UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LILIBETH FERNANDEZ, individually and on behalf of all others similarly situated, Plaintiff, v. THE TOX CORPORATION, COURTNEY YEAGER, and RYAN YEAGER, Defendants.	Case No. CV 22-9079-DMG (AFMx) **ORDER RE DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION [30] AND PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION UNDER 29 U.S.C. § 216(b) [39]**

This matter is before the Court on Defendants Courtney and Ryan Yeager's (together, the "Yeager Defendants") Motion to Dismiss for lack of personal jurisdiction and Plaintiff Lilibeth Fernandez's Motion for Conditional Certification under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. ("FLSA") [Doc. ## 31 ("MTD"), 39-1 ("Cond. Cert. Mot.").] Fernandez brings claims against the Yeager Defendants and the Tox Corporation ("Tox") for employment law violations relating to their alleged policy and practice of requiring employees to undergo an unpaid training at the beginning of their employment, as well as allegedly retaliatory conduct for her assertion of her rights under state and federal law. *See* Compl. ¶¶ 3, 15, 81–82, 88–89 [Doc. # 1].

The motions are fully briefed. [Doc. ## 36 ("MTD Opp."), 40 ("MTD Reply"), 41 ("Cond. Cert. Opp."), 45 ("Cond. Cert. Reply").]

I. BACKGROUND

A. Factual Background

Tox is a California corporation operating 12 "lymphatic body and facial massage establishments" in the United States, including four in California and three in New York City. Compl. ¶ 4. Tox provides these "lymphatic body and facial massages" to its customers and sells related products for at-home use. *Id.* ¶ 13; Def. Tox Corp.'s Ans. ¶ 13 [Doc. # 29 ("Answer")].[1] Tox utilizes a so-called "Tox Technique," which it describes as "a unique blend of body work that works directly with your lymphatic and digestive system to detoxify the body and mind." *Id.* The Yeager Defendants are "principals and/or officers of Tox," who Fernandez alleges "exercised supervisory authority over Plaintiff and the FLSA Class, as well as exercised discretionary control over payroll decisions." Compl. ¶¶ 23–30; Ans. ¶¶ 23, 25.

To staff its operations, Tox employs individuals such as Fernandez as "Technicians" and "Estheticians" (together, "Technicians") to provide services to its clients. Compl. ¶ 14. Fernandez alleges that at relevant times, Tox required Technicians to undergo an initial unpaid training of approximately 6–8 days, or 40–75 hours, over the course of two weeks. *Id.* ¶ 15. The training program is centralized in New York City, but other unpaid trainings are held in other states, including California and Texas. *Id.* ¶ 17. Employees who train at these sessions are assigned to work at all locations in California, Texas, and elsewhere in the United States. *Id.* Courtney Yeager, with the assistance of other staff, personally conducts all trainings. *Id.* ¶ 18; Ans. ¶ 18.

Fernandez was employed by Tox as an hourly-paid Massage Technician from September 6, 2022 through September 26, 2022, during which time Tox required her to

[1] Courtney and Ryan Yeager did not join Tox's Answer, and have preserved their objection to this Court's personal jurisdiction over them. *See infra* Section III.B.

undergo unpaid training sessions conducted by Courtney Yeager. *Id.* ¶¶ 3, 15–22. Fernandez, along with declarants Gabriella Jianette and Rupinder Kaur, all received offer letters from Tox that dictated the terms of their employment and provided for a $15/hour wage, plus commission on product sales and massages performed. Decl. of Lilibeth Fernandez ISO Pl.'s Cond. Cert. Mot. ¶ 4 [Doc. # 39-2 ("Fernandez Decl.")]; Decl. of Gabriella Jianette ISO Pl.'s Cond. Cert. Mot. ¶ 4 [Doc. # 39-3 ("Jianette Decl.")]; Decl. of Rupinder Kaur ISO Pl.'s Cond. Cert. Mot. ¶ 4 [Doc. # 39-4 ("Kaur Decl.")].

On December 15, 2022, Fernandez filed her Complaint against Defendants, which alleges five separate causes of action: (1) minimum wage violation under 29 U.S.C. § 206(a); (2) minimum wages and unpaid wages under New York Labor Law §§ 652, 663; (3) wage notice and statement penalties under New York Labor Law § 198; (4) retaliatory termination under New York Labor Law § 215 for making protected complaints about working conditions; and (5) retaliatory termination under New York Labor Law § 740 for pursuing adverse legal action against Defendants. Fernandez pursues Count One on behalf of a putative collective action of similarly situated individuals, Counts Two and Three on behalf of a putative class of New York employees (the "New York Class") under the requirements of Rule 23, and Counts Four and Five on her own behalf. *See* Compl. ¶¶ 55–91.

