cason Decl. ¶¶6-11; Byrdie Decl. ¶¶6-11;
 22 Francois Decl. ¶¶6-11; Gauthier Decl. ¶¶6-11; Jean Pierre Decl. ¶¶6-11; Parris Decl. ¶¶6-11;
 Charles Decl. ¶¶6-11; Vermeille Decl. ¶¶6-12.

23 ²¹ See Pl.'s Compl., ¶ 34; Monplaisir Decl. ¶¶6-11; Cason Decl. ¶¶6-11; Byrdie Decl. ¶¶6-11;
 24 Francois Decl. ¶¶6-11; Gauthier Decl. ¶¶6-11; Jean Pierre Decl. ¶¶6-11; Parris Decl. ¶¶6-11;
 Charles Decl. ¶¶6-11; Vermeille Decl. ¶¶6-12.

25 ²² See Pl.'s Compl., ¶ 34; Monplaisir Decl. ¶¶11-15; Cason Decl. ¶¶11-15; Byrdie Decl. ¶¶11-15;
 26 Francois Decl. ¶¶11-15; Gauthier Decl. ¶¶11-15; Jean Pierre Decl. ¶¶11-15; Parris Decl. ¶¶11-15;
 Charles Decl. ¶¶11-15; Vermeille Decl. ¶¶12-16.

27 ²³ See Pl.'s Compl., ¶ 34; Monplaisir Decl. ¶11; Cason Decl. ¶11; Byrdie Decl. ¶11; Francois Decl.
 ¶11; Gauthier Decl. ¶11; Jean Pierre Decl. ¶11; Parris Decl. ¶11; Charles Decl. ¶11; Vermeille Decl.
 ¶12.

1 Technicians are often required to assist other Technicians, yet these additional jobs completed are
2 not reflected in Technicians' pay.²⁴

3 Once a Technician completes one job, they drive to their next job.²⁵ These trips can take up
4 to an hour depending on traffic.²⁶ ITG does not accurately capture all drive time when
5 compensating Technicians.²⁷ Additionally, during the course of the day, ITG often adds or removes
6 Technicians' job assignments, even after the Technicians drove to and reported to the customer's
7 home – Technicians time spent driving to these customer's home or any time waiting for the
8 assigned job to return is not recorded.²⁸

9 C. ITG Technicians' Work Similar Schedules Regardless of Location

10 This work schedule requires Technicians to work long hours. Technicians typically work
11 five to seven days per week, and ten to sixteen hours per day.²⁹ A major portion of this time,
12 however, goes unreported or is outright eliminated from Technicians' compensation. ITG
13 systematically pressures Technicians to underreport their hours, and threatens to – and in fact does
14 – unilaterally change Technician time records.³⁰ Indeed, Technician supervisors instruct

15
16 ²⁴ See Pl.'s Compl., ¶ 34; Monplaisir Decl. ¶¶11-13; Cason Decl. ¶¶11-13; Byrdie Decl. ¶¶11-13;
17 Francois Decl. ¶¶11-13; Gauthier Decl. ¶¶11-13; Jean Pierre Decl. ¶¶11-13; Parris Decl. ¶¶11-13;
18 Charles Decl. ¶¶11-13; Vermeille Decl. ¶¶12-14.

19 ²⁵ See Pl.'s Compl., ¶ 33; Monplaisir Decl. ¶15; Byrdie Decl. ¶15; Francois Decl. ¶15; Gauthier
20 Decl. ¶16; Jean Pierre Decl. ¶15; Parris Decl. ¶15; Charles Decl. ¶15; Vermeille Decl. ¶16.

21 ²⁶ See Pl.'s Compl., ¶ 33; Monplaisir Decl. ¶15; Byrdie Decl. ¶15; Francois Decl. ¶15; Gauthier
22 Decl. ¶16; Jean Pierre Decl. ¶15; Parris Decl. ¶15; Charles Decl. ¶15; Vermeille Decl. ¶16.

23 ²⁷ See Pl.'s Compl., ¶ 33; Monplaisir Decl. ¶¶6-15, 28-29; Cason Decl. ¶¶6-15, 28-29; Byrdie Decl.
24 ¶¶6-16, 28-29; Francois Decl. ¶¶6-16, 28-29; Gauthier Decl. ¶¶6-16, 29-30; Jean Pierre Decl. ¶¶6-
25 15, 28-29; Parris Decl. ¶¶6-15, 29-30; Charles Decl. ¶¶6-15, 28-29; Vermeille Decl. ¶¶6-16, 28-29.

26 ²⁸ See Monplaisir Decl. ¶¶11-14; Cason Decl. ¶¶11-14; Byrdie Decl. ¶¶11-14; Francois Decl. ¶¶11-
27 14; Gauthier Decl. ¶¶11-14; Jean Pierre Decl. ¶¶11-14; Parris Decl. ¶¶11-14; Charles Decl. ¶¶11-
28 14; Vermeille Decl. ¶12-15.

29 ²⁹ See Pl.'s Compl., ¶¶ 5, 36-37; Monplaisir Decl. ¶17; Cason Decl. ¶17; Byrdie Decl. ¶17; Francois
30 Decl. ¶17; Gauthier Decl. ¶18; Jean Pierre Decl. ¶17; Parris Decl. ¶17; Charles Decl. ¶17; Vermeille
Decl. ¶18.

31 ³⁰ See Pl.'s Compl., ¶¶ 5, 38-44, 50; Monplaisir Decl. ¶¶6-15, 27-29; Cason Decl. ¶¶6-15, 27-30;
32 Byrdie Decl. ¶¶6-16, 26-29; Francois Decl. ¶¶6-16, 26-29; Gauthier Decl. ¶¶6-16, 27-30; Jean
33 Pierre Decl. ¶¶6-15, 26-29; Parris Decl. ¶¶6-15, 27-30; Charles Decl. ¶¶6-15, 26-29; Vermeille
Decl. ¶¶6-16, 27-30.

