

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Morgan Heller, Joshua Flavin, Grace Baffoe, and Nick Fredrickson, on behalf of themselves and all other persons similarly situated, known and unknown,)))))	Case No. 22 CV 1617
Plaintiffs,)	Honorable Sharon Johnson Coleman
v.)))	
Curaleaf Holdings, Inc.,)	
Defendant.)	

**PLAINTIFF'S OPPOSED MOTION FOR APPROVAL AND DISTRIBUTION OF
NOTICE AND FOR DISCLOSURE OF CONTACT INFORMATION**

Plaintiff's Plaintiffs Morgan Heller, Grace Baffoe, Joshua Flavin, and Nick Fredrickson (“Plaintiff”), individually and on behalf of all others similarly situated, by and through their attorneys, motion this Court for approval and distribution of notice and for disclosure of contact information, and states as follows:

1. Plaintiffs brought this suit on behalf of certain former and current employees of Defendants Curaleaf Holdings, Inc. (“Defendant”), to recover wages and other damages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), Illinois Minimum Wage Law, 820 ILCS 105/1, *et seq.* (“IMWL”) and the Massachusetts Wage Act, Mass. Gen Laws Ch. 149, §148, *et seq.* ECF No. 1.

2. On February 1, 2023, Plaintiffs filed a motion with this Court for conditional certification and issuance of notice pursuant to § 216(b) of the FLSA. ECF No. 30.

3. On June 6, 2024, this Court issued a memorandum and opinion granting conditional certification for a FLSA class in Illinois, Arizona, and Massachusetts, and directed the parties to meet and confer regarding the proposed notice to potential class members. ECF Nos. 57 and 58.

4. In accordance with this Court's order, the parties have met and conferred numerous times via teleconference and email to reach a comprehensive resolution regarding the Notice, the Opt-

In Consent Form and related terms and despite the diligent efforts of Plaintiffs, the parties have been unable to reach an agreement. Accordingly, Plaintiffs request this Court's assistance in resolving this matter.

5. All of Defendant's objections have been tailored to ensure that the fewest number of potential collective members are informed of the instant litigation and their rights to opt-in thereunder.

6. Defendant objects to the distribution of the Notice via text message, the most common method used by the class members to send and receive communications in 2024.

7. Defendant objects to the use of a website hosted by the third-party administrator containing a copy of the Notice, with answers to frequently asked questions about the Notice and their opt-in rights, and for the ability for potential class members to submit their opt-in forms online via this website.

8. Instead, Defendant demands that Plaintiffs attempt to reach this decidedly younger demographic of retail cannabis dispensary store employees by having the Notice sent via the United States Postal Service to the last known address, which are, in some cases, up to nine years old, of a highly transient population. Then, Defendant wants a process that requires those notified to manually complete the Opt-In Consent Form, locate a USPS stamp, and mail the document back via USPS, or scan the document and email it to the email address of the third-party administrator or, alternatively, attempting to notify this population based on the last known email that Defendants have on file, which in some cases dates back to the employees' initial hiring up to 9 years ago, and has a high likelihood of no longer being active or the email Notice itself going undelivered as a result of being caught in a spam filter.

9. Plaintiff's Proposed Notice and Opt-In Consent Form is attached herein as Exhibit 1.

10. Plaintiffs propose the Notice and Opt-In Consent distribution terms as follows:

a. That the initial transmission of the Notice and Opt-In Consent Form, is to be

distributed via text message, email, and U.S. Mail

- b. The use of a website (as opposed to an automated or live phone operator) operated by the third-party class administrator to post a copy of the Notice, collect consent forms electronically, and provide a list of answers to frequently asked questions.
- c. That Defendants provide Plaintiff's counsel and third-party class administrator with the mailing addresses, cell phone number(s), email address(s), and corresponding dates of employment in Excel format, within 14 days of the entry of this Court's order.
- d. That the notice period shall be (90) ninety days and commence no later than (30) thirty days from the date the Defendants provide the information in (c) above.¹
- e. That Plaintiff, via the third-party administrator be permitted to send two follow-up reminders via each of the methods described in (a) above to all potential class members who have not responded to the Notice. The first sent thirty (30) days after the opt-in period begins and the second sent to potential class members who have not responded withing (60) sixty days of the issuance of the Notice.

