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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EVERADO CARRILLO, ET AL.,
Plaintiffs,
vs.
SCHNEIDER LOGISTICS, INC., ET
AL.;
Defendants.

Case No. CV 11-8557 CAS (DTBx)

**ORDER GRANTING PLAINTIFFS’
MOTIONS FOR PRELIMINARY
INJUNCTION, PROVISIONAL
CLASS CERTIFICATION AND
APPROVAL OF HOFFMAN-LA
ROCHE NOTICE**

I. INTRODUCTION

On October 17, 2011, plaintiffs Everardo Carrillo et al., employees at the Mira Loma warehouse facility in Mira Loma, California, filed suit against Schneider Logistics, Inc. (“SLI”), Premier Warehousing Ventures, LLC (“PWV”), Rogers-Premier Unloading Services, LLC (“Rogers-Premier”), and Impact Logistics, Inc. (“Impact”) alleging violations of the California Labor Code and the Federal Labor Standards Act, 29 U.S.C. § 201, et seq. (“FLSA”). Specifically, plaintiffs allege improper recordkeeping, inadequate payment for hours worked including overtime, and failure to provide meal and rest breaks as required by law. On October 28, 2011, plaintiffs filed their first Amended Complaint (“FAC”) adding Schneider Logistics Transloading and

1 Distribution, Inc. (“SLTD”).¹

2 The Court issued a temporary restraining order (“TRO”) dated October 31, 2011
3 against Premier and Impact imposing requirements for issuing corrected wage
4 statements. Dkt. No. 43. The Court ordered all defendants to show cause on November
5 9, 2011 (“November 9 Hearing”), why they should not be restrained and enjoined by a
6 preliminary injunction pending trial as described in the TRO. On December 7, 2011,
7 the Court granted a preliminary injunction against all defendants requiring them to keep
8 accurate records and to abide by the requirements of state and federal labor laws. Dkt.
9 No. 106.

10 On December 22, 2011, plaintiffs filed a motion for preliminary injunction
11 seeking to enjoin an allegedly retaliatory mass firing of workers and for provisional
12 class certification. On December 29, 2011, plaintiffs filed a motion for approval of
13 notice pursuant to Hoffman-La Roche v. Sperling, 493 U.S. 165 (1989). Schneider filed
14 its opposition to plaintiffs’ motion for preliminary injunction on January 3, 2012.
15 Premier filed a separate opposition to plaintiffs’ motion on January 3, 2012. Schneider,
16 Premier, and Impact filed separate oppositions to plaintiffs’ motion for approval of
17 Hoffman-La Roche notice on January 9, 2012. Plaintiffs filed their reply in support of
18 their motion for approval of Hoffman-La Roche notice on January 13, 2012. Plaintiffs
19 filed their reply in support of their motion for preliminary injunction on January 20,
20 2011. With leave of the Court, on January 26, 2012, Schneider filed a sur-reply in
21 opposition to plaintiffs’ motion for preliminary injunction. A hearing was held on
22 January 30, 2011. After carefully considering the parties’ arguments, the Court finds
23 and concludes as follows.

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27 ¹ The Court refers to PWV and Rogers-Premier collectively as “Premier” and SLTD
28 and SLI collectively as “Schneider.”

1 **II. DISCUSSION**

2 **A. Plaintiffs’ Motion for Preliminary Injunction**

3 **1. Background**

4 In the Spring of 2011, Schneider and Premier entered into a two-year service
5 contract, effective April 15, 2011, under which Premier would provide “trailer loading
6 services” for Schneider at three warehouses in Mira Loma, California. See Traber Decl.
7 Ex. A §§ 1.01, 4.01. The contract required Premier to provide enough workers to
8 satisfy Schneider’s fluctuating needs for semi-truck trailer loading. Id. § 2.01.
9 Schneider agreed to pay Premier a fixed amount for each fully-loaded truck. Id. In
10 finding that Schneider should be subject to the preliminary injunction requiring proper
11 recordkeeping, the Court previously determined that Schneider’s contract with Premier
12 dictates nearly every material term of plaintiffs’ employment for example, by requiring
13 each new worker to undergo detailed pre-employment screening and training, providing
14 ongoing supervision, and requiring accurate recording of all hours worked, periodic
15 performance evaluations, and strict adherence to Schneider’s performance standards.
16 Dkt. No. 106 at 5; Traber Decl. Ex. A §§ 2.04(a)-(p), 2.08. Schneider also reserved the
17 right to request that Premier remove any worker from the premises and from their
18 assignment with Schneider. Traber Decl. Ex. A § 2.12. The contract purports to shift
19 all responsibility for legal compliance to Premier, declaring that Premier shall be
20 “solely responsible” and will “remain the sole and exclusive employer” of the workers.
21 Id. §§ 2.02–2.03.

22 On October 12, 2011, the California Division of Labor Standards Enforcement
23 (“DLSE”) conducted an unannounced inspection of the warehouses during which
24 investigators uncovered significant recordkeeping violations for which administrative
25 citations were issued. As noted above, plaintiffs filed this class action lawsuit on
26 October 17, 2011, seeking injunctive relief and damages against all defendants. On
27 October 18, 2011, the named plaintiffs and others held a press conference and a public
28 meeting to announce the filing of this lawsuit. Ramirez Decl. ¶ 4. On October 19,

1 2011, plaintiffs and others publicly demonstrated outside the warehouses and
2 distributed leaflets depicting some of the workers supporting this lawsuit. Ramirez
3 Decl. ¶ 5; Arcero Decl. ¶ 7; Tejada Decl. ¶ 7. Later that day, Schneider’s management
4 called a mandatory meeting of about 25 employees.²

5 On October 21, 2011, Premier sent a letter to Schneider stating that Premier “had
6 come to believe” that it was “unable to sustain its work” under “the present terms” of
7 the contract. Redgrave Decl. Ex. A. However, the letter stated that Premier would “be
8 glad to discuss new arrangements.” Id. Premier indicated that it would also be
9 terminating contracts with Schneider in Savannah, Georgia and Elwood, Illinois. Id.
10 Thereafter, on November 18, Premier held a meeting of its workers at the Mira Loma
11 facility at which it distributed a termination letter, giving notice to workers that they
12 would be “separated from employment with Premier on or about February 24, 2012.”
13 Supp. Lopez Decl. ¶ 4 & Ex. A. Premier also stated at the meeting that it would not
14 rehire any of the workers. Id. ¶ 5. Plaintiffs maintain that “retaliatory intent is the only
15 explanation” for Premier’s cancellation of the contract and the mass termination of
16 plaintiffs. Mot. at 9.