1 Technicians to reduce their hours, and encourage Technicians to report fewer hours than those
2 worked.³¹

3 As a natural consequence of Technicians' overwhelming workload, and ITG's constant
4 pressure to complete all daily job assignments, they are systematically denied the ability to take
5 meal breaks.³² ITG Supervisors encouraged Technicians to work through meal break periods.
6 However, despite the fact that Technicians continue to work during the purported meal break, ITG
7 requires Technicians to falsely document that they took a thirty-minute meal break.³³ If Technicians
8 do not document that they took a thirty-minute meal break, ITG often alters their time sheets to
9 show a thirty-minute meal break, whether the Technician took a thirty-minute meal period or not.³⁴
10 Technicians' time spent working during these thirty-minute meal periods – meal periods that rarely,
11 in fact, occur – is not recorded and results in off-the-clock work.³⁵

12 **D. Technicians' Compensation Is Not Received Free and Clear**

13 Technicians' pay – undercompensated as it already is – is also not given unconditionally,
14 free and clear of unlawful kickbacks to ITG.³⁶ ITG does not supply Technicians with all the tools

15
16 ³¹ See Pl.'s Compl., ¶¶ 5, 41, 44, 50; Monplaisir Decl. ¶¶6-15, 27-29; Cason Decl. ¶¶6-15, 27-29;
17 Byrdie Decl. ¶¶6-16, 26-29; Francois Decl. ¶¶6-16, 26-29; Gauthier Decl. ¶¶6-16, 27-30; Jean
18 Pierre Decl. ¶¶6-15, 26-29; Parris Decl. ¶¶6-15, 27-30; Charles Decl. ¶¶6-15, 26-29; Vermeille
19 Decl. ¶¶6-16, 27-30.

20 ³² See Pl.'s Compl., ¶¶ 5, 43-47; Monplaisir Decl. ¶¶18-21; Cason Decl. ¶¶18-21; Byrdie Decl.
21 ¶¶18-20; Francois Decl. ¶¶18-20; Gauthier Decl. ¶¶19-21; Jean Pierre Decl. ¶¶18-20; Parris Decl.
22 ¶¶18-21; Charles Decl. ¶¶18-20; Vermeille Decl. ¶¶19-21.

23 ³³ See Pl.'s Compl. ¶¶ 5, 43-47; Monplaisir Decl. ¶¶18-21, 27-29; Byrdie Decl. ¶¶18-20, 26-29;
24 Francois Decl. ¶¶18-20, 26-29; Gauthier Decl. ¶¶19-21, 27-30; Jean Pierre Decl. ¶¶18-20, 26-29;
25 Parris Decl. ¶¶18-21, 27-30; Charles Decl. ¶¶18-20, 26-29; Vermeille Decl. ¶¶19-21, 27-30.

26 ³⁴ See Pl.'s Compl. ¶¶ 5, 43-47; Monplaisir Decl. ¶¶18-21, 27-29; Cason Decl. ¶¶18-21, 27-29;
27 Byrdie Decl. ¶¶18-20, 26-29; Francois Decl. ¶¶18-20, 26-29; Gauthier Decl. ¶¶19-21, 27-30; Jean
28 Pierre Decl. ¶¶18-20, 26-29; Parris Decl. ¶¶18-21, 27-30; Charles Decl. ¶¶18-20, 26-29; Vermeille
Decl. ¶¶19-21, 27-30.

³⁵ See Pl.'s Compl., ¶¶ 43-47; Monplaisir Decl. ¶¶18-21, 27-29; Cason Decl. ¶¶18-21, 27-29; Byrdie
Decl. ¶¶18-20, 26-29; Francois Decl. ¶¶18-20, 26-29; Gauthier Decl. ¶¶19-21, 27-30; Jean Pierre
Decl. ¶¶18-20, 26-29; Parris Decl. ¶¶18-21, 27-30; Charles Decl. ¶¶18-20, 26-29; Vermeille Decl.
¶¶19-21, 27-30.

³⁶ See 29 C.F.R. § 531.35 (wages must be paid "free and clear" of any kickbacks, which include
employees' purchase of tools as required by the employer to perform the employer's work).

1 necessary to complete the jobs assigned, nor does ITG reimburse the Technicians for tools and
 2 supplies purchased by the Technicians.³⁷ To perform their basic job duties, Technicians purchase
 3 their own gasoline, tools and equipment, such as cellphones, drills, screwdrivers, wrenches, drill
 4 bits, clothing, gloves, and knee pads.³⁸ Technicians are required to spend up to \$300 in fuel
 5 expenses per week, and up to \$1,000 in work-related expenses for tools and equipment per year.³⁹

6 Alternatively, Technicians are forced to enter ITG's payment program, which allows
 7 Technicians to obtain the necessary tools and equipment to complete the jobs assigned by ITG, but
 8 takes a correlated dollar amount out of the Technicians' paycheck.⁴⁰ ITG charges Technicians in
 9 the payment plan more for tools and supplies than if they purchase their own tools and supplies at
 10 a hardware store.⁴¹ ITG even charged Technicians who did not agree to participate in the payment
 11 plan and deducted from their paychecks.⁴² ITG also routinely deducts the costs of equipment from
 12 Technicians' compensation by labelling the deductions as "lost" equipment and supplies, regardless
 13 of whether they are returned.⁴³

14
 15 ³⁷ See Pl.'s Compl., ¶ 7; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-34;
 16 Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-35;
 17 Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

18 ³⁸ See Pl.'s Compl., ¶¶ 7-9, 52; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-
 19 34; Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-
 20 35; Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

21 ³⁹ See Pl.'s Compl., ¶ 52; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-34;
 22 Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-35;
 23 Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

24 ⁴⁰ See Pl.'s Compl., ¶ 7; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-34;
 25 Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-35;
 26 Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

27 ⁴¹ See Pl.'s Compl., ¶ 7; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-34;
 28 Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-35;
 Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

⁴² See Pl.'s Compl., ¶ 7; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-34;
 Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-35;
 Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

⁴³ See Pl.'s Compl., ¶¶ 52-53; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-
 34; Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-
 35; Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

1 **E. ITG’s Technician Compensation Model Results In Systemic Wage Violations**

2 Under ITG’s compensation structure, ITG provides Technicians with a job code for each
3 discrete task they complete.⁴⁴ Each job code corresponds to a dollar amount that the Technician is
4 to be paid for completing that task.⁴⁵ It is ITG’s policy and practice to delete or alter codes that
5 Technicians have submitted for completed job tasks, and ITG further pressures Technicians to omit
6 completed tasks.⁴⁶ ITG thus underpays Technicians by pressuring them to omit code entries for
7 tasks they completed.⁴⁷

8 It is also ITG’s policy and practice to either underreport⁴⁸ or refuse to track Technicians’
9 hours worked – thereby further underpaying Technicians for their hours worked – for: orientation
10 and training;⁴⁹ pre-shift work;⁵⁰ meal periods, if any;⁵¹ additional time, beyond two hours, spent on
11

12 ⁴⁴ See Pl.’s Compl., ¶¶ 40-50; Monplaisir Decl. ¶¶27-29; Cason Decl. ¶¶27-30; Byrdie Decl. ¶¶26-
13 29; Francois Decl. ¶¶26-29; Gauthier Decl. ¶¶27-30; Jean Pierre Decl. ¶¶26-29; Parris Decl. ¶¶27-
30; Charles Decl. ¶¶26-29; Vermeille Decl. ¶¶27-30.

