

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

THE SPIVAK LAW FIRM
8605 Santa Monica Bl, PMB 42554
West Hollywood CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

LOUIS BENOWITZ (SBN 262300)
Louis@SmithBenowitz.com
SMITH & BENOWITZ
4515 Van Nuys Boulevard, Suite 302
Sherman Oaks, CA 91403
Telephone: (818) 839-7800
Facsimile: (818) 839-9700

Attorneys for Plaintiff,
GABRIELA ESCRIBA, and all others similarly situated
(Additional Counsel for Plaintiffs listed on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN
(UNLIMITED JURISDICTION)

JODIE BLANTON JR., YAZMIN CORTES
and GABRIELA ESCRIBA, on behalf of all
others similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN, INC., a
Pennsylvania Corporation, and DOES 1 through
20, inclusive;

Defendants.

AND THE CONSOLIDATED/RELATED
ACTIONS.

Case No.: STK-CV-VOE-2021-5136

**DECLARATION OF DAVID SPIVAK IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Consolidated/Related Actions:

- *Cortes v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2108718;
- *Escriba v. Communications Test Design, Inc, et al.*; County of San Bernardino, Case No. CIVSB2115512; U.S.D.C., Central District of CA, Fed. Case No. 5-21-cv-01326-AB-KK



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West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF GABRIELA ESCRIBA

BENJAMIN JACOB SMITH (SBN 266712)

benjy@thesmithlawcorp.com

SMITH LAW

4515 Van Nuys Blvd., Ste 302

Sherman Oaks CA 91403-5799

Tel: (818) 839-9607 | Fax: (818) 839-9700

ATTORNEYS FOR PLAINTIFF YAZMIN CORTES

Brian J. Mankin [CSB No. 216228]

brian@lmlfirm.com

Misty M. Lauby [CSB No. 243009]

misty@lmlfirm.com

LAUBY MANKIN LAUBY LLP

5198 Arlington Avenue, PMB 513

Riverside, CA 92504

Tel: (951) 320-1444 | Fax: (951) 320-1445

ATTORNEYS FOR PLAINTIFF JODIE BLANTON, JR.

Larry W. Lee [CSB No. 228175]

lwlee@diversitylaw.com

Kristen M. Agnew [CSB No. 247656]

agnew@diversitylaw.com

Nicholas Rosenthal [CSB No. 268297]

nrosenthal@diversitylaw.com

DIVERSITY LAW GROUP, P.C.

515 S. Figueroa Street, Suite 1250

Los Angeles, CA 90071

Tel: (213) 488-6555 | Fax: (213) 488-6554

William L. Marder, Esq. [CSB No. 170131]

POLARIS LAW GROUP

501 San Benito Street, Suite 200

Hollister, CA 95023

Tel: (831) 531-4214 | Fax: (831) 634-0333



SPIVAK LAW

Mail:

8605 Santa Monica Bl

PMB 42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

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Los Angeles CA 90067

1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFFS' MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff GABRIELA ESCRIBA ("Plaintiff" or "Escriba") in her and
6 Plaintiffs JODIE BLANTON JR. and YAZMIN CORTES's (collectively, "Plaintiffs") lawsuit
7 against Defendant COMMUNICATIONS TEST DESIGN, INC. ("Defendant") (Plaintiffs and
8 Defendant are collectively referred to below as the "Parties"). I am making this declaration in
9 support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

10 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
11 herein and, if called as a witness, could and would competently testify thereto under oath.

12 3. To the best of my knowledge, neither Plaintiffs nor I have any conflicts of interest
13 with the absent class members. Each Plaintiff is an adequate class representative. Each Plaintiff
14 and the class members have strong and co-extensive interests in this litigation because they all
15 worked for Defendants during the relevant time period, allegedly suffered the same alleged
16 injuries from the same alleged course of conduct, and there is no evidence of any conflict of
17 interest between the Plaintiffs and the class members. Moreover, each Plaintiff has demonstrated
18 his/her commitment to the settlement class by, among other things, retaining experienced counsel,
19 providing counsel with documents and extensively speaking with them to assist in identifying the
20 claims asserted in this case, assisting them in contacting class members and gathering information
21 from them, meaningfully participating in the mediation that led to the Settlement, and exposing
22 himself/herself to the risk of attorneys' fees and costs awards against him/her if this Action had
23 been unsuccessful. Thus, each Plaintiff is adequate to serve as a Class Representative.
24 Accordingly, this Court should find that Plaintiffs and their counsel are adequate to represent the
25 Settlement Class as required under Code of Civil Procedure § 382.

