

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

CHRISTOPHER LOPEZ,
Individually and On Behalf of All Others
Similarly Situated,
Plaintiff,

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v.

No. MO:18-CV-0231-DC-RCG

BIRD ELECTRIC ENTERPRISES, LLC,
Defendant.

ORDER

BEFORE THE COURT are Plaintiff’s Opposed Motion for Expedited Conditional Certification of Collective Action and Judicially-Supervised Notice (Opposed Motion for Conditional Certification) (Doc. 13), Plaintiff’s Opposed Motion for Corrective Notice (Doc. 30), and the parties’ Agreed Motion Regarding Conditional Certification and Judicially Supervised Notice (Agreed Motion for Conditional Certification) (Doc. 36). 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. 5). This Court has authority to enter this order pursuant to 28 U.S.C. § 636(b)(1)(A). *See, e.g., Esparza v. C&J Energy Servs., Inc.*, No. 5:15–CV–850-DAE, 2016 WL 1737147, at *1 (W.D. Tex. May 2, 2016) (noting conditional certification involves non-dispositive issues); *Wedel v. Vaughn Energy Servs., LLC*, No 2:15–CV–93, 2015 WL 5920034, at *1 (S.D. Tex. Oct. 6, 2015) (same).

Plaintiff filed this suit as a collective action alleging violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201, *et seq.*, on December 11, 2018. (Doc. 1). On February 4, 2019, Plaintiff filed an Opposed Motion for Conditional Certification. (Doc. 13). On June 10, 2019, the undersigned issued a Report and Recommendation to the District Judge recommending that Plaintiff’s Opposed Motion for Conditional Certification be granted. (Doc. 32). After

discovering that some of Defendant's employees had signed Dispute Resolution Agreements that could potentially confuse putative plaintiffs regarding their rights to opt-in to the suit, Plaintiff filed a Motion for Corrective Notice. (Doc. 30). The parties then conferred and came to an agreement regarding conditional certification as well as a method of notice that was agreeable to both parties. (Doc. 36). Consequently, the parties' filed an Agreed Motion for Conditional Certification. *Id.* In their Agreed Motion for Conditional Certification, the parties state that Plaintiff's Motion for Corrective Notice is now moot. *Id.* at 3. Based on this procedural history, and having considered the parties' briefing and the applicable legal authorities, the Court **ORDERS** the following:

The Report and Recommendation on Plaintiff's Opposed Motion for Conditional Certification issued by this Court on June 10, 2019 is hereby **WITHDRAWN**. (Doc. 32).

Plaintiff's Opposed Motion for Conditional Certification is **DENIED** as **MOOT**. (Doc. 13).

Plaintiff's Motion for Corrective Notice is **DENIED** as **MOOT**. (Doc. 30).

The parties' Agreed Motion for Conditional Certification is **GRANTED**. (Doc. 36).

Accordingly, the Court conditionally certifies the following class:

All hourly-paid current and former electricians, including foremen and general foremen, who worked in Department 16 or Department 22 at any time between June 24, 2016 and the date when this Order is entered (the "Class Members").

It is further **ORDERED** that, within fourteen (14) days of this Order, Defendant shall disclose in Excel (.xlsx) format: the full name; last known address(es) with city, state, and zip code; all known telephone numbers; beginning date(s) of employment; and ending date(s) of employment (if applicable) of any class members except Class Members who: (i) filed consents in *Guajardo v. Bird Electric, Inc.*, Civil Action No. 7:18-cv-00025-DC, pending in the U.S.

District Court for the Western District of Texas, Midland Division (the “*Guajardo* case”); (ii) were disclosed by Defendant in its April 26, 2018, November 16, 2018, or December 13, 2018 class lists in connection with the *Guajardo* case; or (iii) signed an arbitration agreement with Defendant that covers the claims in this case and that is dated prior to December 12, 2018.¹ The Class Members described in subsections (i)-(iii) of the immediately preceding sentence shall not receive notice of this lawsuit as set forth below.

It is further **ORDERED** that the Parties shall comply with the following schedule:

Within 30 days of receiving the contact information for the Class Members	Class Counsel shall send a copy of the Notice and Consent Form attached as Exhibit A to this Order to the Class Members by First Class U.S. Mail; Class Counsel may send the Text Message Notice of Collective Action attached to this Order as Exhibit B one time to the Class Members through text message; and Class Counsel may make the Notice and Consent Form available on a website solely dedicated to disseminating notice. Class Counsel shall send a link of the website to Defendant’s counsel shortly after the time the website is published and shall not make changes to the website during the Notice Period, without agreement from Defendant’s counsel in advance.
Within 3 days of the initial delivery of the Notice of Collective Action	Class Counsel shall file an Advisory with the Court indicating the date of delivery of the Notice of Collective Action and Consent Form was first sent to the Class Members (the “Delivery Date”).
60 days from the Delivery Date	The Class Members shall have 60 days from the Delivery Date to return their signed Consent forms to Class Counsel for filing with the Court (the “Notice Period”).
No later than 7 days after the close of the Notice Period	Class Counsel shall file with the Court all signed Consents to Join.

¹ The Parties have agreed that Defendant will disclose any Class Members who have signed arbitration agreements that are not dated and that those individuals will receive notice (the identity of these individuals has been agreed upon by the Parties). The Parties further agree that, if any individual who files a consent in this case has signed an arbitration agreement with Defendant, Defendant reserves the right to move to compel the claims of that individual to arbitration or to otherwise seek to exclude that person from participating in this lawsuit.

It is further **ORDERED** that Plaintiff is authorized to offer the Class Members the option to consent to join this collective action through the use of electronic signatures.

It is finally **ORDERED** that, other than the text message notice set forth above, Class Counsel may only contact any Class Member by telephone for the purpose of securing a correct mailing address if the original mailed notice is returned to Class Counsel as undeliverable.

It is so **ORDERED**.

SIGNED this 26th 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