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21 ² The parties dispute the purpose of and what was said at the meeting. According
22 to plaintiffs, Schneider Assistant General Manager Mark Hedges expressed anger that
23 workers had filed this suit and had named Schneider as a defendant. Quezada Decl. ¶ 7;
24 Ramirez Decl. ¶ 6. Plaintiffs assert that Hedges physically mimed the crumpling and
25 throwing away of a piece of paper, and told the workers that anyone who supported the
26 workers’ efforts would be “destroyed” and “thrown away.” Id. According to Schneider,
27 Mark Hedges informed employees that DLSE had cited impact for improper recordkeeping
28 and that Schneider was not under investigation but was named in the current action.
Hedges Decl. ¶¶ 3, 5; Gonzalez Decl. ¶¶ 3–5; Davis Decl. ¶¶ 3–5. Schneider asserts that
at no time during the meeting did Hedges make any statements that could be construed as
threatening. Hedges Decl. ¶ 6; Gonzalez Decl. ¶ 7; Davis Decl. ¶ 6.

1 **2. Legal Standard**

2 A preliminary injunction is an “extraordinary remedy.” Winter v. Natural Res.
3 Def. Council, Inc., 555 U.S. 7, 9 (2008). The Ninth Circuit summarized the Supreme
4 Court’s clarification of the standard for granting preliminary injunctions in Winter as
5 follows: “[a] plaintiff seeking a preliminary injunction must establish that he is likely to
6 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
7 preliminary relief, that the balance of equities tips in his favor, and that an injunction is
8 in the public interest.” Am. Trucking Ass’n, Inc. v. City of Los Angeles, 559 F.3d
9 1046, 1052 (9th Cir. 2009); see also Cal. Pharms. Ass’n v. Maxwell-Jolly, 563 F.3d
10 847, 849 (9th Cir. 2009) (“Cal. Pharms. I”). Alternatively, “serious questions going to
11 the merits’ and a hardship balance that tips sharply towards the plaintiff can support
12 issuance of an injunction, so long as the plaintiff also shows a likelihood of irreparable
13 injury and that the injunction is in the public interest.” Alliance for the Wild Rockies v.
14 Cottrell, 632 F.3d 1127, 1132 (9th Cir. 2011); see also Indep. Living Ctr. of So. Cal. v.
15 Maxwell-Jolly, 572 F. 3d 644, 657–58 (9th Cir. 2009) (“ILC II”). A “serious question”
16 is one on which the movant “has a fair chance of success on the merits.” Sierra On-
17 Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1421 (9th Cir. 1984).

18 **3. Analysis**

19 For the reasons articulated below, the Court finds it reasonable and necessary to
20 enjoin the impending February 24, 2012 termination of workers at the Mira Loma
21 warehouse facility.

22 **a. Likelihood of success on the merits**

23 The Court finds it likely that plaintiffs will prevail on their claim for retaliatory
24 termination in violation of federal and state law.

25 The FSLA’s anti-retaliation provision, 29 U.S.C. § 215(a)(3), broadly prohibits
26 any person from retaliating against any worker or group of workers who have filed
27 complaints concerning violations of the FLSA. Kasten v. St. Gobain, 131 S.Ct. 1325
28 (2010). That provision states, in pertinent part:

1 [I]t shall be unlawful for any person . . . (3) to discharge or in any other
2 manner discriminate against any employee because such employee has
3 filed any complaint or instituted or caused to be instituted any proceeding
4 under or related to this chapter

5 Equally broad anti-retaliation provisions are set forth in the California Labor Code,
6 which prohibit any “discharge” or “any manner [of] discrim[ination]” against any
7 workers who make complaints and public filings. See Labor Code § 98.6(a); see also
8 Labor Code § 1102.5(b) (“An employer may not retaliate against an employee for
9 disclosing information to a government or law enforcement agency, where the
10 employee has reasonable cause to believe that the information discloses a violation of
11 state or federal statute, or a violation or noncompliance with a state or federal rule or
12 regulation.”).

13 Schneider contends that plaintiffs are not likely to succeed on the merits for
14 multiple reasons. First, Schneider argues that plaintiffs cannot present any facts to
15 show that it participated in or influenced Premier’s decision to terminate the agreement
16 to provide services at the Mira Loma warehouses. Opp’n at 8. Next, Schneider
17 contends that an employment action that similarly impacts all like-situated employees,
18 as opposed to targeting specific employees, cannot be shown to be an adverse action
19 within the meaning of the FLSA. Id. at 8–9 (citing Weger v. City of Ladue, 500 F.3d
20 710 (8th Cir. 2008); Somoza v. Univ. of Denver, 513 F.3d 1206 (10th Cir. 2008);
21 Jordan v. Chertoff, 224 Fed. Appx. 499, 501 (7th Cir. 2007). Accordingly, because
22 Premier terminated its contracts in two locations in addition to Mira Loma, Schneider
23 maintains that there has been no adverse action taken against plaintiffs. Id. at 9. Next,
24 Schneider argues that plaintiffs have proffered insufficient evidence to establish that
25 Schneider had a retaliatory motive against plaintiffs. Schneider further contends that,
26 contrary to plaintiffs’ “false” allegations, Schneider supervisors do not have the
27 authority to discipline or fire the workers, and have never been told that they have such
28 authority. Id. at 11 (citing Arroyo Decl. ¶ 5; Arauz Decl. ¶ 3. Thus, Schneider argues

1 that even if plaintiffs could establish a prima facie case of retaliation against Premier,
2 plaintiffs cannot do so with respect to Schneider because Schneider is not a joint
3 employer of plaintiffs. Id. at 13.

4 Additionally, Schneider and Premier each argues that plaintiffs are unlikely to
5 prevail on the merits because it is beyond the scope of the Court's authority to provide
6 the type of relief plaintiffs request. Both defendants cite Brooks-Scanlon Co. v.
7 Railroad Commission of Louisiana, 251 U.S. 396, 398 (1920), and Bullock v. State of
8 Florida, 254 U.S. 513, 518 (1921) for the proposition that a court may not enjoin the
9 termination of a contract, where the effect is to require a business to continue its
10 operations. Schneider Opp'n at 12; Premier Opp'n at 7–9. Finally, Schneider argues
11 that courts may not enjoin the termination of employees. Schneider Opp'n at 12–13
12 (citing Reid Ice Cream Co. v. Stephens, 62 Ill. App. 334 (Ill. 1896); Auberach v.
13 Northland Rubber Co., 161 N.Y. Sup.. 396 (N.Y. 1916); Brook v. Riley, 3 N.Y.S. 446
14 (N.Y. 1888).