26 4. Counsel for the Parties also undertook extensive settlement discussions, which
27 included participating in a formal mediation.

28 ***Background of Counsel***

5. In 1991, I earned a Bachelor of Arts degree with a major in Political Science from
the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
Southwestern University School of Law.



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1 6. In December of 1995, Supreme Court for the State of California admitted me as
2 an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State.
3 On May 11, 2012, I also became admitted to the District of Columbia Bar. On February 21, 2013,
4 I became admitted to the New York bar.

5 7. I am experienced in handling employment law matters and specifically wage and
6 hour cases. I have been practicing law since 1995. My experience has been almost exclusively in
7 the area of employment law representing employees with claims of wrongful termination,
8 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical
9 leave violations. I have tried many cases before California and federal courts, government
10 agencies, and neutral arbitrators. I am a member of the California Employment Lawyers
11 Association (CELA).

12 8. Since I started practicing law, I have tried many cases before courts, arbitrators
13 and government agencies. Some of my cases are:

14 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
15 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiff Special
16 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
17 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
18 back pay and gave plaintiff a retroactive promotion. See "Lawsuit Puts Customs Service on Trial:
19 Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, *San Diego Union-*
Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And
20 Retaliation" by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

21 B. *Jorge Guzman v. Department of Justice*, United States District Court,
22 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiff Special
23 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
24 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
25 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent in
26 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
27 Latino, including falsified charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21,
28 1999.

 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims



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1 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
2 compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His Job" by
3 Dan Weikel, *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded to Fired
4 Social Worker" by Dan Weikel, *Los Angeles Times*, June 10, 2000; "A Whistleblower's Revenge"
5 by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

6 D. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
7 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
8 Plaintiff, who I represented *pro bono* sought the return of \$45,000.00 he paid to an attorney
9 escrow officer who subsequently absconded with the money. The jury awarded compensatory
10 damages. The Judgment with interest is now far in excess of that amount. Soon after this case was
11 litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal
12 Services.

13 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
14 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated customs
15 agent, followed by an award of Attorneys' fees and costs.

16 F. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
17 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
18 wrongful termination against his former employer. The neutral arbitrator awarded compensatory
19 and liquidated damages. The claims for damages, attorney's fees and costs were resolved shortly
20 thereafter by means of a confidential settlement.

21 G. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior Court case no.
22 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
23 first and only case to be successfully prosecuted through trial under the Labor Code Private
24 Attorney Generals Act of 2004, Labor Code §§ 2698, *et seq.* on behalf of plaintiff and other
25 aggrieved employees against someone other than an employer for civil penalties including unpaid
26 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
27 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
28 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

9. Since 2007, I have prosecuted several traditional wage & hour class actions as the
sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
v. Quality Vessel Engineering, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*



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1 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
2 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
3 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
4 motion for final approval of the settlement class action settlement in *Tapia v. Mangen*, had no
5 quarrel with an hourly rate of \$525.00 for my services.

6 10. In my representation of employees, I have prosecuted several lawsuits on behalf
7 of employees with claims of rest and meal period and overtime violations and related wage claims.

8 11. I have been involved in the prosecution of numerous wage and hour class actions
9 at various stages of litigation. A small sampling of the wage and hour class actions in which I
10 have been counsel of records is as follows:

11 A. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
12 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
13 settlement on behalf of assistant fitness manager employees).

14 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
15 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
16 court on behalf of nonexempt employees).

17 C. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case
18 No. BC465017 (appointed Class Counsel and granted final approval of class action settlement on
19 behalf of merchandiser employees).

20 D. *Deckard v. MSL Community Management LLC*, Riverside County Superior
21 Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action
22 settlement on behalf of caregivers and medical technicians).

23 E. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
24 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
25 approval of class action settlement on behalf of boutique manager and assistant manager
26 employees).

27 F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
28 (appointed Class Counsel and granted final approval of class action settlement on behalf of
personal trainer employees).

