

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

**JASON GUAJARDO, individually and on
behalf of all others similarly situated,
*Plaintiff,***

v.

**BIRD ELECTRIC ENTERPRISES, LLC,
*Defendant.***

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No. MO:18-CV-025-DC-RCG

ORDER GRANTING IN PART PLAINTIFF’S MOTION FOR CORRECTIVE NOTICE

BEFORE THE COURT is Plaintiff Jason Guajardo’s (Plaintiff) Motion for Corrective Notice and Brief in Support. (Doc. 63). This case is before the undersigned through an Order pursuant to 28 U.S.C. § 636 and Appendix C of the Local Court Rules for the Assignment of Duties to United States Magistrate Judges. (Doc. 35). On June 12, 2019, the Court held a hearing on several motions, including the instant Motion for Corrective Notice. (Doc. 68). During the hearing, the Court made an oral ruling **GRANTING IN PART** Plaintiff’s Motion for Corrective Notice. (Doc. 63). In accordance with the oral ruling at the hearing, the following Order now issues.

On February 15, 2018, Plaintiff brought suit against Defendant Bird Electric Enterprises (Defendant) alleging violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* (Doc. 1). Plaintiff alleges Defendant failed to pay him and other similarly situated employees overtime pay for hours worked in excess of forty in a workweek. *Id.* Specifically, Plaintiff alleges Defendant failed to pay “for compensable travel time and compensable preparatory and concluding work.” *Id.* at 2. On April 10, 2018, the parties filed a Stipulation of Conditional Certification whereby they agreed to the following conditionally-certified class: “All current and former Electricians who worked for Defendant in Department 16 at any time from April 10, 2015

to the present” (Doc. 10 at 1). The Court granted the Stipulation on April 16, 2018, and conditionally certified the agreed-upon class. (Doc. 12). Additionally, the Court approved the parties’ proposed form and method of notice to the potential class members. *Id.*

To date, there have been three rounds of notice given in this case because Defendant has twice discovered additional potential class members it had not previously disclosed to Plaintiff. (Doc. 63 at 2). On December 6, 2018, during the pendency of the second round of notice, and shortly before the start of the third round of notice, Defendant hosted a company Christmas party where it presented “Dispute Resolution Agreements” (DRA) to its employees. (Doc. 72 at 6). The DRA does not apply to the suit currently before the Court. The DRA provides generally that any claims an employee may have against Defendant will be resolved through alternative dispute resolution. (Doc. 63-1 at 6–7). Specifically, Section 3 of the DRA provides: “[i]ncluded within the scope of this Agreement are all disputes . . . other than those listed in Section 4.” *Id.* at 6. Notably, Section 4 makes no reference to the instant case. *Id.* The last sentence of Section 3 states:

This Agreement does not require arbitration of claims that are pending in court on the Effective Date in which the Employee and the Company are parties or those claims Employee might have in connection with a collective action lawsuit if Employee is a member of a class certified by the court and the court-ordered notice period has not yet expired as of the Effective Date.

Id. Plaintiff contends this language is confusing and could have prevented potential class members from opting-in to this suit. Specifically, Plaintiff argues that the absence of any mention of this case or collective action lawsuits in Section 4 had the potential to mislead potential class members. (Doc. 63 at 3). Additionally, he argues that the phrase “member of a class” in the last sentence of Section 3 is similarly misleading as it is “undefined and wholly

vague.” *Id.* at 7. Defendant opposes the Motion for Corrective Notice and argues the DRA is not misleading, coercive, or an attempt to undermine the collective action. (Doc. 70 at 5–9).

First, the Court finds the record does not support a finding that Defendant acted with a misleading purpose in presenting the DRA to its employees or that sanctions against Defendant are warranted. However, the Court finds that Plaintiff has made an adequate showing, both in his filings and during oral argument at the hearing on the matter, that the DRA had the potential to confuse some potential class members regarding their eligibility to join this litigation. Accordingly, the Court finds that issuance of a corrective notice to potential class members who were given notice during the second or third rounds of notice and who were employed by Defendant on or after December 6, 2018 is appropriate.

It is therefore **ORDERED**, in accordance with the oral ruling at the hearing, that Plaintiff’s Motion for Corrective Notice (Doc. 63) is **GRANTED IN PART** as follows:

Plaintiff shall issue notice via text message with a link to the corrected Notice Form to the potential class members who were originally given notice during the second or third rounds of notice and who were employed by Defendant on or after December 6, 2018.

The text-message notice shall read:

If you worked for Bird Electric Enterprises, LLC as an electrician in Department 16 after April 10, 2015 and were paid by the hour, you might be entitled to join a lawsuit claiming back pay for unpaid overtime compensation. YOU ARE ENTITLED TO JOIN THIS CASE EVEN IF YOU SIGNED A “DISPUTE RESOLUTION AGREEMENT” WITH BIRD. For additional information about the case, including how to join, visit www.BirdElectricLawsuit.com.

Lastly, the corrective language on the Notice Form shall read:

You have received a “DISPUTE RESOLUTION AGREEMENT” from Bird Electric. That agreement has no effect on your legal rights to join the lawsuit.

**YOU ARE PERMITTED TO JOIN THIS LAWSUIT AND
PURSUE YOUR CLAIMS IN COURT EVEN IF YOU HAVE
SIGNED THE “DISPUTE RESOLUTION AGREEMENT.”**

Finally, the deadline for this limited group of potential class members to file consent forms shall be **Monday, July 8, 2019**.

It is so **ORDERED**.

SIGNED this 14th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Ron C. Griffin', written over a horizontal line.

RONALD C. GRIFFIN
UNITED STATES MAGISTRATE
JUDGE