14 ⁴⁵ See Pl.’s Compl., ¶¶ 49-50; Monplaisir Decl. ¶¶27-29; Cason Decl. ¶¶27-30; Byrdie Decl. ¶¶26-
15 29; Francois Decl. ¶¶26-29; Gauthier Decl. ¶¶27-30; Jean Pierre Decl. ¶¶26-29; Parris Decl. ¶¶27-
30; Charles Decl. ¶¶26-29; Vermeille Decl. ¶¶27-30.

16 ⁴⁶ See Pl.’s Compl., ¶ 48-51; Monplaisir Decl. ¶¶27-29; Cason Decl. ¶¶27-30; Byrdie Decl. ¶¶26-
17 29; Francois Decl. ¶¶26-29; Gauthier Decl. ¶¶27-30; Jean Pierre Decl. ¶¶26-29; Parris Decl. ¶¶27-
30; Charles Decl. ¶¶26-29; Vermeille Decl. ¶¶27-30.

18 ⁴⁷ See Pl.’s Compl., ¶¶ 48-56; Monplaisir Decl. ¶¶27-29; Cason Decl. ¶¶27-30; Byrdie Decl. ¶¶26-
19 29; Francois Decl. ¶¶26-29; Gauthier Decl. ¶¶27-30; Jean Pierre Decl. ¶¶26-29; Parris Decl. ¶¶27-
30; Charles Decl. ¶¶26-29; Vermeille Decl. ¶¶27-30.

20 ⁴⁸ See Pl.’s Compl., ¶¶ 5, 38-42, 44, 50; Monplaisir Decl. ¶¶6-15, 27-29; Cason Decl. ¶¶6-15, 27-
21 30; Byrdie Decl. ¶¶6-16, 26-29; Francois Decl. ¶¶6-16, 26-29; Gauthier Decl. ¶¶6-16, 27-30; Jean
Pierre Decl. ¶¶6-15, 26-29; Parris Decl. ¶¶6-15, 27-30; Charles Decl. ¶¶6-15, 26-29; Vermeille
Decl. ¶¶6-16, 27-30.

22 ⁴⁹ See Pl.’s Compl., ¶ 27; Monplaisir Decl. ¶26; Cason Decl. ¶¶25-26; Byrdie Decl. ¶¶24-25;
23 Francois Decl. ¶¶24-25; Gauthier Decl. ¶26; Jean Pierre Decl. ¶¶24-25; Parris Decl. ¶¶25-26;
Charles Decl. ¶25; Vermeille Decl. ¶¶25-26.

24 ⁵⁰ See Pl.’s Compl., ¶¶ 30-31; Monplaisir Decl. ¶¶6-15, 28-29; Cason Decl. ¶¶6-15, 29-30; Byrdie
25 Decl. ¶¶6-16, 28-29; Francois Decl. ¶¶6-16, 28-29; Gauthier Decl. ¶¶6-16, 29-30; Jean Pierre Decl.
¶¶6-15, 28-29; Parris Decl. ¶¶6-15, 29-30; Charles Decl. ¶¶6-15, 28-29; Vermeille Decl. ¶¶6-16,
29-30.

26 ⁵¹ See Pl.’s Compl., ¶¶ 43-47; Monplaisir Decl. ¶¶18-21; Cason Decl. ¶¶18-21; Byrdie Decl. ¶¶18-
27 20; Francois Decl. ¶¶18-20; Gauthier Decl. ¶¶19-21; Jean Pierre Decl. ¶¶18-20; Parris Decl. ¶¶18-
21; Charles Decl. ¶¶18-20; Vermeille Decl. ¶¶19-21.

1 completing jobs;⁵² and drive time to and between job assignments.⁵³ Further, ITG does not
2 reimburse Technicians for work-related expenses.⁵⁴

3 Through this compensation system, Technicians are systematically denied the wages to
4 which they are due and entitled. As a result, Technicians are routinely denied minimum wage and
5 overtime compensation.⁵⁵

6 III. ARGUMENT

7 A. Legal Standard for Conditional Certification and Facilitation of Notice 8 Under the FLSA

9 The FLSA is a remedial statute that permits employees to bring a collective action on behalf
10 of themselves and other employees similarly situated. 29 U.S.C. § 216(b); *Tennessee Coal Iron &*
11 *R. Co., v. Muscoda Local No. 123*, 321 U.S. 590, 597-98 (1944); *see also Ramirez v. Ghilotti Bros.*
12 *Inc.*, 941 F. Supp. 2d 1197, 1202-03 (N.D. Cal. 2013). The FLSA’s purpose is to “eliminate” unfair
13 labor practices. 29 U.S.C. § 202(a)(b). It prohibits “customs and contracts which allow an
14 employer to claim all of an employee’s time while compensating him for only a part of it” and
15 provides employees a private right of action to recover their unpaid wages. *Tennessee Coal Iron*
16 *& R. Co.*, 321 U.S. at 602.

17 While the Ninth Circuit has not formally prescribed the standard for managing FLSA
18 collective actions, it recently recognized the applicability of the “two-step approach.” *Campbell v.*
19

20 ⁵² See Pl.’s Compl., ¶ 34; Monplaisir Decl. ¶¶6-15, 28-29; Cason Decl. ¶¶6-15, 29-30; Byrdie Decl.
21 ¶¶6-16, 28-29; Francois Decl. ¶¶6-16, 28-29; Gauthier Decl. ¶¶6-16, 29-30; Jean Pierre Decl. ¶¶6-
15, 28-29; Parris Decl. ¶¶6-15, 29-30; Charles Decl. ¶¶6-15, 28-29; Vermeille Decl. ¶¶6-16, 29-30.

22 ⁵³ See Pl.’s Compl., ¶ 33; Monplaisir Decl. ¶¶6-15, 28-29; Byrdie Decl. ¶¶6-16, 28-29; Francois
23 Decl. ¶¶6-16, 28-29; Gauthier Decl. ¶¶6-16, 29-30; Jean Pierre Decl. ¶¶6-15, 28-29; Parris Decl.
¶¶6-15, 29-30; Charles Decl. ¶¶6-15, 28-29; Vermeille Decl. ¶¶6-16, 29-30.

24 ⁵⁴ See Pl.’s Compl., ¶¶ 7-9, 52; Monplaisir Decl. ¶¶30-34; Cason Decl. ¶¶31-35; Byrdie Decl. ¶¶30-
25 34; Francois Decl. ¶¶30-34; Gauthier Decl. ¶¶31-35; Jean Pierre Decl. ¶¶30-34; Parris Decl. ¶¶31-
35; Charles Decl. ¶¶30-34; Vermeille Decl. ¶¶31-35.