11. The Notices and Consents to Join make no comment on the merits of the case. The Notices are narrowly drawn to notify potential class members of the pending litigation, the composition of the class and their right to "opt in" to this litigation.

12. The 90-day opt-in period requested by Plaintiff is proper. "Courts in this circuit have approved opt-in periods ranging from 45 to 120 days." *Nehmelman v. Penn Nat. Gaming, Inc.*, 822 F.Supp.2d 745,764 (N.D. Ill. 2011). Important considerations favoring a longer opt-in period are high turnover among workers, necessitating additional investigation to contact plaintiffs (*Anyere*, 2010 WL 1542180 at *4); and "widespread geographic dispersal" of the class (*Espenscheid v. DirectSat USA, LLC*,

¹ The (30) thirty-day period has been requested by the third-party administrator to properly configure the data and obtain carrier approval for text distribution.

2010 WL 2330309, *13 (W.D. Wis. 2010)). In this case, there is high turnover for Defendant, and a widespread geography, three entire states' stores owned by Defendant affected by the collective certification, rendering proper the 90-day opt-in period requested by Plaintiffs appropriate.

13. Likewise, this court should also allow Plaintiff to send notice to class members by email, as well as text and U.S. Mail. *See Espenscheid*, 2010 WL 2330309, *14 (“With respect to email notification, some courts, including this one, have allowed email distribution of notice forms for FLSA collective actions.”) (collecting cases). “With regard to the use of email to notify potential plaintiffs of this litigation, ‘communication through email is [now] the norm.’” *Butler v. DirectSat USA, LLC*, 876 F.Supp.2d 560, 575 (D. Md. 2012) (quoting *In re Deloitte & Touche, LLP Overtime Litig.*, 2012 WL 340114, at *2 (S.D.N.Y. Jan. 17, 2012)); *see also Vaughn v. Rescue Rangers LLC*, 3:15-cv-0056-JAG, Dkt. 30, p. 1 (Order granting conditional certification) (E.D. Va. Jan. 13, 2016) (ordering Defendants to produce contact information, including e-mail addresses, for potential plaintiffs); *Gerges v. Enterprise Systems Software, LLC*, 3:15-cv-01816-JZ, Dkt. 19, p. 2 (Order approving Stipulation for Conditional Certification) (N.D. Ohio Oct. 27, 2015) (Defendants are to provide spreadsheet with contact information, including e-mails, for potential plaintiffs).

14. The need to provide notice to workers by text message is particularly acute in this matter given that many of Defendants' current and former employees may frequently change mailing and email addresses, in addition to the potential limitations on email delivery posed by spam filters. Courts frequently permit notice by text message, recognizing that “notice by email and text is reasonable in today's mobile society and that these methods of communication may offer a more reliable means of reaching an individual even if that individual is away from home or has moved.” *Calvillo v. Bull Rogers, Inc.*, 2017 WL 3172843, at *6 (D.N.M. July 25, 2017). Notice by text message has been embraced by courts around the country, including by courts in the Seventh Circuit. *See, e.g., Brashier v. Quincy Prop., LLC*, 2018 WL 1934069, at *6–7 (C.D. Ill. Apr. 24, 2018); *Marino v. Poob-Bab Enterprises, Inc.*, Civ. A.