15 **i. Whether Schneider is a joint employer of plaintiffs**

16 The Court rejects Schneider's argument that it cannot be subject to a preliminary
17 injunction enjoining the February 24 termination because it is not a joint employer of
18 plaintiffs. All joint employers are jointly and severally responsible for compliance with
19 the FLSA, including its anti-retaliation provisions. See Chao v. A-One, 346 F.3d at
20 916–19 (affirming that companies were joint employers and liable for retaliatory
21 discharges); Chao v. Hoel Oasis, Inc., 493 F.3d 26, 34 (1st Cir. 2007) (“There may be
22 multiple employers who are simultaneously liable for compliance with the FLSA.”). In
23 order to establish that Schneider is a joint employer with Premier, plaintiffs must
24 demonstrate that Schneider “directly or indirectly, or through an agent or any other
25 person, employs or exercises control” over plaintiffs’ wages, hours or working
26 conditions. IWC Wage Order §9-2001 §2(G); Martinez v. Combs, 49 Cal.4th 35, 64, 69
27 (2010); Rutherford Food Corp. v. McComb, 331 U.S. 722, 729 (1947); Boucher v.
28 Shaw, 572 F.3d 1087, 1091 (9th Cir. 2009). Plaintiffs have offered substantial evidence

1 that Schneider both indirectly and directly controls their working conditions. This
2 evidence includes: (1) declarations from workers that supervisors from both Schneider
3 and Premier disciplined them, terminated them, and directed them how to do their work;
4 and (2) the 2011–13 labor services contract between Schneider and Premier, which the
5 Court has already found gives Schneider contractual authority to control almost every
6 material term and condition of the workers’ employment. See Dkt Nos. 64, 65, 67, 70,
7 71, 72, 93 & Ex. A attached thereto; Prelim. Inj. at 5.³ Based on this evidence, the
8 Court believes that plaintiffs are likely to prevail on their assertions that Schneider is a
9 joint employer with Premier and that each is jointly and severally liable for the actions
10 of the other.

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14 ³ Schneider’s attempt to rebut plaintiffs’ evidence is unpersuasive. First, rather than
15 directly address plaintiffs’ specific allegations, the declarations from Schneider managers
16 only broadly and conclusorily state that Schneider has never supervised, directed,
17 controlled, or terminated any of the workers. Doc. 133 at 4–6. Schneider’s General
18 Manager, Vincent Redgrave, admitted in his deposition that he did not know what
19 Schneider supervisors did on a day-to-day basis. Redgrave Depo. at 54:14–21. He also
20 testified that neither he, nor anyone else at Schneider, conducted any investigation of
21 whether Schneider supervisors exercised control over plaintiffs’ employment or daily work
22 activities. Id. at 61:8–62:11. Moreover, although Redgrave asserted in his declaration that
23 there are no supervisors at the Mira Loma warehouses with the names plaintiffs identified,
24 Redgrave Decl. ¶ 3, he conceded in his deposition that plaintiffs accurately identified
25 Schneider supervisory personnel whom he characterized as “leads.” Redgrave Depo. at
26 176:7–180:24. Mark Hedges, Schneider’s Assistant General Manager, explained that the
27 personnel whom Schneider now calls “leads,” it previously called “supervisors.” Hedges
28 Depo. at 17:6–9. Further, Schneider’s denials that any of its personnel ever supervised any
plaintiffs working in the Mira Loma warehouses is also directly refuted by the declaration
of Ramon Cepeda, a former Impact supervisor, who explains in detail exactly how
Schneider’s managers controlled and directed plaintiffs’ work. Cepeda Decl. ¶¶ 2–10.
According to Cepeda, Schneider management set the controlling productivity standards,
directed subcontractors to have their personnel under-report the workers’ actual hours, and
specifically told him on several occasions to terminate particular employees. Id. ¶¶ 4–6.

1 New York, 198 U.S. 45 (1905).

2 **iii. Causal link between protected activity and**
3 **termination**

4 The Court finds it likely that plaintiffs can establish a causal link between their
5 protected activity and their impending termination. Under both state and federal law,
6 plaintiffs may prove causation by showing that retaliation was a substantial or
7 motivating factor for defendants' adverse employment actions. Ostad v. Or. Health
8 Scis. Univ. 372 F.3d 876, 884 (9th Cir. 2003); George v. Cal. Unemployment Ins.
9 Appeals Bd., 179 Cal.App.4th 1475, 1492 (Cal. Ct. App. 2009). Plaintiffs can satisfy
10 this standard in a variety of ways, including by showing temporal proximity between
11 the protected activity and the adverse action, through statements by the employer
12 showing its disapproval of the protected activity, and by showing that the employer's
13 proffered reasons for the adverse action were pretextual. Coszalter v. City of Salem,
14 320 F.3d 968, 977 (9th Cir. 2003). In this case, plaintiffs can likely show all three.

15 First, there is close temporal proximity between the DLSE inspection, the filing
16 of this lawsuit, and the mass termination. Premier terminated its contract with
17 Schneider on October 21, 2011, only nine days after the DLSE inspection, and only four
18 days after plaintiffs filed this lawsuit. Based on such close temporal proximity, the
19 Court believes it likely that the mass termination was retaliatory. See Thomas v. City of
20 Beaverton, 379 F.3d 802, 812 (9th Cir. 2004) ("The causal link between a protected
21 activity and the alleged retaliatory action can be inferred from timing alone when there
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25 ⁴(...continued)
26 standard applicable to mandatory injunctions. See Schwarzer, Tashima & Wagstaffe, Cal.
27 Practice Guide: Fed. Civ. Pro. Before Trial (The Rutter Group 2011), ¶ 13.795. Moreover,
28 as noted above, the FLSA permits the issuance of "mandatory" injunctions as it
specifically provides that a court may require "employee reinstatement." 29 U.S.C. §
216(b).

1 is a close proximity between the two.”).⁵

2 Next, the Court believes it likely that plaintiffs can show retaliatory motive
3 through Schneider’s statements and conduct, which demonstrate its disapproval of
4 plaintiffs’ protected activity. The Court finds plaintiffs’ version of the events of
5 October 19, 2011, more credible than Schneider’s for three reasons. First, the two
6 employees who testified that Mark Hedges threatened to “destroy” or “throw away”
7 anyone who supported this lawsuit do not stand to gain through this testimony because
8 they are not plaintiffs or potential class members. By contrast, Hedges is a member of
9 Schneider’s management team, with a clear job-related bias. Second, Hedges admitted
10 in his deposition that Schneider was displeased with the support for the plaintiff
11 workers shown by Schneider employees Franklin Quezada and Victor Ramirez.⁶ Third,
12 Schneider has refused to produce the actual videotape of the October 19 meeting, to
13 which Hedges acknowledged that Schneider has access. Schneider’s refusal to produce
14 the videotape raises the inference that plaintiffs’ characterization of what Hedges said at
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17 ⁵ In this regard, Schneider’s reliance on Porter v. Cal. Dep’t of Corr., 419 F.3d 885,
18 895 (9th Cir. 2005), for the proposition that causation cannot be shown by temporal
19 proximity is misplaced. In that case, the Ninth Circuit held that a trial court erred in
20 granting summary judgement to an employer on a retaliation claim based on the two-year
21 delay between the protected conduct and the adverse action. Rejecting the argument that
22 temporal proximity is *necessary* to show causation, the court noted that a large gap may
23 make it more difficult to prove causation but does not prevent such a showing. Indeed, the
24 Porter court noted: “The cases that accept mere temporal proximity between an employer’s
25 knowledge of protected activity and an adverse employment action as sufficient evidence
26 of causality to establish a prima facie case uniformly hold that the temporal proximity must
27 be ‘very close.’” Id. at 895 (quoting Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273
28 (2001)).