26 ⁵⁵ See Pl.’s Compl., ¶¶ 48, 55-56; Monplaisir Decl. ¶¶6-15, 28-29; Cason Decl. ¶¶6-15, 29-30;
27 Byrdie Decl. ¶¶6-16, 28-29; Francois Decl. ¶¶6-16, 28-29; Gauthier Decl. ¶¶6-16, 29-30; Jean
28 Pierre Decl. ¶¶6-15, 28-29; Parris Decl. ¶¶6-15, 29-30; Charles Decl. ¶¶6-15, 28-29; Vermeille
Decl. ¶¶6-16, 29-30.

1 *City of Los Angeles*, 903 F.3d 1090 (9th Cir. 2018); *see also Daniels v. Aeropostale W., Inc.*, 2013
2 WL 1758891, at *2 (N.D. Cal. Apr. 24, 2013) (Alsup, J.) (applying the two-step approach to FLSA
3 collective actions). The first step in the two-tiered approach requires the Court to determine whether
4 the Plaintiff is “similarly situated” and whether notice of the action should be given to potential
5 opt-in plaintiffs. *Daniels*, 2013 WL 1758891, at *2. The Court’s determination is “typically
6 focused on a review of the pleadings but may sometimes be supplemented by declarations or limited
7 other evidence.” *Campbell*, 903 F.3d at 1109; *see also Luethold v. Destination Am., Inc.*, 224
8 F.R.D. 462, 467 (N.D. Cal. 2004) (explaining that the Court’s analysis at this early juncture is
9 “based primarily on the pleadings and any affidavits submitted by the parties”).

10 The first stage of the two-step analysis – where this case is currently situated – is commonly
11 referred to as the “conditional certification” stage, where the court conditionally certifies the
12 collective, making a preliminary determination that plaintiffs are similarly situated and authorizes
13 notice to a potential class of the opportunity to opt into the suit. *See, e.g., See Guilbaud v.*
14 *Sprint/United Mgmt. Co., Inc.*, 2014 WL 10676582 at *1 (N.D. Cal. Oct. 3, 2014). The Ninth
15 Circuit recently clarified the “similarly situated” standard: “[p]arty plaintiffs are similarly situated,
16 and may proceed in a collective, to the extent they share a similar issue of law or fact material to
17 the disposition of their FLSA claims.” *Campbell*, 903 F.3d. at 1117.⁵⁶

18 “The initial notice stage determination uses a ‘lenient [standard] that typically results in
19 certification.’” *Ramirez*, 941 F. Supp. 2d at 1203 (quoting, *Lewis v. Wells Fargo & Co.*, 669 F.
20 Supp. 2d 1124, 1128 (N.D. Cal. 2009)); *see also, Guilbaud*, 2014 WL 10676582 at *1 (N.D. Cal.
21 Oct. 3, 2014) (“Although certification is not automatic, the plaintiffs’ burden is nonetheless a light
22 one”); *Brown v. Permanente Med. Grp.*, 2017 WL 1536493 at *1 (N.D. Cal. Feb. 2, 2017) (“This
23 ‘fairly lenient standard’ typically results in conditional certification being granted”); *Benedict v.*
24 *Hewlett-Packard Co.*, 2014 WL 587135, at *6-7 (N.D. Cal. 2014) (finding that the lenient standard

25 _____
26 ⁵⁶ In clarifying the “similarly situated” inquiry, the Ninth Circuit rejected the extent to which the
27 prior “ad hoc” standard contemplated a district court’s assessment of “fairness and procedural
28 considerations” when determining whether collective members were “similarly situated.”
Campbell, 903 F.3d. at 1117.

1 applied even though defendant produced “over 50,000 pages of documents and three Rule 30(b)(6)
2 witnesses” because “discovery is not yet complete.”). As the Ninth Circuit recently articulated, the
3 required showing is “loosely akin to a plausibility standard,” *Campbell*, 903 F. 3d at 1109, and the
4 “sole consequence of a successful motion . . . is the sending of court-approved written notice to
5 workers who may wish to join the litigation as individuals.” *Id.* at 1101 (quotation marks and
6 citations omitted). Indeed, the standard is minimal because requiring a “higher evidentiary hurdle”
7 at the first stage of certification would frustrate the purpose of the FLSA by “precluding employees
8 who have suffered the same illegal treatment by an employer from prosecuting one action more
9 efficiently and economically than would be possible with numerous individual claims.” *Carter v.*
10 *Anderson Merchandisers*, 2008 WL 2783193, at *2 (C.D. Cal. July 10, 2008).

11 At the second stage of the analysis, which usually occurs after the close of discovery, the
12 party opposing certification may move to decertify the class. *Hernandez v. United Auto Credit*
13 *Corp.*, 2010 WL 1337702, at *2 (N.D. Cal. Apr. 2, 2010). It is at this subsequent stage, and upon a
14 developed record, where the Court engages in a more rigorous analysis of the “similarly situated”
15 inquiry. *Id.*

16 **B. This Case Should Be Conditionally Certified and Notice Should Be**
17 **Authorized Because The Proposed Collective Is Similarly Situated**

18 This case is at the “lenient” first stage of conditional proceedings. “Under this lenient
19 standard,” Plaintiff merely must show that there is “some factual basis beyond the mere averments
20 in [the] complaint for the class allegations.” *Escobar v. Whiteside Const. Corp.*, No. C 08-01120
21 WHA, 2008 WL 3915715, at *4 (N.D. Cal. Aug. 21, 2008) (Alsup, J.) (internal citations omitted);
22 *see also Adams v. Inter-Con Sec. Systems, Inc.*, 242 F.R.D. at 536 (ND Cal. 2007) (granting
23 conditional certification even where Defendants submitted sworn declarations contradicting the
24 plaintiffs’ declarations, which could “later negate plaintiffs’ claims.”).

25 The pleadings as well as the declarations submitted in support of conditional certification
26 demonstrate that the proposed collective is similarly situated. “Party plaintiffs are similarly
27 situated, and may proceed in a collective, to the extent they share a similar issue of law or fact

1 material to the disposition of their FLSA claims.” *Campbell*, 903 F.3d. at 111. If a plaintiff “makes
 2 a plausible showing that such a similarity exists, the district court should grant first-stage
 3 certification.” *Campanelli v. Image First Healthcare Laundry Specialists, Inc.*, No. 15-CV-04456-
 4 PJH, 2018 WL 6727825, at *6 (N.D. Cal. Dec. 21, 2018).