G. *Fischer v. National Distribution Centers*, Riverside County Superior
Court, Case No. RIC1114952 (appointed Class Counsel and granted final approval of class action



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1 settlement on behalf of hourly warehouse employees).

2 H. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
3 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
4 behalf of hourly employees).

5 I. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
6 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
7 action settlement on behalf of medical devices employees).

8 J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
9 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
10 settlement on behalf of non-exempt hourly employees excluding truck drivers).

11 K. *La Fleur v. Medical Management International, Inc.*, United States District
12 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel
13 and granted final approval of class action settlement on behalf of practice managers).

14 L. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
15 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
16 settlement on behalf of security guard employees).

17 M. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
18 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
19 on behalf of dairy and agricultural laborers).

20 N. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
21 BC442608 (appointed Class Counsel and granted final approval of class action settlement on
22 behalf of call concert rigging employees).

23 O. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
24 Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class action
25 settlement by the court on behalf of hourly employees).

26 P. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
27 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
28 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
customer account executives).

Q. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
BC511072 (appointed Class Counsel and granted final approval of class action settlement on

1 behalf of bobtail truck drivers).

2 R. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
3 BC431249 (granted class certification through contested motion and appointed Class Counsel in
4 case on behalf of former pharmacy employees based on late final wage payments in violation of
Labor Code §§ 201–203).

5 S. *Celeste Shaw and Dejan Nagl v. Interthinx, Inc.*, United States District
6 Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel
7 and granted final approval of class action settlement by the court on behalf of auditor employees).

8 T. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
9 Class Counsel and granted final approval of class action settlement involving alleged
10 misclassification of sales employees and unpaid vacation pay).

11 U. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
12 BC462917 (appointed Class Counsel and granted final approval of class action settlement on
13 behalf of service account manager employees).

14 V. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
15 No. BC421485 (granted class certification through contested motion and appointed Class Counsel
16 in case on behalf of former security workers based on late final wage payments in violation of
Labor Code §§ 201–203).

17 W. *Vang v. Burlington Coat Factory Corporation*, United States District Court
18 Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and
19 granted final approval of class action settlement by the court on behalf of assistant store manager
20 employees).

21 X. *Volney-Parris v. Southern California Edison Company*, Los Angeles
22 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class
23 action settlement on behalf of customer specialist employees).

24 Y. *Wade and Gammel, et al. v. Defender Security Company*, Central District
25 of California, Case No. 2:15-cv-7142 CAS-JC (appointed Class Counsel and granted final
approval class action settlement on behalf of security technicians).

26 Z. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
27 Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class
28 action settlement on behalf of sales associates).



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1 Conclusion

2 12. My office's incurred costs to date and the expected costs through overseeing the
3 complete distribution of all settlement proceeds approximately \$6,750.00.

4 13. The Settlement establishes a Total Settlement Amount of two million dollars
5 (\$2,000,000.00), and provides for Class Counsel to apply to the Court for Attorneys' Fees and
6 Costs, consisting of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the
7 Total Settlement Amount (i.e., 700,000.00) and an amount not to exceed thirty thousand dollars
8 (\$30,000.00) for costs and expenses. The attorneys' fees provided for by the Settlement is
9 commensurate with: (1) the risk that Class Counsel took in bringing and litigating the cases, (2)
10 the extensive time, effort and expense that Class Counsel dedicated to the cases, (3) the skill and
11 determination that Class Counsel have shown, (4) the results that Class Counsel have achieved
12 throughout the litigation, (5) the value of the Settlement that Class Counsel have achieved for the
13 Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote
14 their time and efforts to this matter. The proposed Notice provides Class Members with
15 information about the amount allocated toward the Attorneys' Fees and Costs, and that an award
16 of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.

17 14. Class Counsel have borne all of the risks and costs of litigation and will not receive
18 any compensation until recovery is obtained.

19 15. For the reasons stated in Plaintiffs' motion for preliminary approval of class action
20 settlement, I believe the settlement is fair, adequate and reasonable.

21 I declare under the penalty of perjury of the laws of the State of California that the
22 foregoing is true and correct to the best of my knowledge.

23 Executed on January 19, 2023 at Los Angeles, California.

24 

25 DAVID SPIVAK,
26 Declarant



28 S P I V A K L A W

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