B. Procedural Background

The Yeager Defendants filed the instant Motion to Dismiss on March 9, 2023 pursuant to Federal Rule Civil Procedure 12(b)(2), arguing that Fernandez has not met her burden to establish this Court's personal jurisdiction over them. *See generally* MTD.

Fernandez has also moved the Court to conditionally certify a collective action under 29 U.S.C. § 216(b) on behalf of herself and the following collective of potential opt-in litigants alleging violations of Count One (the "FLSA Class"). Her collective action definition is:

> All persons who are working or have performed work in the United States for Tox or any of its affiliates as a Technician or Esthetician at any

> time within the past three years and who were not paid for training time on their regular pay date.

Cond. Cert. Mot. at 7. In doing so, Plaintiff's seeks to challenge a common illegal pay practice by Defendants, or that Defendants violated FLSA's minimum wage requirements by forcing Fernandez and other Technicians to undergo unpaid training for 6–14 days, 7–8 hours per day, without any compensation. *Id.* at 7, 9.

II.
LEGAL STANDARDS

A. Conditional Certification

Section 216(b) of the FLSA states that employees may file suit against their employers on their own behalf or on behalf of "other employees similarly situated." 29 U.S.C. § 216(b). A "collective action" differs from a class action in that each plaintiff must opt into the suit by giving her consent in writing. *McElmurry v. U.S. Bank Nat'l Ass'n*, 495 F.3d 1136, 1139 (9th Cir. 2007). Accordingly, "unlike in a class action, only those plaintiffs who expressly join the collective action are bound by its results." *Id.* (citing 29 U.S.C. § 256).

While section 216(b) does not define "similarly situated," the Ninth Circuit provides guidance on the subject in *Campbell v. City of Los Angeles*, 903 F.3d 1090 (9th Cir. 2018), a case that upended previous district court practice in FLSA collective action cases in this circuit. The *Campbell* opinion instructs that there is a two-step process to determine certification in FLSA cases. *Id.* at 1109. The first step of the process, in which plaintiffs will typically move for preliminary certification, occurs "at or around the pleading stage." *Id.* At this stage, the court makes an initial determination as to whether potential opt-in plaintiffs are "similarly situated" to the representative plaintiff(s) such that a collective action should be certified for the sole purpose of sending "court-approved written notice" to potential class members "who may wish to join the litigation as individuals." *Id.* at 1101 (citing *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013)); *see alsoHoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169–72 (1989).

Workers may be deemed "similarly situated" when they are subject to the same policy or practice that is alleged to violate the FLSA and share a common theory of the defendant's statutory violations. *Vega v. All My Sons Bus. Development LLC*, 583 F. Supp. 3d 1244, 1252–53 (D. Ariz. 2022) (citation omitted); *Lescinsky v. Clark Cnty. School Dist.*, 539 F. Supp. 3d 1121, 1127 (D. Nev. 2021) (citing *Senne v. Kansas Cty. Royals Baseball Corp.*, 934 F.3d 918, 949 (9th Cir. 2019), *cert. denied*, -- U.S. --, 141 S. Ct. 248 (2020)). In conducting its analysis, the court is "typically focused on a review of the pleadings but may sometimes be supplemented by declarations or limited other evidence." *Campbell*, 903 F.3d at 1109. It is still a "lenient" inquiry and is "loosely akin to a plausibility standard, commensurate with the stage of the proceedings." *Id.*

If the collective action "survive[s] its earlier scrutiny," it reaches the second-stage inquiry. At the second stage, an employer can move for "decertification" of the collective action, which "will come at or after the close of relevant discovery." *Id.* at 1110. In other words, the second stage constitutes a "more exacting look at the plaintiffs' allegations and the record." *Id.* District courts may decertify collective actions at the second stage when "conditions make the collective mechanism truly infeasible, but [they] cannot reject the party plaintiffs' choice to proceed collectively based on [their] perception of likely inconvenience." *Id.* The *Campbell* panel analogized this inquiry to the Rule 23 commonality inquiry as announced by *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), but cautioned that, more broadly, Rule 23 standards are inapplicable in the FLSA context. *Id.* at 1114–15.