26 ⁶ Hedges testified that when he and others in Schneider management saw that two
27 employees were pictured on a flyer distributed by Warehouse Workers United supporting
28 the lawsuit, he and other members of management expressed concerns because “naturally,
our company doesn’t want to have a union. We’re pro management.” Hedges Depo. at
46:6–22.

1 the meeting is accurate, and that Schneider's characterization is not. See Akiona v.
2 United States, 938 F.2d 158, 161 (9th Cir. 1991) (adverse inference when party fails to
3 produce relevant evidence within its control).

4 Third, the Court finds that plaintiffs will likely be able to show that defendants'
5 excuses for the termination are pretextual. In reaching this conclusion, the Court finds
6 that Schneider has failed to offer a legitimate reason for its refusal to maintain the
7 workers after February 24, 2012, despite considerable evidence demonstrating that the
8 work those employees are now performing will still need to be done after that date, and
9 that hiring an entirely new workforce to replace plaintiffs appears contrary to
10 Schneider's economic self-interest.⁷ Furthermore, the Court does not believe Schneider
11 has adequately explained its departure from past practices in this case. That is, while
12 Scott Larson testified that it was his general practice, as Schneider's purchasing agent
13 and chief contract negotiator, to respond to all notices of contract termination, in this
14 case, Schneider accepted the October 21 termination letter without attempting
15 negotiation.⁸ In any event, even if Schneider continues to subcontract loading work to
16 another company such as RoadLink, Schneider has not offered a logical explanation for
17 its failure to retain the experienced workers that have already been trained and vetted by
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20 ⁷ The Court notes that Schneider is still responsible under a contract with Wal-Mart
21 for loading and unloading the same number of trucks at the Mira Loma warehouses.
22 Redgrave Depo. at 38:24–39:10, 143:14–19. Indeed, Schneider has already negotiated
23 contract terms with a different company, RoadLink Workforce Solutions, LLC
24 (“RoadLink”), to take over Premier's work after February 24, 2012. However, Schneider's
25 purchasing agent and chief contract negotiator, Scott Larson, conceded that it would be
26 more efficient for Schneider to retain, rather than terminate, incumbent subcontractors that
27 are familiar with their contract responsibilities and that have an experienced and vetted
28 workforce in place. Larson Depo. at 37:6–18.

⁸ The Court finds particularly significant that Schneider never offered Premier the
higher contract rates it eventually agreed to with RoadLink, despite Premier's offer to
“discuss other arrangements.” Redgrave Decl. Ex. A.

1 Premier.⁹ Premier's stated reasons for cancelling the contract thereby causing plaintiffs'
2 termination also appear to be pretextual. In his declaration, Premier's owner, Jim
3 Pittman, states that Premier decided to terminate the contract because he learned in
4 August or September 2011 that Premier's workers' compensation costs in California
5 could more than double. Pittman Decl. ¶¶ 6, 8. However, Pittman has not satisfactorily
6 explained why he waited until October 21 to terminate the contract—i.e., four days after
7 plaintiffs filed this lawsuit—when he knew since at least September about the insurance
8 increase. While Pittman claims that he was traveling on business in September and
9 October and needed time to look at Premier's contracts with Schneider, he admitted in
10 his deposition that he had staff who could have pulled the contracts for him, and that it
11 would have taken less than 30 minutes to review them. Pittman Depo. at 63:9–67:20.¹⁰
12 In light of these facts, the Court finds it extremely unlikely that the timing of Premier's
13 termination letter was purely coincidental and that retaliatory animus was not at least
14 one motivating reason for defendants' actions.

15 **iv. Scope of adverse action**

16 Finally, the Court rejects the notion that because Premier's termination of its
17 contracts affects other workers, it cannot constitute an adverse employment action
18 against plaintiffs. An adverse employment action directed against persons in addition to
19 the direct targets of an employer's retaliatory animus can still be wrongful where the
20 employer may have taken broader action to send a chilling message or to hide its
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22 ⁹ Insofar as Schneider contends that it lacks the contractual authority to require a
23 new subcontractor to use the workforce already operating at its warehouses, the Court
24 finds this argument unavailing. This is so because Schneider has overwhelmingly superior
25 bargaining power when negotiating with subcontractors as evidenced by its contracts with
Impact and Premier, and acknowledged by Scott Larson in his deposition.

26 ¹⁰ The Court notes also that despite Premier's intention to operate in several other
27 warehouses in the Inland Empire, no plaintiffs have been offered jobs in any of those
28 facilities, providing further evidence that Premier's stated reasons for the termination are
likely pretextual.

1 retaliatory intent. See, e.g., NLRB v. McClain of Georgia, Inc., 138 F.3d 1418,
2 1423–24 (11th Cir. 1998) (mass termination that encompasses targeted as well as non-
3 targeted employees may be retaliatory if the employer ordered mass or general layoffs
4 for the purpose of discouraging union activity or in retaliation against employees for the
5 union activity of some); Great Lakes Chemical Corp. v. NLRB, 967 F.2d 624, 628
6 (rejecting employer’s argument that discrimination must be proven on an individual
7 basis).¹¹ In this case, even though Premier cancelled its contracts in Illinois and
8 Georgia, its termination of the Mira Loma contract appears likely to have still been done
9 with retaliatory intent. Indeed, as discussed above, plaintiffs have set forth substantial
10 evidence of precisely such a scenario.

11 **b. Risk of irreparable harm**

12 The Court believes that plaintiffs will suffer serious irreparable harm absent the
13 issuance of a preliminary injunction enjoining the February 24 termination. In reaching
14 this conclusion, the Court rejects defendants’ argument that plaintiffs cannot establish
15 irreparable harm because monetary damages alone would be sufficient to remedy any
16 harm. Schneider Opp’n at 14–15; Premier Opp’n at 13–14. Defendants made this same
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18 ¹¹ Schneider’s reliance on Werger, 500 F.3d 710; Somoza, 513 F.3d 1206; and
19 Jordan, 224 Fed. Appx. 499 is misplaced. In Werger, the issue was whether an employer’s
20 new workplace rules restricting employee interactions could constitute an adverse
21 employment action. 500 F.3d at 716. Similarly, at issue in Somoza was whether the
22 employer’s challenged actions were sufficiently adverse, and not whether they were
23 particularly targeted. 513 F.3d at 1219. By contrast, in this case, there can be no doubt
24 that termination constitutes an adverse employment action. In Jordan, the Seventh Circuit
25 held that there were two ways to establish a prima facie case for retaliation under Title VII.
26 The court explained that a plaintiff “must *either*: (1) show that after filing a charge (or
27 otherwise opposing an employer's allegedly discriminatory practice), only she, and not any
28 similarly situated employee who did not take protected action, was subjected to a
materially adverse action even though she was performing her job satisfactorily; *or* (2)
present evidence that she engaged in protected activity and as a result suffered the
materially adverse action of which she complains.” Jordan, 224 Fed. Appx. at 501
(emphasis added).