5 In cases like this one, District Courts, including those in this District, typically exercise their
 6 discretion to permit collective actions to proceed.⁵⁷ The Complaint, numerous declarations
 7 submitted with this motion, and the opt-in consent forms on file with the Court provide far more
 8 support than necessary for conditional certification. *See Guilbaud*, 2014 WL 10676582 at *1 (N.D.
 9 Cal. Oct. 3, 2014) (noting declarations attesting to common types of unlawful conduct is sufficient
 10 for conditional certification purposes); *Brown*, 2017 WL 1536493 at *2 (N.D. Cal. Feb. 2, 2017)
 11 (same); *Escobar*, 2008 WL 3915715, at *4 (same); *see also, Misra v. Decision One Mortg. Co.,*
 12 *LLC*, 673 F. Supp. 2d 987, 996 (C.D. Cal. 2008) (“The consistency of the statements in the various
 13

14
 15 ⁵⁷*See, e.g., Daniels v. Aeropostale W., Inc.*, 2013 WL 1758891, at *3–4 (N.D. Cal. Apr. 24, 2013)
 16 (Alsup, J.) (conditionally certifying a nationwide collective of non-exempt employees based upon
 17 allegations of under calculated overtime wages); *Escobar*, 2008 WL 3915715, at *4 (conditionally
 18 certifying nationwide collective of non-exempt employees based upon allegations of
 19 uncompensated pre-shift and off-the-clock work); *Saravia v. Dynamex, Inc.*, 310 F.R.D. 412, 423
 20 (N.D. Cal. 2015) (Alsup, J.) (conditionally certifying a California-wide collective of delivery
 21 drivers asserting FLSA claims based upon allegations of misclassification and uncompensated
 22 minimum and overtime wages); *Guilbaud, supra*, 2014 WL 10676582 (N.D. Cal. Oct. 3, 2014)
 23 (conditionally certifying a nationwide group of retail store employees asserting FLSA claims based
 24 upon allegations of uncompensated pre- and post-shift work, as well as allegations that they
 25 performed work during uncompensated meal periods); *Brown v. Permanente Med. Grp.*, 2017 WL
 26 1536493 (N.D. Cal. Feb. 2, 2017) (conditionally certifying nationwide group of call center-based
 27 “Advice Nurses,” asserting FLSA claims based upon allegations of uncompensated pre- and post-
 28 shift work, as well as allegations that they performed work during uncompensated meal periods);
Ramirez, 941 F. Supp. 2d at 1206 (granting plaintiff’s motion for conditional collective action
 certification); *Bonner v. SFO Shuttle Bus Co.*, No. C13–1606 THE, 2013 WL 6139758, at *5 (N.D.
 Cal. Nov. 21, 2013) (same); *Flores v. Velocity Exp., Inc.*, No. 12–cv–05790–JST, 2013 WL
 2468362, at *8 (N.D. Cal. June 7, 2013) (same); *Zaborowski v. MHN Gov’t Servs., Inc.*, 2013 WL
 1787154, at *4 (N.D. Cal. Apr. 25, 2013) (same); *Brewer v. Gen. Nutrition Corp.*, No. 11–CV–
 03587 YGR, 2013 WL 100195, at *6 (N.D. Cal. Jan. 7, 2013) (same); *Harris v. Vector Mktg. Corp.*,
 716 F. Supp. 2d 835, 848 (N.D. Cal. 2010) (same); *Luque v. AT&T Corp.*, No. C 09–05885 CRB,
 2010 WL 4807088, at *7 (N.D. Cal., Nov. 19, 2010) (same); *Lewis v. Wells Fargo & Co.*, 669 F.
 Supp. 2d 1124, 1129-30 (N.D. Cal. 2009) (same).

1 declarations submitted by Plaintiffs is sufficient to satisfy a modest factual showing that they were
2 similarly situated, in that they routinely worked unpaid overtime in violation of the FLSA.”).

3 Plaintiff’s substantial allegations and the evidence before the Court plainly satisfy the
4 standard for the first stage of conditional certification. All Technicians are similarly situated
5 because they: (1) are subject to the same illegal compensation and overtime policies, and (2) have
6 the same job duties, responsibilities, work hours, and compensation.

7 **1. ITG Subjects All Technicians to the Same Unlawful**
8 **Compensation and Overtime Policies**

9 ITG systematically violated, and continues to violate, the FLSA. Sections 206 and 207 of
10 the FLSA require that employers pay non-exempt, hourly employees overtime of at least one and
11 one-half times the regular rate of pay for hours worked in excess of forty per week. 29 U.S.C. §§
12 206, 207(a)(1). The calculation of hours worked is not limited to hours “clocked-in” and may
13 include pre-shift and post-shift work. *Ramirez*, 941 F. Supp. 2d at 1201-06. “Working time” also
14 includes meal or rest periods, when an employee does not actually take a break but instead continues
15 to work. 29 C.F.R. §§ 785.18, 785.19(a); *Hill*, 690 F. Supp. 2d at 1010; *Rother v. Lupenko*, 515
16 Fed. Appx. 672, 674 (9th Cir. 2013). Employers are required to create and maintain accurate
17 records of all hours worked by employees. 29 U.S.C. §§ 211(c), 215(a)(5); 29 C.F.R. § 516.2(a)(7).
18 An employer cannot shift this duty to employees. 29 U.S.C. § 211(c).

19 As discussed above, ITG requires that all Technicians work significant portions of their day
20 off-the-clock. Technicians attend training off-the-clock, they do pre-shift inventory work off-the-
21 clock, they drive between client locations off-the-clock, they incur wait time at client locations off-
22 the-clock, they work through lunch off-the-clock, and they continue work late into the evening off-
23 the clock. *See supra*, Section II.B. ITG’s conduct in requiring Technicians to work off-the-clock
24 reduces the total hours factored into ITG’s compensation formula, which necessarily reduces
25 Technicians’ total compensation, overtime compensation, as well as the total number of hours
26 compensated at the required, bona fide, overtime rate. This uniformly violates the FLSA. *See* 29
27 U.S.C. § 207 (a), (g).

1 ITG also eliminates, reduces, or pressures Technicians to omit piece-rate codes for
 2 completed work activities. *See supra*, Section II.B. This reduces Technicians' total compensation
 3 and overtime compensation, because Technicians are not compensated at the bona fide regular rate,
 4 nor are they compensated at the bona fide overtime rate. This, too, uniformly violates the FLSA.
 5 *See* 29 U.S.C. § 207(a), (g).