In general, the management of a collective action under the FLSA is "a subject of substantial judicial discretion." *Howell v. Advantage RN, LLC*, 401 F. Supp. 3d 1078, 1085 (S.D. Cal. 2019) (citations omitted).

B. Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(2), a defendant may seek dismissal of an action due to lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). "When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of

demonstrating that the court has jurisdiction." *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 741 (9th Cir. 2013). "When a district court acts on a defendant's motion to dismiss under Rule 12(b)(2) without holding an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts to withstand the motion to dismiss. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). "Because there is no statutory method for resolving [personal jurisdiction], the mode of its determination is left to the trial court." *Data Disc, Inc. v. Sys. Tech. Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

When adjudicating a motion to dismiss brought pursuant to Rule 12(b)(2), a district court may consider evidence outside of the pleadings, including affidavits submitted by the parties, and may order discovery on jurisdictional issues. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (internal citation omitted). Although for purposes of assessing a motion to dismiss, the facts in the Complaint are generally accepted as true, the court "may not assume the truth of allegations in a pleading which are contradicted by affidavit." *Data Disc*, 557 F.2d at 1284 (internal citation omitted). "[C]onflicts between the facts contained in declarations submitted by the two sides must be resolved in the plaintiff's favor." *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151, 1160 (9th Cir. 2007) (internal citation and quotation marks omitted).

III.
DISCUSSION

A. Conditional Certification

1. "Similarly Situated"

Fernandez moves this Court to conditionally certify a class of potential opt-in litigants defined as "[a]ll current or former Technicians and Estheticians who performed work in the United States for the Tox Corporation or any of its affiliates within the past three years and who were not paid for training time." Compl. ¶ 9. In doing so, she posits that all potential opt-in class members were subject to a common illegal pay practice of

being required to undergo an unpaid training before beginning their employment, which "lasted approximately eight days, 7–8 hours per day." Cond. Cert. Mot. at 9.

In support of her Motion, she presents evidence of other "similarly situated" Tox Technicians. In addition to her own declaration, Fernandez submits two additional Technician declarations stating that (1) each was required to attend Tox's training as a condition of their employment, (2) nine Technicians attended their training, and (3) none of the three declarants were paid for their training time. Reply at 9 (citing Fernandez Decl. ¶¶ 6–8; Jianette Decl. ¶¶ 6–8; Kaur Decl. ¶¶ 6–8). Each declarant also states that Courtney Yeager mentioned during training that she and her assistant trainer named "Brittany" personally conduct all of Tox's trainings. Fernandez Decl. ¶¶ 6–7; Jianette Decl. ¶¶ 6–7; Kaur Decl. ¶¶ 6–7.[2] Kaur also states that "Courtney told me that she conducted training every other week, including at Tox's other locations in California, Texas, Florida, and Canada. A training was conducted in New York City approximately once every other month." Kaur Decl. ¶ 7.

First, Defendants argue that Fernandez's evidence is insufficient for conditional certification. Cond. Cert. Opp. at 7. But there is no legal requirement that a collective action plaintiff submit a particular number of declarations or other evidence to meet the

[2] The Court has reviewed Defendants' Objections to the Fernandez, Jianette, and Kaur declarations. [Doc. # 42 ("Ds.' Objs.").] The caselaw is not clear on whether evidence must be admissible at the conditional certification stage of a FLSA action, *see* Cond. Cert. Reply at 22, but the Court will address some of them below for the sake of resolving this motion. To the extent the Court does not address any of them, it is because the Court did not rely on the objected-to evidence in reaching its ruling. Any objections to such evidence are **OVERRULED as moot**.

Defendants object to ¶ 7 of all three declarations, in which Fernandez, Jianette, and Kaur each state that Courtney Yeager said during training that she and Brittany "were the only people authorized by Tox to conduct its trainings." Ds.' Objs. at 6. The Court **OVERRULES** these objections. This statement is relevant to the issue of whether Tox had a uniform policy, and is not confusing or unfairly prejudicial. *See* Fed. R. Evid. 401, 403. This statement is not heresay, as it is a statement of a party opponent. Fed. R. Evid. 801(d)(2). Nor is it an opinion on an ultimate issue. Fed. R. Evid. 704. Each declarant claims to have heard Courtney Yeager make this statement, so there is no basis for an objection on personal knowledge. Fed. R. Evid. 602. There are a variety of other blanket objections listed that seem completely inapplicable, *e.g.*, competency to testify per FRE 601, so the Court **OVERRULES** the remaining objections as well.

