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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

PASCUAL LUJAN, individually and on behalf of other similarly situated employees and aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiffs,

vs.

GUSMER ENTERPRISES, INC.; and DOES 1 through 25, inclusive,

Defendants.

Case No. 24CECG00166

Honorable Kristi Culver Kapetan, Department 502

DECLARATION OF BENNETT BERGER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Date:
Time:
Dept.: 502

Complaint Filed: January 11, 2024
FAC Filed: August 26, 2025
Trial Date: Not Set

DECLARATION OF BENNETT BERGER

I, Bennett Berger, declare:

1. I make this declaration in the above-entitled action, in support of Plaintiff's motion for preliminary approval of class action and PAGA settlement agreement. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I have been retained by Plaintiff's counsel, Blackstone Law, APC (Blackstone), in the above-entitled action as a data analysis expert to analyze a set of timekeeping and payroll records to determine the exposure for various claims including unpaid minimum wages, unpaid overtime wages, meal periods, rest periods, reimbursements, and related derivative penalties.

3. I received my Bachelors of Art in Business Management Economics from the University of California, Santa Cruz in 2011. During my education I put an emphasis in finance and studied topics including statistical analysis, information systems management and corporate finance.

4. I am a partner at Berger Consulting Group, LLC ("BCG") and have provided data analysis and damage exposure for over 3,000 cases. I have reviewed and analyzed data provided in numerous formats for multiple business types, including but not limited to retail, hospitals, logistics, finance, hospitality, technology, and manufacturing. My curriculum vitae is attached hereto as Exhibit 1. BCG was founded in 2013 and has been hired to provide expert analysis for more than 10,000 cases. BCG provides data and statistical analysis based on timekeeping records and other types of employee data.

5. I testified as an expert witness in the following:

1. *Turner v Charter Communications – AAA Case No. 01-22-0001-5254 – Deposition – February 16, 2023*
2. *Harper v Charter Communications – AAA Case No. 01-19-0004-5743 – Deposition – September 28, 2021*
3. *Feltzs v Cox Communications – Case No. 8:19-CV-02002-JVS-JDE – Second Deposition – September 22, 2021*
4. *Domingo v Prime Healthcare Paradise Valley – Case No. 37-2019-00023576-CU-OE-CTL – Trial – August 11, 2021*

5. *Domingo v Prime Healthcare Paradise Valley – Case No. 37-2019-00023576-CU-OE-CTL – Deposition – July 28, 2021*
6. *Ward v Sutter Valley Hospitals – Case No. 2:19-CV-00581-KJM-AC – Deposition – June 16, 2021*
7. *Sanchez v ARB, Inc. – Case No. 30-2016-00837130-CU-OE-CXC – Deposition – March 31, 2021*
8. *Feltzs v Cox Communications – Case No. 8:19-CV-02002-JVS-JDE – Deposition – March 5, 2021*
9. *Libreros v LLR, Inc dba Lularoe – Case No. RIC1714426 – Deposition – January 15, 2021*
10. *Hankey v The Home Depot USA – Case No. 2:19-cv-00413-JAM-CKD – Deposition – November 13, 2020*
11. *Mkhitarian v Bank of the West, – Case No. BC691989 – Deposition – September 17, 2020*
12. *Santos v United Parcel Services, Inc. – Case No. 3:18-cv-03177-EMC – Deposition – September 1, 2020*
13. *Cessna v Southern California Edison Company – Case No. BC689081 – Deposition – July 29, 2020*
14. *Gamboa v PAFCO - Case No. CIVDS1605273 – Deposition - July 18, 2019*
15. *Fuller v TWC - Case No. 3:17-cv-01513-DMS-AGS - Deposition - June 20, 2019*
16. *Avila v Simply Right - Case No. BC538100 - Deposition - October 16, 2018*
17. *Pineda v Lithographix - Case No. BC612372 - Deposition - February 9, 2018*
18. *Cacho v Eurostar - Case No. BC558689 - Deposition - February 17, 2017*
19. *Barajas v WHM - Case No. BC491045 - Deposition - November 28, 2016*

6. Blackstone provided various Excel files broken down by employee containing timekeeping records and payroll records. These records covered 17 employees ranging from January 11, 2020 through April 5, 2024. It is my understanding this is the full dataset that was agreed upon by both Plaintiff and Defendant in order to assess the damages in this matter and represents approximately 19% of the class. The records contained 2,350 total workweeks and Defendant represented that there are a total of 12,306 workweeks through January 30, 2025.

7. The timekeeping records were analyzed for shift length distributions as well as meal break violations. The records showed an 11% meal break violation rate resulting in an exposure of

$174,594, or $157,071 after the paid meal break premiums resulting in a 10.1% violation rate.

8. Given that rest breaks are not required to be recorded by an employer, and based on the information regarding Defendant's alleged rest break practices, I was advised to calculate a 100% rest break violation rate for shifts greater than or equal to 3.5 hours (resulting in exposure of $1,602,148).

9. Based on the information provided to me regarding Plaintiff's experiences working for Defendant and their observations and understandings of Defendant's practices and policies that pertained to the employees, I calculated an estimated one hour of unpaid off-the-clock work per workweek (resulting in exposure of $289,502).

10. I was advised that Plaintiff's claim for unreimbursed business expenses arose out of Plaintiff and other employees' need to use personal cell phones, hand tools, and use of personal vehicles for work related purposes without receiving any amount of reimbursement. Based thereon, I was asked to calculate $30 per month in unreimbursed business expenses (resulting in exposure of $88,920).