6 In addition, because ITG requires Technicians to regularly incur a multitude of expenses for
 7 ITG's sole benefit, *see supra*, Section II.B, the regular and overtime compensation provided to
 8 Technicians is not paid unconditionally, free, and clear of deductions and/or kickbacks. This also
 9 uniformly violates the FLSA. *See* 29 U.S.C. § 206; 29 C.F.R. § 531.35 (wages must be paid "free
 10 and clear" of any kickbacks, which include employees' purchase of tools as required by the
 11 employer to perform the employer's work).

12 Finally, for all the reasons discussed above, ITG does not keep required, accurate records of
 13 all hours and piece-rates worked by Plaintiff and the Collective. This uniformly violates the FLSA.
 14 *See* 29 U.S.C. § 211(c).

15 **2. Technicians Have Similar Job Duties, Responsibilities, Work 16 Hours, and Compensation**

17 Plaintiff and Technicians have similar job responsibilities across the United States. All ITG
 18 Technicians are classified by ITG as non-exempt employees, who are therefore entitled to overtime
 19 compensation.⁵⁸ All ITG Technicians perform various services related to the installation and repair
 20 of cable, internet, and phone services for ITG's clients.⁵⁹ The services uniformly include installing
 21 cable, internet and telephone; troubleshooting; running new telephone lines; running coax cables
 22 for new outlets; installing ground cable; educating customers on equipment; providing customer
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26 ⁵⁸ *See, e.g.*, Pl.'s Compl., ¶25.

27 ⁵⁹ *See* Monplaisir Decl. ¶5; Cason Decl. ¶5; Byrdie Decl. ¶5; Francois Decl. ¶5; Gauthier Decl. ¶5;
 28 Jean Pierre Decl. ¶5; Parris Decl. ¶5; Charles Decl. ¶5; Vermeille Decl. ¶5.

1 service; and replacing and installing drops.⁶⁰ All declarants state that they regularly work in excess
2 of forty hours a week and are subject to a substantially similar compensation scheme.⁶¹

3 3. Similar Cases Have Been Certified

4 Substantially similar cases involving FLSA claims on behalf of cable installers and piece-
5 rate workers have been certified, both within the Ninth Circuit and nationally. For example, in *Soto*
6 *v. O.C. Communications*, the Northern District of California conditionally certified a nationwide
7 class of cable installation technicians who alleged, among other things, that the defendant did not
8 compensate technicians for pre- and post-shift work, and undercompensated technicians by
9 misclassifying performed tasks. No. 17-cv-00251 (N.D. Cal. Aug. 31, 2017) Order (ECF 127),
10 attached as Exhibit A to the Edelstein Decl.

11 Similarly, in *Sigui v. M&M Commc'ns, Inc.*, the District of Rhode Island conditionally
12 certified a class of cable installation technicians who alleged, among other things, that defendants'
13 task-based compensation system did not pay the overtime required by the FLSA. No. CV 14-442
14 (D.R.I. April 4, 2017) Order, attached as Exhibit B to the Edelstein Decl. *See also Benoit v. Tri-*
15 *Wire Eng'g Sols., Inc.*, No. CV 07-30237 (D. Mass. June 4, 2008) Order and Notice (ECF 30),
16 attached as Exhibit C to the Edelstein Decl. (conditionally certifying collective action where
17 technicians installed and activated telephone, data, and broadbanding equipment, were paid piece-
18 rate (by the job) and alleged they were not paid overtime wages); *Perez v. Shucks Maine Lobster*
19 *LLC*, No. 2:15-CV-00348-JAW, 2016 WL 6304674, at *11 (D. Me. Oct. 27, 2016) (conditionally
20 certifying a collective of employees, based on plaintiff's personal observations and her
21 conversations with coworkers, who were paid on a piece-rate basis for picking lobsters, who alleged
22 they were not paid overtime wages).⁶²

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24 ⁶⁰ *See supra*, Section II.A; Monplaisir Decl. ¶5; Cason Decl. ¶5; Byrdie Decl. ¶5; Francois Decl.
25 ¶5; Gauthier Decl. ¶5; Jean Pierre Decl. ¶5; Parris Decl. ¶5; Charles Decl. ¶5; Vermeille Decl. ¶5.

26 ⁶¹ *See* Monplaisir Decl. ¶¶6-17, 27-29; Cason Decl. ¶¶ 6-17, 27-30; Byrdie Decl. ¶¶6-17, 26-29;
27 Francois Decl. ¶¶6-17, 26-29; Gauthier Decl. ¶¶6-18, 27-30; Jean Pierre Decl. ¶¶6-17, 26-29; Parris
28 Decl. ¶¶6-17, 27-30; Charles Decl. ¶¶6-17, 26-29; Vermeille Decl. ¶¶6-18, 27-30.

⁶² *See also Monroe v. FTS USA, LLC*, 860 F.3d 389 (6th Cir. 2017) (affirming conditional
certification of cable technicians who were forced to underreport their hours); *Beasley v. Custom*

1 **C. Notice Should Issue Regardless of Whether Potential Opt-in Plaintiffs**
 2 **Have Signed Arbitration Agreements**

3 Plaintiff anticipates that ITG will argue that notice should not issue because potential Opt-in
 4 plaintiffs have signed arbitration agreements – the Court should reject this argument outright.

5 Indeed, even where some of an action’s potential plaintiffs “appear to be subject to an
 6 enforceable arbitration agreement, th[e] court may not preemptively deny FLSA certification or
 7 narrow the scope of the proposed collective” and instead “must first allow plaintiff to seek FLSA
 8 certification and, if appropriate, order notice to be sent” to all potential FLSA collective action
 9 members. *Campanelli v. Image First Healthcare Laundry Specialists, Inc.*, No. 15-CV-04456-PJH,
 10 2018 WL 6727825, at *9 (N.D. Cal. Dec. 21, 2018). “Only after the FLSA plaintiffs join this
 11 action, may the court entertain defendants’ arbitration-related motions seeking to compel opt-in
 12 plaintiffs to arbitrate or to prohibit plaintiffs from proceeding collectively.” *Id.* Potential opt-in
 13 plaintiffs who have all been subjected to the same wage violations should be given the opportunity
 14 to decide for themselves whether they want to pursue their claims, and the timely issuance of notice
 15 to them will facilitate that process.