"lenient" standard for collective action certification. *See* Cond. Cert. Mot. at 16–17; *Heath v. Google Inc.*, 215 F. Supp. 3d 844, 852 (N.D. Cal. 2016); *Leuthold v. Destination Am.*, 224 F.R.D. 462, 468–69 (N.D. Cal. 2004); *see also Knight v. Concentrix Corp.*, No. 4:18-cv-07101-KAW, 2019 WL 3503052, at *3 (N.D. Cal. Aug. 1, 2019) (finding three declarations and allegations contained in the complaint indicating plaintiffs were required to arrive at their workstations and perform pre-shift work before clocking in to be sufficient at the conditional certification stage). Indeed, a FLSA plaintiff's lack of access to evidence is the very justification courts cite for the low standard on a conditional certification motion, which is usually made without the benefit of "necessary discovery" and "fully developed record" that can be examined in the decertification stage. *Lescinsky*, 539 F. Supp. 3d at 1127 (citation omitted).

Defendants' other argument is that Fernandez's evidence, if sufficient, "lack[s] the foundation necessary to expand the collective beyond New York." Cond. Cert. Opp. at 7. In support of this position, Defendants cite district court cases in this circuit in which judges declined to conditionally certify nationwide FLSA collective actions, although none of them postdate *Campbell*. *See* Cond. Cert. Opp. at 7–8 (citing *Young v. Beard*, 2014 WL 66706, at *5 (E.D. Cal. Jan. 8, 2014); *Gamble v. Boyd Gaming Corp.*, 2014 WL 2573899, at * 4–5 (D. Nev. June 6, 2014); *Kelsey v. Entertainment U.S.A., Inc.*, 67 F. Supp. 3d 1061, 1069 (D. Ariz. 2014)). Each of these cases address FLSA claims that involve complicated fact patterns with many more variables than present in this case, in which Fernandez's FLSA claim challenges a single practice under a single theory of violating FLSA's minimum wage provision. *Cf. Senne*, 934 F.3d at 949 ("Critical to our decision is that plaintiffs allege a single, FLSA-violating policy—the failure to pay overtime under any circumstances—and argue a common theory of defendants' statutory violations[.]"). There are no inconsistencies in Fernandez's evidence about this policy. *Cf. Phillips v. County of Riverside*, No. ED CV 19-1231-JGB (SHKx), 2022 WL 216822, at *6 (C.D. Cal. Apr. 7, 2022). And as Fernandez points out, none of Defendants' cited cases challenge policies of

employers with the same style of "hands-on nationwide management" as Tox. Cond. Cert. Reply at 15.

Since *Campbell* was decided, district courts applying its relaxed standard at this stage routinely will grant conditional certification to a nationwide opt-in collective, even when the plaintiff does not have evidence of the challenged policy or practice in every location of the defendant's operations. *See, e.g.*, *Haro v. Walmart, Inc.*, 2023 WL 2239333, at *7 (E.D. Cal. Feb. 27, 2023) (rejecting arguments to limit conditional certification to California employees); *Pittmon v. CACI Int'l, Inc.*, 2021 WL 4642022, at *4 (C.D. Cal. Aug. 27, 2021) ("Plaintiffs are not required, before any substantive discovery has taken place, to submit declarations from plaintiffs in every state to justify nationwide certification.") (citations omitted). And there are even cases, not cited by Defendants, that would do so before *Campbell* was decided. *See, e.g.*, *Harris v. Vector Marketing Corp.*, 716 F. Supp. 2d 835 (N.D. Cal. 2010); *Stickle v. SCI Western Market Support Ctr., L.P.*, 2009 WL 3241790, at *6 (D. Ariz. Sept. 30, 2009); *Beauperthuy v. 24 Hour Fitness USA, Inc.*, 2008 WL 793838, at *6 (N.D. Cal. Mar. 24, 2008); *Adams v. Inter-Con Sec. Sys., Inc.*, 242 F.R.D. 530, 539 (N.D. Cal. 2007); *see also* Cond. Cert. Reply at 10–15.