No. 16-cv-09715, Dkt. 54 (N.D. Ill. Aug. 13, 2018) (allowing Plaintiff to send notice via text message to potential opt-in plaintiffs in exotic dancer FLSA case); *Owens v. GLH Capital Enter., Inc.*, 2017 WL 2985600, at *5 (S.D. Ill. July 13, 2017); *see also Landry v. Swire Oilfield Services, L.L.C.*, 252 F. Supp. 3d 1079, 1129 (D.N.M. 2017) (“The Court finds persuasive the Plaintiffs’ argument that communication via email and text message will ‘increase the chance of the class members receiving and reading the notice’”); *Ziglar v. Express Messenger Sys. Inc.*, 2017 WL 6539020, at *7 (D. Ariz. Aug. 31, 2017) (permitting mail, email, and text message notice in FLSA collective action); *Irvine v. Destination Wild Dunes Management, Inc.*, 132 F. Supp. 3d 707, 711 (D.S.C. Sept. 14, 2015) (finding that “the request that notice be distributed via direct mail, email and text messaging appears eminently reasonable”); *Bhumithanarn v. 22 Noodle Market Corp.*, 2015 WL 4240985, at *5 (S.D.N.Y. July 13, 2015) (“ . . . [T]he Court finds that notice via text message is likely to be a viable and efficient means of communicating with many prospective members of this collective action.”); *See Campbell v. Marshall Int’l, LLC*, 623 F. Supp. 3d 927, 935 (N.D. Ill. 2022) (granting plaintiffs’ motion for conditional certification and issuance of notice by, in part, email and text message).

15. Finally, the Court should also authorize the reminder notices to be sent during the opt-in period. Courts have routinely authorized such reminder notices. *See, e.g., Boltinghouse v. Abbott Labs., Inc.*, 2016 WL 3940096, at *5 (N.D. Ill. 2016) (finding that sending a reminder notice “is reasonable” and “authoriz[ing] Plaintiffs to send one reminder notice to any potential opt-in plaintiff who has not replied 15 days prior to the end of the opt-in period”); *Knox v. Jones Grp.*, 2016 WL 4943825, at *8 (S.D. Ind. 2016), on reconsideration in part, 2016 WL 6083526 (S.D. Ind. 2016) (noting that “[t]he Court is unconvinced that any harm will result from potential class members being informed of their rights twice. Deadline reminders are commonplace and will not appear to endorse the merits of the case. Therefore, Plaintiffs’ request to send a reminder notice is approved”); *Soto v. Wings ‘R US Romeoville, Inc.*, 2016 WL 4701444, at *9 (N.D. Ill. 2016) (approving “Plaintiff’s request to send a reminder email

to all potential opt-in plaintiffs halfway through the [] notice period”); *Swarthout v. Ryla Teleservices, Inc.*, 2011 WL 6152347, at *5 (N.D. Ind. 2011) (granting the use of one reminder letter).

16. For the foregoing reasons, Plaintiffs request this Court to enter an order granting as follows:

- a. That Plaintiffs’ Proposed Notice and Opt-In Consent Form attached herein as Exhibit 1 is approved.
- b. That Plaintiffs’ request for the initial transmission of the Notice and Opt-In Consent Form, is to be distributed via text message, email and U.S. Mail is approved.
- c. That Plaintiffs’ use of a website operated by the third-party class administrator to post a copy of the Notice, collect consent forms electronically, and provide a list of answers to frequently asked questions is approved.
- d. That Defendants are required to provide Plaintiff’s counsel and third-party class administrator with the mailing addresses, cell phone number(s), email address(s), and their corresponding dates of employment in Excel format, within 14-days of the entry of this Court’s order.
- e. That Plaintiffs’ proposed notice period shall be (90) ninety days and commence no later than (30) thirty days from the date the Defendants provide the information in (d) above.
- f. That Plaintiffs’ request that they be permitted to send via the third-party administrator two follow-up reminders via each of the methods described in (a) above to all potential class members who have not responded to the Notice, the first sent thirty (30) days after the opt-in period begins and the second sent to those who have not responded within (60) sixty days of the issuance of the Notice is approved.
- g. Award costs and a reasonable attorney’s fee and grant all other relief to which Plaintiff may be entitled, whether specifically prayed for or not.