16 That any prospective Collective members may have executed an arbitration agreement does
 17 not bar the issuance of notice. As this Court has recognized, this initial conditional certification
 18 stage is not appropriate for addressing such arbitration-related concerns because that inquiry goes
 19 to the merits of the case. *See, e.g., Saravia v. Dynamex*, 310 F.R.D. 412, 424-25 (N.D. Cal. 2015)
 20 (Alsup, J.) (finding that the presence of arbitration agreements among the proposed collective
 21 should not bar conditional certification, noting that courts within the Ninth Circuit found that “the

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 25 *Commc’ns, Inc.*, No. 5:15-CV-583-F, 2016 WL 5468255, at *5 (E.D.N.C. Sept. 28, 2016)
 26 (conditionally certifying cable installer technicians who were paid on a piece-rate compensation
 27 scheme); *Williams v. Grayco Cable Servs., Inc.*, 187 F. Supp. 3d 760, 768 (S.D. Tex. 2016) (same);
 28 *Taylor v. Bear Commc’ns, LLC*, No. 4:12-CV-01261-BCW, 2013 WL 3270971, at *3 (W.D. Mo.
 June 27, 2013) (same); *Jason v. Falcon Data Com, Inc.*, No. 09-cv-03990 (JG)(ALC), 2011 WL
 2837488, at *7 (E.D.N.Y. July 18, 2011) (same); *Joiner v. Groupware Int’l, Inc.*, No. 8:09-cv-
 1943-T-26MAP, 2010 WL 2136533, at *2 (M.D. Fla. May 27, 2010) (same).

1 issue of the enforceability of arbitration clauses related to the merits of the case and therefore should
2 be dealt with in phase two”).

3 As discussed above, the relevant inquiry at this early procedural juncture is whether the party
4 plaintiffs “share a similar issue of law or fact material to the disposition of their FLSA claims.” *See*
5 *Campbell*, 903 F. 3d at 1117. The required showing is “loosely akin to a plausibility standard,” *id.*
6 at 1109, and the “sole consequence of a successful motion . . . is the sending of court-approved
7 written notice to workers who may wish to join the litigation as individuals.” *Id.* at 1101 (quotation
8 marks and citations omitted). As such, the presence of alleged agreements to arbitrate – the validity
9 and enforceability of which have yet to be examined – should have no bearing on the issuance of
10 notice to prospective collective members. Cf. *Saravia*, 310 F.R.D. 424–25.

11 This Court has recognized additional considerations supporting the issuance of notice
12 notwithstanding the presence of alleged agreements to arbitrate – specifically, notice should issue
13 regardless of a Collective members status vis-à-vis an arbitration agreement because of the
14 possibility that the arbitration clause could be found unenforceable for some or all members of
15 collective and that “discovery could reveal a mechanism for addressing the arbitration clauses on a
16 collective-wide basis.” *Id.* This Court has observed that it would be “premature to assume that the
17 issue of arbitration will be unmanageable at this [conditional certification] phase, rather than
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1 reserving it for a motion for decertification.” *Id.*⁶³ As such, the Court should issue notice in this
 2 case and reject any arguments that ITG may assert around purported agreements to arbitrate.⁶⁴

3 **D. Notice is Appropriate and Necessary to Protect Collective Members’**
 4 **Rights**

5 District courts have broad discretion to allow a party asserting FLSA claims on behalf of
 6 others to notify potential “similarly situated” plaintiffs that they may choose to “opt-in” to the suit.
 7 *Hoffman-La Roche, Inc., v. Sperling*, 493 U.S. 165, 169 (1989). Court-authorized notice protects
 8 against “misleading communications” by the parties, resolves the parties’ disputes regarding the
 9 content of any notice, prevents the proliferation of multiple individual cases, assures that joinder of
 10 additional parties is accomplished properly and efficiently, and expedites resolution of the dispute.
 11 *Hoffman-La Roche, Inc.*, 493 U.S. at 171-72.⁶⁵

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 13 ⁶³ See also, e.g., *Woods v. Club Cabaret, Inc.*, 140 F. Supp. 3d 775, 782-83 (C.D. Ill. 2015)
 14 (rejecting argument that the fact that some class members were subject to arbitration agreements
 15 would preclude conditional certification, observing that “any issues related to opt-in plaintiffs with
 16 arbitration agreements can be addressed at step-two of the class certification process, where the
 17 number, timing, and circumstances surrounding such clauses can be most appropriately addressed
 18 after discovery is concluded”); *Deatrick v. Securitas Security Services USA, Inc.*, 2014 WL
 19 5358723, at *3-4 (N.D. Cal. Oct. 20, 2014) (finding that “Plaintiff has met his burden to show that
 20 conditional certification is appropriate under the lenient standard applicable at this first stage” and
 21 concluding that arguments concerning dispute resolution agreements “have little to no bearing at
 22 this point in the litigation” and “[t]hese inquiries are reserved for the second stage of the certification
 process”); *Maddy v. General Electric Co.*, 59 F. Supp. 3d 675, 685 n.7. (D.N.J. 2014). (“That some
 service technicians have signed arbitration agreements does not preclude conditional certification
 of all service technicians across the United States.”); *Hernandez v. Immortal Rise, Inc.*, 2012 WL
 4369746, *5 (E.D.N.Y. Sept. 24, 2012) (finding that the existence of arbitration agreements
 irrelevant to conditional certification); *D’Antuono v. C & G of Groton, Inc.*, 2011 WL 5878045, *4
 (D. Conn. Nov. 23 2011) (“the existence of other exotic dancers’ arbitration agreements is . . .
 immaterial to the question of class certification.”).

23 ⁶⁴ Plaintiff anticipates that ITG may cite *In re JPMorgan Chase & Co.*, 916 F.3d 494 (5th Cir. 2019)
 24 in support of an argument that notice should not issue – however, *JPMorgan* is not binding on this
 25 Court and runs counter to the Ninth Circuit’s directive in *Campbell*, as persuasively articulated by
 Judge Hamilton in *Campanelli*, and also contravenes this Court’s prior conclusions in *Saravia* – as
 well as those of courts across the country, as noted above – that issues of arbitration are more
 properly addressed at the decertification phase, see *Saravia*, 310 F.R.D. at 424–25.

26 ⁶⁵ Unlike Rule 23 class actions, in Section 216(b) collective actions, the statute of limitations for
 27 putative class members is not automatically tolled with the commencement of the action, but rather
 with the filing of an opt-in consent. 29 C.F.R. §790.21(b)(2)(ii).

1 Plaintiff's proposal for Court-approved notice to the proposed Collective members is timely,
 2 accurate, and informative – as required. *Hoffman-La Roche Inc.*, 493 U.S. at 172. The Proposed
 3 Notice of Collective Action Lawsuit and Proposed Opt-in Consent Form (which are attached as
 4 Exhibits D and E, respectively, to the Edelstein Decl.) provide notice of the pendency of the action
 5 and opportunity to opt-in.⁶⁶ Plaintiff's legal claims are accurately described, and proposed
 6 Collective members are advised that ITG is defending the claims. The Notice also clearly states
 7 that they are not required to participate in this action. Additionally, the Notice provides clear
 8 instructions on how to opt-in, accurately states the prohibition against retaliation for participation
 9 in a FLSA action, and informs proposed Collective members that this Court has not made any
 10 determination regarding the merits of Plaintiff's claims. Thus, Plaintiff requests that the Court
 11 approve the Proposed Notice and Opt-In Consent Form submitted herewith for distribution to
 12 proposed Collective members.