Ninth Circuit law specifically cautions that in FLSA collective actions, "as long as the proposed collective's factual or legal similarities are material to the resolution of their case, dissimilarities in other respects should not defeat collective treatment." *Senne*, 934 F.3d at 948 (quotation marks and citation omitted). This analysis should be done "in light of the purposes and goals of a collective action." *Sheffield v. Prius Corp.*, 211 F.R.D. 411, 413 (D. Or. 2002). As *Campbell* itself states, "[a] systemic policy is no less common across the collective if those subject to it are affected at different times, at different places, in different ways, or to different degrees." 903 F.3d at 1116 (citation omitted).

In conclusion, Fernandez's allegations set forth a set of plausible allegations with "legal or factual similarity material to the disposition" of the claims, which can be collectively resolved. *Senne*, 934 F.3d at 948 (citing *Campbell*, 903 F.3d at 1117)). Fernandez may not yet have discovery elucidating the details of Tox's practices in other

states, but she did provide evidence of three potential opt-in collective members with the same or similar "job requirements" and "pay provisions," providing a "factual nexus which binds the named plaintiff[] and the potential class members together." *See Gillespie v. Cracker Barrel Old Country Store Inc.*, 2023 WL 2734459, at *9, 10 (D. Ariz. Mar. 31, 2023) (citations and quotation omitted); *see also Wood v. TriVita, Inc.*, 2009 WL 2046048, at *4 (D. Ariz. Jan. 22, 2009). She alleges a similar job performance and training process that is "centralized" for all employees at all Tox locations. Compl. ¶¶ 13–17.[3] She provides evidence that suggests that Ryan Yeager singlehandedly runs payroll for all Tox locations. Fernandez Decl. ¶¶ 14, 16; *id.*, Exs. 1 (email from Courtney Yeager stating that Ryan [Yeager] would handle processing Fernandez's W-2 form) at 4, 3 (email from Ryan Yeager indicating he does payroll for all 13 companies "individually") at 10 [Doc. # 39-2].[4] And some of Tox's admissions in its Answer also support Fernandez's theory that Tox's policies and practices are centralized and uniform across job titles, such as a general statement that "Defendant admits it pays Technicians on an hourly basis, plus commissions." Ans. ¶ 19. Once the parties enter discovery, proof of the alleged violation can potentially be established for all members of the collective by a simple examination of Tox's payroll records, making it suitable for collective treatment.

Nor is the court required to exclude plaintiffs that may be subject to a collective action waiver from receiving notice. *See* Cond. Cert. Opp. at 9–10. To the contrary, "courts have overwhelmingly determined that the possibility of mandatory arbitration should not prevent the conditional certification of a collective action." *Pittmon*, 2021 WL 4642022, at *4 (citing *Rosario v. 11343 Penrose Inc.*, 2020 WL 8812460, at *5 (C.D. Cal. 2020)); *see also Saravia v. Dynamex, Inc.*, 310 F.R.D. 412, 424 (N.D. Cal. 2015) ("No

[3] Tox denied these allegations in its Answer, but "it is not the court's role to resolve factual disputes, decide substantive issues relating [to] the merits of the claims, or make credibility determinations at this first stage of certification." *Gillespie*, 2023 WL 2734459, at *10 (citations omitted).

[4] Defendants' objections to this evidence are also **OVERRULED**. *See* Defs.' Objs. at 4. Fernandez's declaration authenticates these exhibits, and they are party opponent statements. *See* Fed. R. Evid. 602, 801(d)(2).

district court in [the Ninth Circuit] has denied conditional certification on the basis that some members of the proposed collective may be subject to valid and enforceable arbitration clauses."). The same logic applies to the waivers here. Defendants' arguments about the enforceability of the waivers is a *defense* to be asserted in the decertification process, and is not relevant at this stage. Cond. Cert. Opp. at 10; Cond. Cert. Reply at 18–19.

For the foregoing reasons, the Court **GRANTS** Fernandez's motion for conditional certification of a collective of "[a]ll persons who are working or have performed work in the United States for Tox as a Technician or Esthetician at any time within the past three years and who were not paid for training time on their regular pay date."[5]

2. Notice

Finally, Defendants contest whether the notice in this case should come from Plaintiff's counsel or a third-party administrator. Cond. Cert. Opp. at 12 (internal quotation omitted) (citing *Cooley v. Air Methods Corp.*, 2020 WL 9311858, at *4 (D. Ariz. Sept. 25, 2020); *Prentice v. Fund for Pub. Interest Research, Inc.*, 2007 WL 2729187, at *5 (N.D. Cal. Sept. 18, 2007)). Fernandez does not respond to that argument in her Reply, so the Court construes her non-response as acquiescence to using a third-party administrator. *See, e.g.*, *John-Charles v. California*, 646 F.3d 1243, 1247 n.4 (9th Cir. 2011) (deeming issue waived where party "failed to develop any argument"); *City of Arcadia v. EPA*, 265 F. Supp. 2d 1142, 1154 n.16 (N.D. Cal. 2003) ("[T]he implication of this lack of response is that any opposition to this argument is waived.").