1 argument in opposition to plaintiffs’ previous application for temporary restraining
2 order requiring defendants to keep legally mandated payroll records. In rejecting the
3 argument at that time, the Court explained that irreparable harm would result from the
4 delays that plaintiffs, as low-wage workers, would face in having to prove the amount
5 of their unpaid wages should defendants’ recordkeeping prove inadequate, incomplete
6 or fraudulent. Dkt. No. 43 at 7. Likewise, at this stage, because, delays in
7 compensation threaten to impair plaintiffs’ ability to meet basic needs, such harms are
8 irreparable. See Smith v. Sup. Ct., 39 Cal.4th 77, 82 (Cal 2006) (“Wages, are not
9 ordinary debts . . . because of the economic position of the average worker . . . it is
10 essential to the public welfare that he receive his pay when it is due.”)

11 In addition, the impending termination threatens considerable non-economic
12 injuries. To this end, courts routinely recognize that retaliatory discharges deter
13 workers from vindicating their statutory rights and seeking access to courts, and that
14 these injuries constitute irreparable harm. See, e.g., Mullins v. City of New York, 626
15 F.3d 47, 55 (2d Cir. 2010) (“Unchecked retaliation subverts the purpose of the FLSA”
16 and “the resulting weakened enforcement of federal law can itself be irreparable harm in
17 the context of a preliminary injunction application.”); Arcamuzi v. Continental Air
18 Lines, Inc., 819 F.2d 935, 938–39 (9th Cir. 1987) (“[A]llegations of retaliation for the
19 exercise of statutorily protected rights represent possible irreparable harm far beyond
20 economic loss.”). Indeed, in this case, plaintiffs have presented evidence that the
21 allegedly retaliatory conduct at issue here has already intimidated workers, making
22 them unwilling to raise workplace issues with their supervisors. See, e.g., Ramirez
23 Decl. ¶ 7. In addition, is reasonable to infer that if the termination were allowed to
24 proceed, any replacement workers hired by Schneider or a new contractor would be
25 reluctant to assert their rights.¹² When combined with the irreparable economic injuries

27 ¹² The cases defendants cite in support of their argument do not compel a contrary
28 (continued...)

1 plaintiffs face, these threatened harms leave no doubt that the “irreparable harm”
2 element is met.

3 **c. The balance of equities and the public interest**

4 The Court finds that the balance of equities tips decidedly in plaintiffs favor. In
5 this respect, the Court believes that, in contrast to plaintiffs who will suffer serious
6 injury absent an injunction, Schneider will not suffer substantial hardship if the Court
7 enjoins the termination. As discussed above, because Schneider intends to maintain
8 operations at the Mira Loma warehouses, it is difficult to imagine what hardship, if any,
9 it would suffer by retaining plaintiffs either as direct employees or jointly with another
10 subcontractor. Schneider’s contention that it cannot “easily collapse” its current
11 operations to bring workers directly onto its payroll is belied by the fact that it has
12 already started to use its own employees to perform loading work in other locations.
13 Larson Depo. at 132:22–133:14. Even if this were not the case, Schneider has not
14 explained why it would be burdensome to require a replacement contractor to retain the
15 Schneider-Premier workforce. Premier’s argument that an injunction would burden it
16 by requiring it to continue operations at the Mira Loma facility is similarly unavailing.
17 As discussed above, the Court does not require Premier to revoke the termination of its
18 contract with Schneider. That is but one of the several options at defendants’ disposal.
19 Finally, the Court finds that given the strong federal and state policies barring
20 retaliation against workers asserting their rights, the public interest strongly favors the
21 issuance of an injunction. See Gould v. Maryland Sound Industries, Inc., 31

22 Cal.App.4th 1137, 1148 (Cal. Ct. App. 1995) (“California courts have long recognized
23

24 ¹²(...continued)

25 result because they are inapposite or distinguishable. For example, in Williams v. SUNY,
26 635 F. Supp. 1243, 1248 (E.D.N.Y. 1986), the court expressly recognized that “inherent
27 in a retaliatory discharge case is the ‘distinct risk that other employees may be deterred
28 from protecting their rights under the Act or from providing testimony in her effort to
protect her own rights . . . [and this] may be found to constitute irreparable injury.’”

1 that wage and hour laws concern not only the health and welfare of the workers
2 themselves, but also the public health and general welfare.”).

3 **d. Whether plaintiffs should be required to post a bond**

4 The Court finds it appropriate to waive plaintiffs’ Rule 65(c) obligation to post a
5 bond. Courts have discretion to dispense with Rule 65(c)’s security requirement
6 altogether or to impose a nominal security when “requiring security would effectively
7 deny access to judicial review,” especially when the likelihood of success on the merits
8 favors little or no bond. California ex rel. Van de Kamp v. Tahoe Regional Planning
9 Agency, 766 F.2d 1319, 1325–26, as modified by 775 F.2d 998 (9th Cir. 1985); see also
10 Miller v. Carlson, 768 F. Supp. 1331, 1340–41 (N.D. Cal. 1991) (bond waived as
11 plaintiffs are “indigent persons” and the preliminary injunction “is consistent with
12 public policy”); Capulo v. Bay Area Rapid Transit, 5 F. Supp. 2d 1078, 1086 (N.D. Cal.
13 1998) (minimal \$100 bond imposed for preliminary injunction in part because bond
14 would cause hardship to plaintiffs). Both factors are present in this case. First, as this
15 Court has already found, the individual plaintiffs are low-wage workers who cannot
16 afford to post even nominal security. Dkt. No. 43 at 11. Next, for the reasons
17 articulated above, the Court finds that plaintiffs are likely to prevail on the merits of
18 their claim for retaliatory termination, and that granting injunctive relief is in the public
19 interest. Accordingly, the Court hereby exercises its discretion to waive the posting of a
20 bond.

21 **B. Plaintiffs’ request for provisional class certification**

22 The Court finds it appropriate to grant plaintiffs’ request for provisional class
23 certification for the purposes of this preliminary injunction.