Dated: August 15, 2024

Respectfully submitted,

/s/ *Haskell S. Garfinkel*
One of the Plaintiffs' Attorneys

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EXHIBIT 1

**COURT-AUTHORIZED NOTICE OF YOUR RIGHT TO JOIN A LAWSUIT
SEEKING TO RECOVER WAGES UNDER THE FAIR LABOR STANDARDS ACT
AS AN OPT-IN PLAINTIFF**

Date: [DATE]

To: All persons who were employed as hourly retail dispensary employees by Curaleaf Holdings, Inc in the states of Illinois, Arizona, and Massachusetts during the period between March 28, 2019 and February 1, 2022. This includes both current and former hourly Curaleaf employees, who work or have worked at any of Curaleaf's retail dispensaries, open or closed, located in Illinois, Arizona, or Massachusetts.¹

1. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit filed against Defendant Curaleaf Holdings, Inc (“Curaleaf”).

This Notice also serves to inform you of your ability to join the lawsuit as a plaintiff, advise you of how your rights may be affected by this suit, and to instruct you on the procedure for joining this lawsuit, should you choose to do so.

2. DESCRIPTION OF THE LAWSUIT

The Plaintiffs are all former Store Associates (a/k/a “product specialists” and colloquially “budtenders”) employed by Curaleaf at its Northbrook, Illinois (Plaintiff Morgan Heller), Skokie, Illinois (Plaintiff Grace Baffoe), Oxford, Massachusetts (Joshua Flavin), and Midtown, Arizona (Nicholas Fredrickson) retail dispensaries. Plaintiffs filed this suit on behalf of themselves and those similarly situated to them: other hourly retail employees, who worked for Curaleaf at any Illinois, Arizona, or Massachusetts retail dispensary for any period of time between March 28, 2019 and February 1, 2022.

The Fair Labor Standards Act (“FLSA”) requires that tips are the property of employees and prohibits employers from keeping some or all of the tips received by employees for any purpose. Plaintiffs allege Curaleaf violated the FLSA by failing to pay employees some or all of their earned tips, due to tips being either confiscated, spent, or involuntarily donated to charity, depending upon the dispensary. Plaintiffs also allege that in some instances Curaleaf violated the FLSA by operating an illegal tip pool such that employees were not paid all their tips earned and owed under the FLSA. Plaintiffs seek actual damages, liquidated damages, attorneys’ fees, and costs/expenses. No trial date has yet been set in this case.

A collective action is similar to a class action in that the goal of the plaintiffs is to address a widespread issue affecting multiple individuals in an efficient manner. A key difference is that

¹ This notice was issued to you at the last available physical mobile number, mailing address and E-Mail address provided to Curaleaf during your employment. If you were not employed by Curaleaf during the period outlined, please ignore this notice and no further action is required.

in a collective action, individuals must actively choose to join the lawsuit (opt-in), whereas in a class action, individuals are automatically included in the lawsuit unless they choose to remove themselves (opt-out).

3. WHO MAY JOIN THE LAWSUIT

If you worked at an Illinois, Arizona, or Massachusetts Curaleaf dispensary as an hourly employee for any period of time between March 28, 2019 and February 1, 2022, you have a right to join, or “opt-in,” to this lawsuit.

To do so you must complete the Consent to Become a Party Plaintiff form (the “Consent Form”) and submit it to the Plaintiffs’ attorney via one of the following methods:

- a) Mailing or delivering the Consent Form to the following address:

Heller vs. Curaleaf
c/o JND Legal Administration
P.O. BOX 91398
Seattle, Washington 98111

or

- b) Completing and submitting the Consent Form found at:

www.curaleaflawsuit.com

or

- c) Emailing the Consent form to:

info@curaleaflawsuit.com

Your completed and signed Consent Form should be sent and completed via one of the methods above in sufficient time to have Plaintiffs’ attorney file it with the federal court on or before 90 days from the above date or you may not be able to participate in this lawsuit.