Accordingly, the Court orders notice through first-class mail and electronic mail with a 90-day opt-in period, with notice given to a third-party administrator and a 45-day reminder notice to those who have not responded. *See* Cond. Cert. Mot. at 19. Notice shall

[5] Since Fernandez has not provided any allegations or evidence of any of Tox's "affiliates," let alone the policies or practices of any such entities, the Court limits the conditionally certified class to Technicians who work for the Tox Corporation. *See* Cond. Cert. Opp. at 11.

be given to all Technicians who worked for Tox, regardless of any collective action waiver they may have signed.

B. Personal Jurisdiction

The Yeager Defendants, citizens of Florida, argue that Fernandez has not met her burden to establish personal jurisdiction over them in California. MTD at 2.

Due process requires that a court has either "general jurisdiction" or "specific jurisdiction" over a defendant. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004); MTD Opp. at 17–18. Put differently, a defendant must have "certain minimum contacts" with the forum for a court to exercise personal jurisdiction over them, "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citations omitted).

A court has general jurisdiction over an individual when that person's contacts with the forum are "so substantial, continuous, and systematic that the defendant can be deemed to be 'present' in that forum for all purposes." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). Specific jurisdiction, on the other hand, "depends on an affiliation between the forum and the underlying controversy." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks, brackets, and citations omitted); *see also Bristol-Myers Squibb Co. v. Sup. Ct.*, 137 S. Ct. 1773, 1781 (2017).

For individuals like the Yeager Defendants, the "paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). The record in this case reflects that the Yeager Defendants are currently domiciled in Florida, after purchasing a home there in November 2021 and moving there in January 2022. Decl. of Courtney Yeager ISO Defs.' MTD ¶ 3 [Doc. # 32 ("C. Yeager Decl.")]; Decl. of Ryan Yeager ISO Defs.' MTD ¶ 3 [Doc. # 33 ("R. Yeager Decl.")]. Courtney Yeager attests that she has only visited California once since January 2022, for a

trip duration of less than 72 hours.[6] C. Yeager Decl. ¶ 4. Ryan Yeager has "not set foot in the state of California" since January 2022. R. Yeager Decl. ¶ 4. Both Yeager Defendants also state that they have never owned real property in California. C. Yeager Decl. ¶ 5; R. Yeager Decl. ¶ 5.

In this context, Defendants advance a categorical, inflexible rule that California courts could not possibly exercise general jurisdiction over the Yeager Defendants, because they are currently domiciled in Florida. MTD at 7–8. To support their position, they cite caselaw stating that "isolated contacts" with or "[s]poradic or isolated visits" to a forum state will not support general jurisdiction. *Id.* (quoting *Tuazon v. RJ. Reynolds Tobacco Co.*, 433 F.3d 1163, 1173 (9th Cir. 2006); *Shrader v. Biddinger*, 633 F.3d 1235, 1247 (10th Cir. 2011)).

In doing so, the Yeager Defendants offer the Court a very misleading characterization of their contacts with California. Fernandez submits evidence that strongly suggests the Yeager Defendants were domiciled in California for nearly a decade, including for much of the class period. *See* MTD Opp. at 7 n.2. Fernandez's evidence includes an article in Calabasas Style Magazine dated January 2, 2018, which provides a rough timeline of the Yeager Defendants' life in California. After meeting and marrying in 2011, the Yeager Defendants moved to California approximately two years later. Decl. of James E. Goodley ISO Pl.'s Opp. to Defs.' MTD ("Goodley Decl."), Ex. H (*Calabasas Style Magazine* article) at 2–3 [Doc. # 37-8]. The article states that they lived in the Hollywood Hills, but moved to Calabasas when they had children, two and a half years