24 To certify a class action, plaintiffs must set forth facts that provide prima facie
25 support for the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3)
26 typicality; and (4) adequacy of representation. Dunleavy v. Nadler (In re Mego Fir
27 Corp. Sec. Litig.), 213 F.3d 454, 462 (9th Cir. 2000) (internal quotations omitted).

28 These requirements effectively “limit the class claims to those fairly encompassed by

1 the named plaintiff's claims.” Falcon, 457 U.S. at 155 (quoting Califano v. Yamasaki,
2 442, U.S. 682, 701 (1979)). In addition to meeting these requirements, plaintiff must
3 also show that the lawsuit qualifies for class action status under one of the three
4 alternatives set forth in Rule 23(b). Wal-Mart Stores, Inc. v. Dukes, 564 U.S. ---, ---,
5 131 S.Ct. 2541, 2548 (2011). Here, plaintiffs seek provisional certification pursuant to
6 Section (b)(2), which requires that “the party opposing the class has acted or refused to
7 act on grounds that apply generally to the class, so that final injunctive relief or
8 corresponding declaratory relief is appropriate with respect to the class as a whole.”
9 Fed. R. Civ. P. 23(b)(2). Pursuant to Rule 23 and the Court’s general equitable powers,
10 the Court has authority to provisionally certify a class for purposes of entering
11 preliminary injunctive relief. See, e.g., Thomas v. Johnston, 557 F. Supp. 879, 916 n.
12 29 (W.D. Tex. 1983).

13 Schneider argues that the Court should deny provisional class certification
14 because the case is still in its “infancy.” Opp’n at 17. However, Schneider does not
15 dispute that plaintiffs have met the Rule 23(a) requirements of numerosity,
16 commonality, typicality, and adequacy of representation. Further, Schneider has not
17 cited any authority for the proposition that provisional class certification is
18 inappropriate simply because a case is in its early stages. To the contrary, courts
19 routinely grant provisional class certification for purposes of entering injunctive relief.
20 See, e.g., Baharona-Gomez v. Reno, 167 F.3d 1228, 1233 (9th Cir. 1999); Thomas, 557
21 F. Supp. At 916 n. 29; Kaiser v. County of Sacramento, 780 F. Supp. 1309, 1312 n.5
22 (E.D. Cal. 1991). Schneider also argues that provisional class certification should be
23 denied because discovery has not begun. Opp’n at 17. However, discovery has now
24 been open for nearly a month, during which time Schneider has not propounded
25 discovery to plaintiffs nor identified any specific item of discover it needs to effectively
26 oppose plaintiffs’ request for provisional class certification.

27 Premier contends that plaintiffs cannot show commonality or typicality because
28 plaintiffs are unable to show that every single putative class member engaged in

1 protected activity. Opp'n at 16–18. However, plaintiffs need not make such a showing
2 to prevail on their claim for retaliation. Instead, plaintiffs may prevail by showing that
3 Premier terminated the entire Mira Loma workforce for the purposes of retaliating
4 against those workers who did engage in protected conduct.

5 There is no dispute that the entire Schneider-Premier workforce will be
6 terminated on February 24, 2012. The Court's preliminary injunction order would
7 require defendants to revoke this termination. Accordingly, the Court hereby grants
8 plaintiffs' request for provisional class certification for the purposes of this preliminary
9 injunction only, of a class comprising all individuals employed by the Schneider and
10 Premier defendants at the Mira Loma warehouses at any time from the announced
11 termination through the present.

12 **C. Plaintiffs' motion for approval of Hoffman-La Roche notice**

13 **1. Background**

14 Plaintiffs seek the conditional certification of the FLSA collective action claims
15 in this lawsuit and authorization to disseminate notice to all similarly situated current
16 and former workers employed by defendants in the Mira Loma warehouse facility.
17 Plaintiffs have submitted two forms of proposed notice, a "long-form" notice (attached
18 as Exhibit A to their motion) and a "short-form" notice (attached to the motion as
19 Exhibit B).

20 **2. Legal Standard**

21 Employees alleging violations of their rights under the FLSA are entitled to bring
22 a collective action lawsuit seeking relief on their own behalf and on behalf of all "other
23 similarly situated employees." 29 U.S.C. § 216(b). Such "collective" actions benefit
24 the judicial system by enabling the "efficient resolution of one proceeding of common
25 issues of law and fact," and by providing similarly situated employees the opportunity
26 to "lower costs to vindicate rights by the pooling of resources." Hoffman-La Roche,
27 493 U.S. at 170. Unlike absent class members in a Rule 23 class action, absent
28 members in a FLSA collective action must affirmatively consent, or "opt in," to be

1 entitled to relief. 29 U.S.C. § 216(b); Thiesen v. Gen Elec. Capital Corp., 267 F.3d
2 1095, 1102 (10th Cir. 2001). Because the benefits of FLSA collective actions “depend
3 on employees receiving accurate and timely notice concerning the pendency of
4 collective action,” district courts have broad authority to facilitate early notice to
5 potential collective action members and to establish a procedure and a deadline for
6 those potential plaintiffs to opt into the lawsuit. Hoffman-La Roche, 493 U.S. at
7 169–72.

8 Collective action designation under the FLSA is a two-step process: conditional
9 notice-stage designation, and later, a determination post-discovery as to whether the
10 case should proceed to trial on a collective basis. See, e.g., Adams v. Inter-Con Sec.
11 Sys., 242 F.R.D. 530, 536 (N.D. Cal. 2007); Wynn v. National Broadcasting Co., Inc.,
12 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002); Thiessen, 267 F.3d at 1102–03. The
13 standard for certification at the notice stage “is a lenient one that typically results in
14 certification.” Gerlach v. Wells Fargo & Co., Case No. C 05-0585 CW, 2006 WL
15 824653, at *2 (N.D. Cal. Mar. 28, 2006) (granting conditional certification) (citing
16 Wynn, 234 F.Supp.2d at 1082); Romero v. Producers Dairy Foods, Inc., 235 F.R.D.
17 474, 482 (E.D. Cal. 2006) (“The decision is made under a ‘fairly lenient standard’ and
18 the usual result is conditional class certification.”).

19 Courts have held that conditional certification is appropriate based on
20 “substantial allegations that the putative class members were together victims of a
21 single decision, policy, or plan.” Thiessen, 267 F.3d at 1102 (internal quotations and
22 citations omitted); Bonilla v. Las Vegas Cigar Co., 61 F. Supp. 2d 1129, 1139 n. 6 (D.
23 Nev. 1999) (requiring “some factual nexus which binds the named plaintiffs and the
24 potential class members together as victims of a particular alleged [policy or practice]”).

