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9 *Attorneys for Plaintiffs*

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF FRESNO**

13 CRUZ SOTO and MONICA NANELLY
14 GARCIA, individually, and on behalf of all
others similarly situated,

15 Plaintiffs,

16 v.

17 ESPINOZA BROTHERS FOOD
18 DISTRIBUTION, INC, a California corporation;
19 ESPINOZA BROTHERS ENTERPRISES, LLC,
a California limited liability company; and
20 DOES 1 through 10, inclusive,

21 *Defendant.*

Case No. 22CECG03830

Assigned for all purposes to:
Hon. Jonathan M. Skiles, Dept. 403

**DECLARATION OF BENNETT BERGER
IN SUPPORT OF RENEWED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 4, 2025
Time: 3:30 p.m.
Dept.: 403

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1. I am an individual over the age of 18 and a partner of Berger Consulting Group and am not a party to the above captioned action. I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. I submit this declaration in connection with the concurrently filed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3. I obtained a Bachelor of Arts degree in Business Management Economics from the University of California, Santa Cruz in 2011.

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*

5. In or around December 2023, I was retained by counsel for Plaintiffs Cruz Soto and Monica Nanelly Garcia (“Plaintiffs”) to assist Plaintiffs’ counsel with respect to their effort to value the various wage and hour violations committed by Defendant Espinoza Brothers Food Distribution (“Defendant”).

6. In the leadup to mediation, counsel for Defendant provided a class list of all their non-exempt hourly employees employed in California during the relevant class period. This list included the employees’ dates of employment which allowed me to calculate the number of workweeks each putative class member worked during the class period, along with pay periods during the PAGA period and the number of terminated employees in the 3-year statute of limitations. They also provided employee counts, workweek counts, and the average rate of pay during the class period

1 along with aggrieved employees and pay periods during the PAGA period. Both the counts I
2 calculated from the class list as well as the figures provided by counsel for Defendant were extremely
3 close in nature, therefore the damages analysis was extrapolated to Defendant's figures. This includes
4 106 employees employed during the class period working approximately 5,136 workweeks with an
5 average rate of pay of \$16.75 per hour, 68 employees terminated in the 3-years statute of limitations,
6 and 70 aggrieved employees working 1,318 pay periods during the PAGA period, of which 37
7 employees were terminated.

8 7. As to the time and pay data, I analyzed a 15.7% sampling of time data and payroll
9 records provided by Defendant for hourly paid non-exempt employees from July 26, 2021 to
10 December 18, 2023, which I reviewed and analyzed to create a damages model to assist Plaintiffs'
11 counsels' evaluation of the realistic range of potential recovery for the class prior to mediation. This
12 sampling percentage is within a range of what we're used to analyzing through the thousands of
13 mediations we have analyzed data for, though there is no predetermined sample that unequivocally
14 determines validity. As stated by professor and statistician David Freedman regarding sample size:
15 "There is no definitive statistical answer to this familiar question. Bigger samples have less sampling
16 error. On the other hand, smaller samples may be easier to manage, and have less non-sampling error.
17 Bigger samples are more expensive than smaller ones: generally, resource constraints will determine
18 the sample size."¹

19 8. From the time data that was provided, I was able to use the sampling to determine the
20 number of shifts by length, which were extrapolated and determined as follows:

- 21 • Number of Estimated Shifts in the Class – 23,733
- 22 • 99.1% of all shifts were greater than 3.5 hours (or 23,511 shifts)
- 23 • 82.0% of all shifts were greater than 5 hours (or 19,454 shifts)
- 24 • 66.0% of all shifts were greater than 8 hours (or 15,665 shifts)
- 25 • 20.7% of all shifts were greater than 10 hours (or 4,922 shifts)

27
28 ¹ D.A. Freedman. "Sampling" In the *Encyclopedia of Social Science Research Methods*.
Sage Publications (2004) Vol. 3 pp. 986-990, M. Lewis-Beck, A. Bryman, and T.F. Liao, eds.

9. The time records that were provided contained clock in and clock out times for the shifts as well as the start and end times of the meal breaks. 99.4% of the shifts over 5 hours had a recorded meal break (19,340 shifts extrapolated). Out of these shifts, my analysis found 20.8% of shifts (4,948 shifts) had an occurrence of a unique meal break violation (defined as a late, short, or missed 1st meal break for shifts over 5 hours or a missed 2nd meal break for shifts over 10 hours) with 12.2% of violations paid as meal break premiums (approximately 605 meal break premiums paid).

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on May 9, 2025, at Frisco, TX.

Bumill *F*

Bennett Berger
Partner of Berger Consulting Group

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
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- 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
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