

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Lindsay Orin
and Proposed Class Counsel

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LINDSAY ORIN, on behalf of herself
and all others similarly situated and on
behalf of the general public,

Plaintiff,

v.

CAL. DEL. U.S.A. INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:23-cv-03404-FMO-KS

Assigned To: Fernando M. Olguin
Courtroom: 6D

CLASS ACTION

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

Date: April 18, 2024

Time: 10:00 A.M.

Courtroom: 6D

Judge: Fernando M. Olguin

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1. I am an individual over the age of 18 and I am a Partner at Berger Consulting Group. This declaration is submitted in support of approval of the proposed class action settlement (“Settlement”) reached in this case. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

3. Gaines hired me in September 2023 to assist in the analysis of time and pay records, which were provided in the following files:

(a) Orin [CAL DEL 000001] Privileged and Confidential for Mediation Purposes Only, 4855-6393-7665 v 4

(b) Orin [CAL DEL 000002-000372] Privileged and Confidential for Mediation Purposes Only, 4861-4674-5986 v 1

(c) Orin [CAL DEL 000373] Privileged and Confidential for Mediation Purposes Only, 4882-5104-4738 v 1

4. Per Gaines' request, I provided an analysis of the following claims: (a) Failure to pay overtime premium wages, (b) Failure to pay the proper sick pay amounts (c) Failure to pay premium wages for missed and denied meal and rest periods, (d) Failure to reimburse business expenses (e) Failure to provide accurately itemized wage statements, (f) Failure to pay all wages due at separation, and (g) PAGA penalties as they relate to the aforementioned wage and hour claims.

5. The sample time data contained records for 15 employees out of the 63 putative class members from April 3rd, 2019 through May 12th, 2023. The analysis was extrapolated to the 6,398 workweeks from April 3rd, 2019 through October 4th, 2023. There are an estimated 21,015 shifts worked across the 6,398 workweeks, and there are an estimated 1,946 pay periods in the PAGA period from March 27th, 2021 through October 4th, 2023.

6. Unpaid overtime premium wages were calculated by comparing the hours worked from the time records to the hours paid in the pay records. I identified 13 underpaid pay periods for 1 out of the 15 employees analyzed who worked shifts in excess of 8 hours a day or 40 hours per week without being paid the proper overtime premium hours. From the 13 pay periods underpaid, there was a total of 22.5 overtime hours worked but paid as regular hours resulting in \$186.35 in unpaid overtime wages. Extrapolated to the class results in 326.4 underpaid overtime premium hours across an estimated 189 pay periods, or 5.4%. The exposure was calculated by taking the \$186.35 in underpaid overtime premium wages in the sampling multiplied by 3,475 pay periods in the class divided by the 239 pay periods analyzed.

$\$186.35 \text{ underpaid overtime} \times 3,475 \text{ pay periods in class} / 239 \text{ pay periods analyzed}$
 $= \$2,710 \text{ in unpaid overtime premium hours}$

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2 7. Unpaid sick pay was calculated by comparing the rate of pay at which
3 sick pay was paid to the regular rate of pay in each pay period while incorporating the
4 commission payments into the regular rate of pay. The difference between the amount
5 of sick pay that should have been paid at the regular rate of pay compared to the
6 amount of sick pay actually paid results in the net underpaid sick pay. 53.3% of
7 employees had a total of 16.9% of their pay periods experiencing underpaid sick pay
8 extrapolating to a total of \$41,566.

9 ***\$41,566 in underpaid sick pay***

10 8. Unpaid rest break premiums assume 50% of each shift worked 3.5 hours
11 or greater had a rest break violation. There were 20,817 extrapolated shifts worked 3.5
12 hours or greater resulting in 10,414 rest break violations assuming the 50% violation
13 rate.

14 ***10,414 rest break violations x \$24.99 weighted average regular rate of pay***
15 ***applied to the rest breaks = \$260,200 in unpaid rest break premiums.***

16 9. Unpaid meal break premiums were calculated based on the number of
17 unique meal break violations. Unique meal break violations are defined as shifts
18 worked in excess of 5 hours with at least one of the following meal break occurrences:
19 1st meal break recorded after the end of the 5th hour, a shift greater than 5 hours of
20 work without a recorded 1st meal break, a 1st recorded meal break lasting less than 30
21 minutes in length (for shifts over 5 hours), or a shift lasting longer than 10 hours
22 without a recorded 2nd meal break. There were 5,795 extrapolated shifts worked in
23 excess of 5 hours (out of 20,130 shifts worked over 5 hours) with at least one unique
24 meal break violation as defined above representing a 28.8% violation rate.

25 ***5,795 meal break violations x \$24.63 weighted average regular rate of pay***
26 ***over the meal break violations = \$142,733 in unpaid meal break premiums.***

27 10. Unreimbursed business expenses assume each employee had \$90 in
28 unreimbursed cell phone expenses (\$30/mo x 3 months).

\$90 per employee x 63 employees = \$5,670 in unreimbursed business expenses

11. Waiting time penalties were calculated by taking the 30 terminated employees within the 3-year statute of limitations multiplied by 7.335 hours per day, multiplied by 30 days times the \$18.24 average hourly rate over the class period.

30 terminated employees x 7.335 hours x 30 days x \$18.24 hourly rate = \$120,431 in Waiting Time Penalties.

12. Wage statement penalties were calculated assuming one penalty per pay period during the 1-year statute of limitations. There were 1,160 pay periods worked by 39 employees from April 3rd, 2022 through October 4th, 2023. Wage statement penalties are the result of applying \$50 for each of the 39 employees' initial pay periods and \$100 for each subsequent pay period with a maximum of \$4,000 per employee.

39 initial pay periods x \$50 = \$1,950

1,121 subsequent pay periods x \$100 = \$112,100

Total wage statement penalties = \$114,050

13. PAGA penalties were calculated at \$100 for each pay period affected by each respective claim except for PAGA for Waiting Time which was calculated at \$100 per terminated employee. The PAGA period runs from March 27th, 2021 through October 4th, 2023.

PAGA for Waiting Time = \$100 x 23 former employees = \$2,300

PAGA for Meal Breaks = 1,441 pay periods x \$100 = \$144,100

PAGA for Rest Breaks = 1,946 pay periods x \$100 = \$194,600

PAGA for Wage Statements = 1,946 pay periods x \$100 = \$194,600

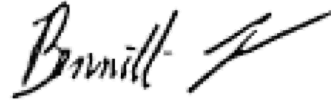
PAGA for Reimbursements = 69 pay periods x \$100 = \$6,900

PAGA for Sick Pay = 428 pay periods x \$100 = \$42,800

Total PAGA exposure = \$585,300

14. Total exposure for all claims equals **\$1,272,660.**

1 I declare, under penalty of perjury, under the laws of the State of California,
2 that the foregoing is true and correct. Executed on March 14, 2024 at Frisco, Texas.
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6 BENNETT BERGER
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EXHIBIT A

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 2,500 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
- Domingo v Prime Healthcare Paradise Valley - Case No. 37-2019-00023576-CU-OE-CTL - Trial - August 11, 2021
- Domingo v Prime Healthcare Paradise Valley - Case No. 37-2019-00023576-CU-OE-CTL - Deposition - July 28, 2021
- Ward v Sutter Valley Hospitals - Case No. 2:19-CV-00581-KJM-AC - Deposition - June 16, 2021
- 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
- Avila v Simply Right - Case No. BC538100 - Deposition - October 16, 2018
- 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