25 If a court finds that the notice-stage standard is met, the court conditionally
26 authorizes the case as a collective action and orders notice disseminated to potential
27 class members, allowing them to opt in by filing a written consent. See, e.g., Wynn,
28 234 F. Supp. 2d at 1082; Garner v. G.D. Searle Pharmaceuticals & Co., 802 F. Supp.

1 418, 423 n. 4 (M.D. Ala. 1991) (“A primary purpose of notification is to locate other
2 similarly situated employees who may wish to bring their claims to the court’s attention
3 *before* this litigation is resolved.”).

4 **3. Analysis**

5 **a. Whether Notice is Warranted**

6 Plaintiffs argue that the Court should approve notice to a provisional class
7 because the plaintiffs’ allegations, declarations, and other evidence show that they and
8 other collective action members are “similarly situated” because they have been subject
9 to substantially similar policies and practices. Mot. at 10. According to plaintiffs,
10 courts have approved conditional certification of FLSA claims where plaintiffs allege
11 that their employers violated the FLSA by suffering or permitting plaintiffs to work “off
12 the clock,” so long as the evidence demonstrates “a likelihood that there are similarly
13 situated employees who would benefit from an awareness of the pending suit” *id.*
14 (quoting Belcher v. Shoney’s, Inc., 927 F. Supp. 249, 253 (M.D. Tenn. 1996)), or
15 “support[s plaintiffs’] position that there are other [workers] who feel they have been
16 aggrieved in ways similar to those of which [plaintiffs] complain[.]” *Id.* at 11 (quoting
17 White v. Osmose, Inc., 204 F. Supp. 2d 1309, 1316–17 (M.D. Ala. 2002)). In addition,
18 plaintiffs maintain that the declarations submitted by the named plaintiffs and several of
19 their co-workers establish that there are many workers employed by defendants in the
20 Mira Loma warehouses during the applicable period who performed work in the same
21 manner as they did, who were compensated under the same pay schemes, and who
22 suffered the same alleged violations of federal and state wage-and-hour law. *Id.* (citing
23 Carrillo Decl. ¶ 4; Arceo Decl. ¶ 4; Esquivel Decl. ¶¶ 5, 8; Lopez Decl. ¶ 4; Morales
24 Decl. ¶ 5.)

25 In opposition, Impact argues that because the record includes only “two
26 individual’ declarations against Impact,” plaintiffs have not met adequately met there
27 burden of showing there are others who are similarly situated. Impact Opp. at 3–4.
28 Schneider again argues that it is not plaintiffs’ employer, and therefore that it should not

1 be included in any notice. Schneider Opp. at 4–6. Further, Schneider argues that the
2 Court should deny conditional certification because not enough potential opt ins have
3 shown interest in this lawsuit. Id. at 10–12. Finally, Schneider argues that it cannot
4 implement notice because it has no control over the warehouse workers and no ability to
5 communicate with them. Id. at 12.¹³

6 The Court finds that plaintiffs have met their burden of showing that there are
7 potentially similarly-situated class members who would benefit from receiving notice at
8 this stage of the pendency of this action as to all defendants. With respect to Impact, the
9 declarations of the two plaintiffs Impact identifies, Evaristo Morales and Juan Chavez,
10 without more would be sufficient to satisfy plaintiffs’ “lenient” burden. Indeed, many
11 courts have held that on a motion for FLSA conditional certification, plaintiffs’ burden
12 and can be satisfied with a small number of declarations. Romero, 235 F.R.D. at
13 482–83 (two declarations); Brown v. Money Tree Mortgage, Inc., 222 F.R.D. 676,
14 688–81 (D. Kan. 2004) (same); Ballaris v. Wacker Silttronic Corp., No. 00-1627-KI,
15 2001 WL 1335809, *3 (D. Or. Aug. 24, 2001) (same). In any event, plaintiffs Morales
16 and Chavez are not the only two warehouse workers asserting claims against Impact as
17 nearly 20 workers have opted into this lawsuit. With respect to Schneider, the Court
18 notes that for the purposes of this motion, plaintiffs need only show that the putative
19 opt-in plaintiffs are similarly situated with respect to the disputed claims.¹⁴

20 Accordingly, for present purposes, putative class members exist who have the same
21 claims as the existing plaintiffs that rely in part on the “joint employer” theory of
22

23
24 ¹³ Premier concedes that plaintiffs have met their burden for the Court to approve
25 Hoffman La-Roche notice, but objects to the scope of the notice of the notice as proposed
26 by plaintiffs, as well as its content.

27 ¹⁴ The merits of Schneider’s “joint employer” defense will ultimately be resolved
28 at a later stage of the proceedings. However, for the reasons articulated above, the Court
believes that plaintiffs have shown a likelihood of success on their assertion that Schneider
is a “joint employer.”

1 liability. Schneider’s contention that it has no control over the warehouse workers and
2 no ability to communicate with them is belied by Impact’s contention that Schneider is
3 the *only* defendant with the ability to post notices in the warehouses where they can be
4 seen and read because Schneider does not allow Impact or Premier access to the notice-
5 posting area. Impact Opp’n at 10. Finally, Schneider’s argument that too few potential
6 opt ins have shown interest in this lawsuit ignores that numerous workers have already
7 opted in, demonstrating considerable interest among potential claimants. Nevertheless,
8 the requirement of a special showing of interest “has almost never been applied outside
9 of the Eleventh Circuit, and has never been applied in the Ninth Circuit.” Gomez v. H
10 & R Funlund Ranches, Inc., 2010 WL 5232973, *5 (E.D. Cal. Dec. 16, 2010) (citing
11 cases); Delgado v. Ortho-McNeil, Inc., 2007 WL 2847238, *2 (C.D. Cal. Aug. 7, 2007)
12 (same).¹⁵

13 Having determined that Hoffman-La Roche notice is warranted, the Court now
14 addresses the appropriate scope and content of such notice.

15 **b. Appropriate Scope of Notice**

16 Plaintiffs request that their short and long-form notices be disseminated to all
17 similarly situated current and former workers, beginning within 10 days after the Court
18 orders such notice to be provided and continuing until 180 days after such order as
19 follows:

20 (1) The long-form Notice (which includes a Consent to Sue form, and which will
21 be translated into Spanish) shall be included in the next pay envelopes that defendants
22 provide to each current employed collective action member;

23 (2) The long-form Notice shall be posted in at least five locations in each of the
24 Mira Loma warehouses, including at the entry and in the lunchroom of each warehouse,
25

26 ¹⁵ Schneider’s reliance on Smith v. T-Mobile USA Inc., 570 F.3d 1119, 1122–23
27 (9th Cir. 2009) is misplaced because that case did not involve the standard for collective
28 action certification, and merely held that, where plaintiffs in an FLSA case settle their
individual claims before other workers have opted in, the case becomes moot.