13 Early distribution of the Notice is essential. *See, e.g., Adams*, 242 F.R.D. at 542-43. As
 14 described above, the pleadings and declarations submitted herewith demonstrate that that proposed
 15 Collective members are “similarly situated” and that ITG has violated the FLSA. Given this
 16 evidence, Notice to proposed Collective members should be expedited, as delay threatens to destroy
 17 their ability to seek compensation for numerous hours of work for which they were not paid.

18 In order to facilitate notice, Plaintiff requests that the Court require ITG to produce to
 19 Plaintiff's counsel, within fourteen (14) days of the Court's order granting Plaintiff's Section 216(b)
 20 Motion, a computer-readable database that includes the names of all proposed Collective members,
 21 along with their last known mailing addresses, all email addresses, all telephone numbers, social
 22 security numbers and dates of employment. Based on this contact information, a third-party notice
 23 administrator will mail, email, and text message the Court-approved Notice of Collective Action
 24 Lawsuit and Opt-In Consent Form to proposed Collective members. *See Woods v. Vector Mktg.*
 25 *Corp.*, No. 14-cv-0264 EMC, 2015 WL 1198593, at *5 (N.D. Cal. Mar. 16, 2015) (authorizing use

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 27 ⁶⁶ Plaintiff has also provided a proposed short form Notice to be sent via text message. *See* Exhibit
 F, attached to the Edelstein Declaration.

1 of an official case website; online opt-in form submission; email notice; publication on Facebook;
 2 and an email or postcard reminder notice).⁶⁷ In addition, the notice administrator will create and
 3 maintain an official case website that allows for online submission of the opt-in form. *Id.*

4 Further, Plaintiff requests that proposed Collective members be required to return their
 5 signed Opt-In Consent Forms to the notice administrator within ninety (90) days (received or
 6 postmarked, or completed via an electronic signature service) after the date on which the Notice
 7 and Consent Forms are mailed. *Id.* at *7 (authorizing 90 day notice period).⁶⁸ Plaintiff's counsel
 8 will file the Consent Forms with the Court on an ongoing basis and no later than two weeks after
 9 the end of this 90-day notice period.

10 In addition, Plaintiff requests that ITG be required to post a copy of the Notice in appropriate,
 11 conspicuous, visible and accessible places at each of its offices or other locations in which
 12 Collective Members currently work during the 90-day notice period. "Courts routinely approve
 13 requests to post notice on employee bulletin boards and in other common areas, even where

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 15 ⁶⁷ See also, *Dudley v. TrueCoverage LLC*, 2018 WL 6431869, at *6 (C.D. Cal. Sep. 28, 2018)
 16 (approving notice by mail, email, and text message); *Petty v. Russell Cellular, Inc.*, No. 2:13-cv-
 17 1110, 2014 WL 1308692, at *6 (S.D. Ohio Mar. 28 2014) (authorizing mail and email notice);
 18 *Prejean v. O'Brien's Response Mgmt., Inc.*, No. 12-cv-1045, 2013 WL 5960674, at *10 (E.D. La.
 19 Nov. 6, 2013) (holding that "notice by both e-mail and first-class mail is both routine and reasonably
 20 calculated to accomplish the broad remedial goals of the notice provision of the FLSA."); *Phelps*
 21 *v. MC Comm'cs, Inc.*, No. 2:11-cv-42, 2011 WL 3298414, at *6 (D. Nev. Aug. 1, 2011) ("Email is
 22 an efficient, reasonable, and low-cost supplemental form of notice, particularly where Defendants
 23 may lack current physical mailing address information for its former employees."); *Calvillo v. Bull*
 24 *Rogers, Inc.*, 267 F. Supp. 3d 1307, 2017 WL 3172843, at *6 (D.N.M. July 25, 2017) ("Courts have
 25 recognized that notice by email and text is reasonable in today's mobile society and that these
 26 methods of communication may offer a more reliable means of reaching an individual even if that
 27 individual is away from home or has moved."); *Irvine v. Destination Wild Dunes Management,*
 28 *Inc.*, 132 F. Supp. 3d 707 (D.S.C. Sept. 14, 2015) ("The request that notice be distributed via direct
 mail, email and text messaging appears eminently reasonable to the Court.").

⁶⁸ See also, *Adams*, 242 F.R.D. at 544 (authorizing 90 day notice period via mail and posting of
 notice); *Deatrick v. Securitas Security Services USA, Inc.*, 2014 WL 5358723, at *6 (N.D. Cal. Oct.
 20, 2014) (authorizing 90 day notice period via mail, website, and posting of notice); *Gee v.*
Suntrust Mortg., Inc., No. C-10-1509 RS, 2011 WL 722111, at *4 (N.D. Cal., Feb.18, 2011)
 (authorizing 90 day notice period via mail); *Carter v. Anderson Merchandisers, LP*, 2008 WL
 2783193 at *6-7 (C.D. Cal. July 10, 2008) (authorizing 90 day notice period); *Fenley v. Wood Grp.*
Mustang, Inc., 170 F. Supp. 3d 1063, 1076 (S. D. Ohio 2016) (authorizing 90 day mail and email
 notice program).

1 potential members will also be notified by mail.” *Whitehorn v. Wolfgang’s Steakhouse, Inc.*, 767
2 F. Supp. 2d 445, 449 (S.D.N.Y. 2011); *see also Adams*, 242 F.R.D. at 541-42 (approving posting
3 of notice at defendant’s facilities with fifteen or more potential collective members).

4 Courts in this Circuit approve similar notice plans to that requested here. *Woods*, 2015 WL
5 1198593, at *7; *Adams*, 242 F.R.D. at 541-42. In sum, Plaintiff’s proposal for court-approved
6 notice to the potential opt-ins is “timely, accurate, and informative,” as required. *Hoffman-LaRoche*,
7 493 U.S. at 172. Plaintiff’s proposed notice plan should accordingly be approved.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court conditionally certify
10 the Collective class under Section 216(b), and authorize notice to allow potential plaintiffs to opt-
11 in to preserve their rights.

12
13 Date: June 7, 2019

Respectfully submitted,

14 /s/ Ori Edelstein
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court’s CM/ECF system on June 7, 2019.

I further certify that copies of the filed, foregoing document will be served upon the opposing parties along with the other case initiating documents in this case.

Date: June 7, 2019

Respectfully submitted,

/s/ Ori Edelstein
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