[6] Fernandez disputes the truth of this statement, and provides the Court with screenshots of several Instagram posts by Courtney Yeager that postdate January 2022 and are geotagged as being posted from California. *See* Decl. of Lilibeth Fernandez ISO Pl.'s Opp. to Defs.' MTD ¶ 18; *id.*, Ex. 5 at 15–22 [Doc. # 37-5]. Defendants do not explain this discrepancy in their Reply, nor do they deny Courtney Yeager's presence in California on those specific dates, but merely argue that social media is "notorious for inaccurate information." Reply at 7 n.2. If the information in Courtney Yeager's declaration is incorrect, she and her attorneys have a continuing obligation to correct it. *See* 28 U.S.C. § 1746 (Unsworn declarations under penalty of perjury); Fed. R. Civ. P. 11 (obligation to present papers to the Court that are true and accurate "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . ."). Even so, conflicts between affidavits on a Rule 12(b)(2) motion "must be resolved in the plaintiff's favor." *See Schwarzenegger*, 374 F.3d at 801.

before the article was published. *Id.* at 4. Finally, there is a statement in a notarized affidavit of non-service by a process server attempting to serve the summons and complaint for the instant lawsuit that "[t]he defendants are unknown to the current resident who moved in February 2022. They occasionally see mail for the defendants so they must have been a prior resident." Goodley Decl., Ex. D (Affidavit of Non-Service) at 2 [Doc. # 37-4].

In addition to living in California for years, the Yeager Defendants also conducted significant and varied business there. At the time that the Calabasas Style Magazine article was published, Ryan Yeager owned a company called Yeager Diamonds, which served the Calabasas and Hidden Hills area. [Doc. # 37-8.] Courtney Yeager, for her part, became the CEO of the Tox Corporation in 2019 and operated a fitness company in Los Angeles before that. Goodley Decl., Exs. I (Courtney Yeager LinkedIn Page) at 2 [Doc. # 37-9], L (*The American Reporter* article) at 2–4 [Doc. # 37-12]. Fernandez also submits a printout from the California Secretary of State showing Ryan Yeager as the Registered Agent for multiple Tox companies, whose initial registrations range from 2014 to 2021. Goodley Decl., Ex. C (California Secretary of State search listing Ryan Yeager as Registered Agent of Tox) at 3–4 [Doc. # 37-3 ("SOS Printout")]. As Defendants admit in their Reply, an individual must reside in a state to be a Registered Agent for service of process in California. *See* MTD Reply at 7 (citing Cal. Corp. Code § 1502(b)).

The Ninth Circuit has held—in the context of a specific jurisdiction analysis—that relevant contacts between the defendant and forum state can be "weakened by the passage of time," but Fernandez filed her suit less than a year after the Yeager Defendants left California. *Mattel, Inc. v. Greiner and Hausser GmbH*, 354 F.3d 857, 688 (9th Cir. 2003) (quoting *Threlkeld v. Tucker*, 496 F.2d 1101, 1104 (9th Cir. 1974)). In *Threlkeld*, the Ninth Circuit held that the lapse of 14 months since the defendant's forum-related activities did not stymie the court's exercise of personal jurisdiction. *Threlkeld*, 496 F.2d at 1104. In *Mattel*, the Ninth Circuit allowed personal jurisdiction over the nonresident corporate defendant after a 40-year period since its last contact with the forum (the filing of a lawsuit

in 1961)because the subject of the later lawsuit was "sufficiently close" to the issues of the previous one. *Mattel, Inc.*, 354 F.3d at 866. Here, there is a much shorter passage of time since the Yeager Defendants ceased to be domiciled in California.

Even so, some non-binding cases have language indicating that the question of whether a defendant is "at home" for the purpose of general jurisdiction in a particular forum should be measured at the time the initial complaint was filed. *Repp v. Oregon Health Scis. Univ.*, 972 F. Supp. 546, 549 n.2 (D. Or. 1997); *see also Cochran v. Air & Liquid Sys. Corp.*, No. 2:21-cv-09612-MEMF (PDx), 2022 WL 7609937, at *15 (C.D. Cal. Oct. 13, 2022). Other cases cite slightly different rules, such as courts can "reach back no more than seven years prior to filing of the complaint" when evaluating "facts to support general jurisdiction." *See Hillbroom v. Israel*, 992 F. Supp. 2d 1072, 1078 (D. N. Mar. I. 2012), *judgment entered*, No. 1-10-CV-00031, 2012 WL 2550480 (D. N. Mar. I. Apr. 5, 2012), *and rev'd and remanded on other grounds*, 566 F. App'x 564 (9th Cir. 2014) (citing *Fru–Con Const. Corp. v. Sacramento Municipal Utility Dist.,* 2007 WL 2384841, at *8 (E.D. Cal. Aug. 17, 2007); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569 (2d Cir. 1996) (parenthetical omitted)).