1 that are accessible to the workers and including where other notices of workplace rights
2 are posted;

3 (3) The long-form Notice shall also be mailed to each formerly employed
4 collective action member, at the worker's last-known address according to defendants'
5 best available contact information for such worker, such mailing to be accomplished at
6 defendants' expense within 10 days after defendants provide such contact information
7 to plaintiffs' counsel, which contact information defendants shall provide to plaintiffs
8 no later than 21 days after the date of the Court's order;

9 (4) The short-form notice shall be distributed by plaintiffs' counsel at such public
10 locations in the community in and surrounding the Mira Loma warehouses and in
11 Mexico (which may include places of worship, community centers, health and wellness
12 centers, transit stops, advocacy group offices, the Mexican consulate, and other
13 locations) as plaintiffs' counsel determine to be likely venues for effectively providing
14 notice to prospective collective action members; and

15 (5) The short-form notice, or a summary of the information set forth therein,
16 including directions for obtaining more complete information, shall also be
17 disseminated by local media (which may include radio and television stations and local
18 newspapers) in Spanish and English, at times and in a manner that plaintiffs' counsel
19 determine will be effective in providing notice to prospective collective action
20 members.

21 Defendants object to plaintiffs' proposed method of giving notice, arguing that
22 paycheck enclosures are "unreasonably intrusive," Schneider Opp'n at 14, that such
23 enclosures and posted notices send the message to workers that defendants "sanction"
24 plaintiffs' claims, Premier Opp'n at 6-8, or would result in improper workplace
25 coercion. Impact Opp'n at 10. Defendants also argue that using local media and
26 posting notices with community organizations in Mira Loma and Mexico is overly
27 broad. Schneider Opp'n at 12; Premier Opp'n at 9; Impact Opp'n at 11-12. Further,
28 defendants maintain that because there has been no finding of liability by the Court,

1 plaintiffs should bear the full burden of paying for any notice. Schneider Opp'n at 13;
2 Premier Opp'n at 11; Impact Opp'n at 12.

3 The Court finds plaintiffs' proposed plan for distributing notice to potential opt-in
4 plaintiffs reasonable and appropriate to ensure that similarly situated workers receive
5 notice of the pendency of this action. In reaching this conclusion, the Court notes that
6 courts commonly approve the type of alternative forms of notice plaintiffs seek here,
7 especially in cases involving low-wage, transient workers. See, e.g., Six (6) Mexican
8 Workers v. Arizona Citrus Growers. 904 F.2d 1301, 1304 n.2 (9th Cir. 1990) (class
9 notice accomplished by "mailing notice to those persons for which accurate addresses
10 existed, publication and radio announcements in relevant U.S. and Mexican
11 newspapers, and posting"); Montoya v. S.C.C.P. Painting Contractors, Inc., 2008 WL
12 554114, *1 (D. Md. 2008) (approving notice posting "at 35 locations around the
13 Washington metropolitan area, printing notices in three local Latino newspapers, radio
14 advertisements on five local stations, and a posted notice on the Washington Lawyer's
15 Committee for Civil Rights and Urban Affairs website"). Furthermore, in light of the
16 potential for efficiently and effectively reaching similarly situated workers, the Court is
17 unpersuaded by defendants' objections to the enclosure of notice in workers' pay
18 envelopes or its posting at defendants' facilities. See Oppenheimer Fund, Inc. v.
19 Sanders, 437 U.S. 340, 356 n.22 (1978) (noting that the practice of requiring defendants
20 "to enclose class notices in their own periodic mailings to class members . . . reduce[s]
21 the expense of sending the notice"); see also Pereira v. Foot Locker, Inc., 261 F.R.D. 60,
22 68 (E.D. Pa. 2009) (specifically rejecting the argument that workplace posting "would
23 create an undue interruption in the workplace," or be "unduly disruptive," instead
24 finding that posting notices is "an effective an efficient way to ensure that potential
25 class members are aware of the litigation").

26 The Court also finds it reasonable to require defendants to pay the costs of notice
27 provided through direct mailing. This is so because the FLSA is a fee-shifting statute as
28 to which plaintiffs' have shown a likelihood of success on the merits. See 29 U.S.C.

1 §216(b). In a fee-shifting case, where plaintiffs have demonstrated a likelihood of
2 success on the merits that would ultimately entitle them to recover all reasonable fees
3 and expenses, courts have discretion to require defendants to pay for the costs of
4 reasonable notice. See Hunt v. Imperial Merchant Srvc., 560 F.3d 1137, 1140 (9th Cir.
5 2009) (affirming order requiring notice cost-shifting even though liability ruling was
6 pending on appeal); Fournigault v. Independence One, 242 F.R.D. 486, 490 (N.D. Ill.
7 2007) (shifting costs based on court’s “impression” that plaintiffs would prevail on
8 liability). In this case, plaintiffs’ successful motion for preliminary injunction indicates
9 that they are likely to prevail on the merits of their claims. Accordingly, shifting some
10 of the expenses associated with notice is appropriate.

11 **c. Appropriate Content of Notice**

12 The parties appear to have three principal points of disagreement regarding the
13 proper content for the notice. Rather than advise the parties of specific changes that
14 must be made, the Court offers general guidance as to these three points. In light of this
15 guidance, the Court directs counsel to meet and confer and submit revised notice with
16 any remaining disputes highlighted.

17 **i. Warning regarding defendants’ litigation costs**

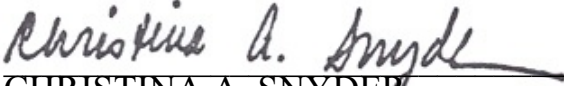
18 Impact and Premier each request that the notice include a warning that if workers
19 choose to opt in, yet lose at trial, they may be required to pay a portion of defendant’s
20 litigation costs. Lavanant Decl. ¶5(k); Impact Opp’n at 15. The Court does not believe
21 it appropriate to include such a warning. This is so for two reasons. First, the Court
22 believes that this kind of warning would undermine the FLSA’s goal of encouraging full
23 enforcement of statutory rights, especially where potential opt-in plaintiffs are low-
24 wage workers. Next, plaintiffs have already prevailed on their first motion for
25 preliminary injunction, and the Court and DLSE have determined that defendants’
26 recordkeeping practices are unlawful. Accordingly, the potential chilling effect of
27 defendants’ proposed warning outweighs the realistic likelihood that any future opt-ins
28 would be required to pay a portion of defendants’ litigation costs.

1 **III. CONCLUSION**

2 In accordance with the foregoing, the Court hereby GRANTS plaintiffs' motion
3 for preliminary injunction. The Court GRANTS plaintiffs' request for provisional class
4 certification. In addition, the Court GRANTS plaintiffs' motion for approval of
5 Hoffman La-Roche notice and directs counsel to meet and confer and submit revised
6 notice with any remaining disputes highlighted

7 IT IS SO ORDERED.

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9 Dated: January 31, 2012


CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

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