4. EFFECT OF JOINING THE LAWSUIT

If you choose to complete and submit the Consent Form you will become an “Opt-In Plaintiff” to this lawsuit. You will, subsequently be bound by any judgment in this lawsuit, whether it is favorable or unfavorable, should the Court ultimately find that Plaintiffs and Opt-In Plaintiffs are, in fact, “similarly situated” in accordance with federal law.

In accordance with federal laws and the Federal Rules of Civil Procedure, the Parties have agreed to limited opt-in discovery. As an Opt-In Plaintiff, you may be required to participate in this lawsuit including, in certain cases, responding to written discovery requests (in which you would respond to questions issued by the Parties) or participating in depositions (in which case you would attend a meeting with the Parties' attorneys and answer a series of questions).

While completing the Consent Form renders you an Opt-In Plaintiff, the completion and submission of the Consent Form does not entitle you to any relief. This matter has not been set for trial, Curaleaf has not been found liable of anything at this time, and your continued right to participate in this lawsuit may depend on a later decision by the District Court.

5. NO RETALIATION AGAINST YOU IS PERMITTED

Federal law prohibits Curaleaf from discharging you from your employment, taking any other adverse employment action against you because you have exercised your legal right to join this lawsuit or because you have otherwise exercised your rights under the Fair Labor Standards Act.

6. YOUR LEGAL REPRESENTATION IF YOU JOIN

Plaintiffs' attorneys, THE GARFINKEL GROUP, LLC will represent you if you submit a completed Consent Form. As your attorneys, THE GARFINKEL GROUP, LLC will be entitled to receive the payment of attorneys' fees and costs from Curaleaf if there is ultimately a recovery or judgment found in your favor. If there is no recovery or judgment in your favor, you will not be responsible for any attorneys' fees or costs.

7. FURTHER INFORMATION

Further information about this notice, or the deadline for filing a Consent Form, as well as any other information regarding this lawsuit, may be obtained by visiting:

www.curaleaflawsuit.com

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. THE FEDERAL DISTRICT COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANT'S DEFENSES. PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK OF COURT. THEY CANNOT ANSWER QUESTIONS REGARDING THIS LAWSUIT OR THE NOTICE.

CONSENT TO BECOME AN OPT-IN PLAINTIFF

By my signature below, I represent to the Court that I worked as an hourly employee at a Curaleaf Holdings, Inc dispensary in Illinois, Arizona, or Massachusetts during the period between the dates of March 28, 2019 and February 1, 2022 and that I believe that I was denied the payment of tips I should have otherwise received. I authorize, through this form, the prosecution of this lawsuit in my name and on my behalf.

Signature

Date

Name (please Print)

The below information will not be filed with the court.

Name (please print)

City, State, Zip code

Street Address

Email Address

Telephone Number

YOU MAY COMPLETE AND RETURN
THIS FORM

ONLINE VIA:

WWW.CURALEAFLAWSUIT.COM

OR

VIA EMAIL:

INFO@CURALEAFLAWSUIT.COM

OR

VIA USPS:

Heller vs. Curaleaf
c/o JND Legal Administration
P.O. BOX 91398
Seattle, Washington 98111

IF YOU HAVE ANY QUESTIONS
REGARDING THIS FORM, PLEASE
CALL PLAINTIFFS' ATTORNEYS AT

312-736-7991

OR VISIT:

WWW.CURALEAFLAWSUIT.COM

PLEASE DO NOT CALL OR CONTACT
THE COURT WITH QUESTIONS ABOUT
THE NOTICE, THE LAWSUIT, OR THE
DEADLINE FOR FILING THIS FORM.

CERTIFICATE OF SERVICE

I, Haskell Garfinkel, hereby certify that on August 15, 2024, the foregoing was filed electronically.

Notice of this filing will be sent to the following individuals by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

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/s/ Haskell S. Garfinkel
One of the Plaintiffs' Attorneys