These cases are not, in fact, in conflict with each other. This Court may rely on jurisdictional facts of the Yeager Defendants' past contact with California to determine that they were still "at home" at the time the lawsuit was filed. There is no binding authority that supports a rule in which an individual who has been "at home" in a forum for an extended period of time is no longer subject to personal jurisdiction at the moment in which they decide to leave the forum state, nor one that precludes a finding that a natural person can be "at home" in a state outside their present domicile. Indeed, such an interpretation would render superfluous the oft-cited language that "[g]eneral jurisdiction exists when a defendant is domiciled in the forum state *or his activities there are 'substantial' or 'continuous and systematic.'*" *Panavision Intern., L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998) (emphasis added) (citing *Helicopteros*, 466 U.S. at 414–16). It is indisputable that general jurisdiction jurisprudence is trending towards a significant

narrowing of the doctrine, but most of that caselaw relates to general jurisdiction over corporations, not individuals like the Yeager Defendants. *See, e.g.*, *Daimler AG*, 571 U.S. at 130 n.8; *Goodyear Dunlop Tires*, 564 U.S. at 919; *see also Cochran*, 2022 WL 7609937, at *15.

On this record, it cannot plausibly be questioned that the Yeager Defendants had "continuous and systemic" contacts with California at the time Fernandez filed her Complaint. *See Daimler AG*, 571 U.S. at 127. They lived here for nearly a decade preceding the filing of this suit, and their domicile continued into the FLSA collective action period. They raised children here, started and ran multiple businesses here, and continue to be officers or employees of Tox, which is headquartered here. The Yeagers will be participating in this lawsuit in their capacity as officers of Tox, so there is no offense to the notions of "fair play and substantial justice" in the exercise of jurisdiction over them. *Int'l Shoe*, 326 U.S. at 320. Nor would such an exercise of jurisdiction be unreasonable. *See Asahi Metal Indus. Co. v. Sup. Ct.*, 480 U.S. 102, 113 (1987).

The Court believes the record in this case meets the "exacting standard" required for a finding of general jurisdiction over the Yeager Defendants. *Schwarzenegger*, 374 F.3d at 801; *see also Tuazon*, 433 F.3d at 1172 ("In evaluating general jurisdiction, we have not developed a precise checklist or articulated a definitive litany of factors."); *Hendricks v. New Video Channel America, LLC*, No. CV 14-2989-RSWL (SSx), 2015 WL 3616983, at *4 (C.D. Cal. June 8, 2015) ("[C]ourts have, in rare instances, exercised general jurisdiction over an individual when the individual's contacts with a forum are so substantial that "the defendant can be deemed to be 'present' in that forum for all purposes.") (citing *Yahoo! Inc.*, 433 F.3d at 1205; *Cohen v. Hansen*, 2013 WL 3200093, at *3–4 (D. Nev. June 24, 2013); *Span Constr. & Eng'g, Inc. v. Stephens*, 2006 WL 1883391, at * 5–6 (E.D. Cal. July 7, 2006)).

Since the Court concludes that general jurisdiction exists over the Yeager Defendants for the purpose of this lawsuit, it need not reach the question of the applicability of *Bristol-Myers Squibb Co.*'s holding regarding absent putative class members. *See* MTD

Opp. at 18–23. The Yeager Defendants' motion to dismiss for lack of personal jurisdiction is **DENIED**.

IV.
CONCLUSION

In light of the foregoing, Plaintiff's Motion for Conditional Certification under the FLSA is **GRANTED**, with the following definition of the collective action:

> All persons who are working or have performed work in the United States for Tox as a Technician or Esthetician at any time within the past three years and were not paid for training time on their regular pay date.

The parties shall meet and confer and shall submit a Joint Status Report to the Court by **June 29, 2023**, indicating their preferred third-party administrator, a revised version of the Notice and opt-in forms,[7] and a proposed notice schedule.

The Yeager Defendants' motion to dismiss is **DENIED**. They shall file their Answers by **June 30, 2023**.

IT IS SO ORDERED.

DATED: June 15, 2023

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

[7] The Court noted some typographical errors in Fernandez's form as submitted [Doc. # 39-5], including a reference to Judge J. Paul Oetkin.