11. The paystubs provided were analyzed to calculate the average rate of pay of $23.49 per hour. The paystubs were also used to calculate underpaid sick pay by not including various bonus payments into the regular rate of pay, resulting in an estimated $61,764 of underpaid sick pay.

12. It's estimated there are 52 former employees in the 3-year class period. Waiting time penalties assume each of these 52 employees are entitled to penalties and are calculated at 30 days per employee multiplied by the average hourly base rate of $23.49 multiplied by 8.2 hours per day. This results in $305,573 of exposure for waiting time penalties.

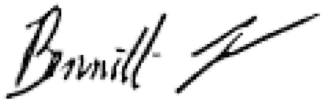
13. Wage statement penalties assume each of the 56 employees and 2,572 pay periods in the 1-year statute of limitations have a violation and therefore are entitled to penalties. Wage statement penalties are calculated at $50 for the initial penalty and $100 for each subsequent penalty with a maximum of $4,000 per employee and result in an exposure of $224,000.

14. The number of pay periods in the PAGA period have been extrapolated to mediation to estimate 1,963 pay periods in the PAGA period. Assuming 1 violation per pay period and assessing a $100 penalty amount results in $196,300 in PAGA penalties.

15. I may be asked to develop additional analysis, observations, and queries in connection with any data counsel for Plaintiffs provides after the date this declaration is signed. If requested, I

could conduct the same or similar analyses as described in this declaration. At that time, if appropriate, I can prepare a supplement to this declaration.

I declare under penalty of perjury of the laws of United States of America in the state of California that the foregoing is true and correct. Executed on June 5, 2026 in Frisco, Texas.



Bennett Berger

Exhibit 1

Bennett Berger

6121 Brentway Rd. Frisco, TX 75034 • Phone: 818-635-6613 • E-Mail: BergerBennett@gmail.com

Experience

Partner / Senior Data Analyst - Berger Consulting Group — June 2013 – Current

- Analyze small and large data sets for wage and hour class action lawsuits. Review data for patterns; group data using Pivot Tables and other complex equations in Excel to help identify relationships between sets of data.
- Use Excel extensively to write equations and macros to aid in quantitative damage models. Worked on over 3,000 wage and hour cases since 2013 in industries such as retail, healthcare, logistics, finance, hospitality, technology, and manufacturing.
- Perform data conversion using multiple commercial OCR software programs to transform small to large volumes of PDF images into searchable text format.
- Write case analysis summaries, detailed reports and declarations explaining the data and exposure models.
- Provide expert testimony of my findings.

Co-Founder / President – SD3D — January 2013 – 2023

- Extensive 3D printing knowledge of mechanics and materials as well as 3D design and 3D scanning. Robust knowledge of 3D printing file preparation software.
- Build Excel spreadsheets for cost analysis of 3D printing versus other manufacturing methods.
- Design the sales and marketing material for the business, along with developing the overall brand and sales strategies.
- Responsible for SD3D's finances, financial projections and investor relations.

Account Executive – Corporate Strategies Inc. — December 2011 – January 2013

- Market and analyze employee benefits for small group clients.
- Compose spreadsheets comparing current verses renewal and proposed insurance plans.
- Execute daily HR tasks for groups- enrollments, terminations, coverage changes, order ID cards, etc.
- Communicate to business owners as well as employees about their plan benefits and cost comparisons.
- Prepare proposals for individual health insurance clients.
- Organize current life insurance summaries and formulate new products ideas and changes.

Education

University of California, Santa Cruz — September 2007 – March 2011

Bachelors of Arts in Business Management Economics

Computer Skills

-Excel, PowerPoint, Word, Outlook, Omnipage PDF converter, ABBYY FineReader PDF converter, Adobe Acrobat Pro

Expert Testimony

Berger Consulting Group

- Turner v Charter Communications – AAA Case No. 01-22-0001-5254 – Deposition – February 16, 2023
- Harper v Charter Communications – AAA Case No. 01-19-0004-5743 – Deposition – September 28, 2021
- Feltzs v Cox Communications – Case No. 8:19-CV-02002-JVS-JDE – Second Deposition – September 22, 2021
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- Sanchez v ARB, Inc. – Case No. 30-2016-00837130-CU-OE-CXC – Deposition – March 31, 2021
- Feltzs v Cox Communications – Case No. 8:19-CV-02002-JVS-JDE – Deposition – March 5, 2021
- Libreros v LLR, Inc dba Lularoe – Case No. RIC1714426 – Deposition – January 15, 2021
- Hankey v The Home Depot USA – Case No. 2:19-cv-00413-JAM-CKD – Deposition – November 13, 2020
- Mkhitarian v Bank of the West, – Case No. BC691989 – Deposition – September 17, 2020
- Santos v United Parcel Services, Inc. – Case No. 3:18-cv-03177-EMC – Deposition – September 1, 2020
- Cessna v Southern California Edison Company – Case No. BC689081 – Deposition – July 29, 2020
- Gamboa v PAFCO - Case No. CIVDS1605273 – Deposition - July 18, 2019
- Fuller v TWC - Case No. 3:17-cv-01513-DMS-AGS - Deposition - June 20, 2019
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- Pineda v Lithographix - Case No. BC612372 - Deposition - February 9, 2018
- Cacho v Eurostar - Case No. BC558689 - Deposition - February 17, 2017
- Barajas v WHM - Case No. BC491045 - Deposition - November 28, 2016