

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY CHUSS,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 5:24-cv-04249-JMG
	:	
REDNER'S MARKETS, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this 7th day of May, 2025, upon consideration of Plaintiff’s Motion for Conditional Certification and to Facilitate Notice (ECF No. 25), Defendant’s Opposition to Plaintiff’s Motion for Conditional Certification and to Facilitate Notice (ECF No. 31), Plaintiff’s Reply in Support of Motion for Conditional Certification and to Facilitate Notice (ECF No. 35), and Defendant’s Sur-Reply to Plaintiff’s Reply in Support of Motion for Conditional Certification and to Facilitate Notice (ECF No. 42), **IT IS HEREBY ORDERED** that the Motion for Conditional Certification and to Facilitate Notice (ECF No. 25) is **GRANTED IN PART**.¹

¹ Plaintiff Anthony Chuss worked for Defendant Redner’s Markets, Inc., a grocery store chain, for the better part of a decade—from June 2014 to November 2022. During some of that time, he was a Meat Manager—one of several grocery department manager (DM) positions—at several of Defendant’s locations. Plaintiff filed this suit on August 15, 2024, claiming that Defendant violated the Fair Labor Standards Act (FLSA) by misclassifying him and all Meat, Deli, and Produce DMs as salaried, overtime exempt employees and thus not paying them overtime to which they were entitled to. Plaintiff now moves to conditionally certify this case as a collective action under 29 U.S.C. § 216(b) and to provide notice to members of a putative collective made up of “any salary-paid Deli Manager, Meat Manager, and/or Produce Manager position . . . at any time from August 15, 2021, to the present date.” Only the first part of Plaintiff’s motion is granted.

In relevant part, the FLSA “provides that an action may be brought ‘by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.’” *Halle v. W. Penn Allegheny Health Sys. Inc.*, 842 F.3d 215, 222-23 (3d Cir. 2016) (quoting 29 U.S.C. § 216(b)). There is a two-step process for certification of collective actions. “The first

step—and the only step at issue here—is conditional certification. The sole consequence of conditional certification is the dissemination of court-approved notice to potential collective action members.” *Gauzza v. Prospect Med. Holdings, Inc.*, 2018 WL 5452746, at *1 (E.D. Pa. Oct. 26, 2018) (internal quotation marks and citation omitted). “Further down the road, the second step—known as final certification—would require Plaintiffs to show that any plaintiffs who opt into the collective are indeed similarly situated for purposes for the FLSA.” *Id.* (internal quotation marks and citation omitted).

The first step—conditional certification—“requires a named plaintiff to make a ‘modest factual showing’—something beyond mere speculation—to demonstrate a factual nexus between the manner in which the employer’s alleged policy affected him or her and the manner in which it affected the proposed collective action members.” *Halle*, 842 F.3d at 224 (citation omitted). At this stage, the Court’s inquiry is “extremely lenient,” and it does not need “to weigh the evidence, resolve factual disputes, or reach the merits of [Plaintiff’s] claims.” *Gauzza*, 2018 WL 5452746, at *2 (citations omitted).

There is dispute about whether Plaintiff meets the “modest factual showing” standard. Plaintiff contends that conditional certification is appropriate because he has “established the existence of common, FLSA-violating policies which applied to the collective action members.” ECF No. 25 at 12. Defendant counters that Plaintiff’s motion should be denied because his evidence is insufficient to establish the “modest factual showing” and because the DMs are not similarly situated. ECF No. 31 at 9-18.

The Court agrees with Plaintiff that conditional certification is warranted. Relying on declarations from himself and his counsel, as well as company documents, Plaintiff argues that the DMs are similarly situated. For example, he claims that each of the three DM positions shared the same job description, that they performed the same tasks, that they were uniformly required to work a 45-hour work week, and that they were subject to the same policies. *Id.* at 12-13. Plus, Plaintiff states that one of those policies—and the one at issue in this case—“classified [Plaintiff and all other DMs] as exempt from the FLSA’s overtime pay requirements.” *Id.* at 12. Plaintiff alleges that this policy misclassified him and other DMs as exempt in order to reduce Defendant’s labor costs. This misclassification, Plaintiff maintains, violated the FLSA by preventing him and other DMs from receiving overtime pay. “This evidence provides the ‘modest factual showing’ required of a plaintiff at the conditional certification stage.” *Gauzza*, 2018 WL 5452746, at *2; *see also Fischer v. Fed. Express Corp.*, 509 F. Supp. 3d 275, 283-84 (E.D. Pa. 2020), *aff’d*, 42 F.4th 366 (3d Cir. 2022) (Gallagher, J.); *Gallagher v. Charter Foods, Inc.*, 2021 WL 2581153, at *3-5 (W.D. Pa. June 23, 2021); *Vasil v. Dunham’s Athleisure Corp.*, 2015 WL 7871360, at *3 (W.D. Pa. Dec. 4, 2015).

Defendant’s arguments in opposition to conditional certification fail. The first argument is that conditional certification is not appropriate because Plaintiff’s evidence is insufficient. Here, Defendant points out that Plaintiff only provided one declaration from an employee—his own—and did not identify any other specific employees similar situated to himself. *See* ECF No. 31 at 12-17. The question at the conditional certification stage, however, is not how many declarations Plaintiff provided but whether he made a “modest factual showing.” As explained above, he has.

IT IS FURTHER ORDERED that the parties shall meet and confer regarding the proper form and scope of notice to be distributed to potential members of the collective. The parties shall submit a joint notice proposal for consideration by **May 16, 2025**.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

Further, to the extent that Plaintiff failed to specifically name another similarly situated employee, that argument fails because it “puts the cart before the horse.” *Gauzza*, 2018 WL 5452746, at *3; *Vasil*, 2015 WL 7871360, at *2. Defendant’s second argument is that its own declarations contradict Plaintiff’s claim that the DMs are similarly situated by showing that the DMs’ duties varied between store locations. *See* ECF No. 31 at 17-18. While this evidence may be relevant later in this case, the conditional certification stage is not the right time to “resolve factual disputes.” *Gauzza*, 2018 WL 5452746, at *2. So this argument fails as well.

Because Plaintiff meets the “modest factual showing” standard, and Defendant’s arguments in opposition are unavailing, the Court grants conditional collective certification. Given the parties’ disputes about notice, they must “meet and confer regarding the proper form and scope of notice to be distributed to potential members of the collective.” *Fischer*, 509 F. Supp. 3d at 291.