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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 STEPAN MEKHITARIAN, an) Case No.: CV 07-0412 DSF (MANx)
17 individual, on behalf of all others)
18 similarly situated,) **REPLY RE: PLAINTIFF’S**
19) **MOTION FOR CLASS**
Plaintiff,) **CERTIFICATION**
20 vs.)
21) **[Supplemental Declaration of**
DELOITTE & TOUCHE (ICS), LLC, a) **Marc L. McCulloch, Esq., and**
22 Delaware Limited Liability Company;) **Supplemental Exhibits Filed**
and DELOITTE TAX, LLP, a Delaware) **Concurrently]**
23 Limited Liability Partnership; and)
24 DOES 1 THROUGH 50 inclusive,) **Hearing Date: August 25, 2008**
25) **Time: 1:30 p.m.**
Defendants.) **Courtroom: 840**
26)
27)
28)

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. SUMMARY OF REPLY2
- II. WHAT BETTER CASE FOR CLASS CERTIFICATION THAN THIS CASE? THE CLASS MEMBERS DO THE SAME WORK.....3
 - A. Tax Associates Worked Thousands of Unpaid Overtime Hours Doing Repetitive and Mundane Non-Exempt Work: Producing Tax Returns3
 - B. Tax Seniors Are Dedicated Non-Exempt Employees Who Also Worked Thousand of Uncompensated Overtime Hours Producing Tax Returns and Performing Mechanical Review of Tax Papers4
- III. THE EXEMPTION QUESTION CAN BE ADDRESSED BY COMMON PROOF4
 - A. Both The Administrative And The Learned Professional Exemptions Require Exercise of Discretion And Independent Judgment On Matters of Significance And May Be Determined By Common Proof As Demonstrated By The Evidence Before This Court5
 - 1. The Administrative Exemptions Is Inapplicable Because Class Members Perform Production Work and Do Not Exercise Discretion and Independent Judgment on Matters of Significance6
 - 2. The Professional Exemption Is Also Inapplicable to Unlicensed TAs and TSs6
- IV. DEFENDANT’S EVIDENCE OF VARIATIONS AMONG THE CLASS MEMBERS’ WORK DOES NOT ADD UP TO A MATERIAL DIFFERENCE FOR THE OVERTIME ANALYSIS7
 - A. The Opposition *Misstates* Facts And Errs On Others9

1 V. CERTIFICATION UNDER RULE 23 (b)(2) IS PROPER BECAUSE
2 BACK PAY AND CIVIL PENALTIES FLOW DIRECTLY FROM A
3 FINDING OF LIABILITY10
4 VI. PLAINTIFF IS AN ADEQUATE CLASS REPRESENTATIVE [REDACTED]
5 [REDACTED]12
6 VII. CONCLUSION.....12
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Arnold v. United Artists Theater Circuit, 158 F.R.D. 439, 46211

Bell v. Farmers Ins. Exchange, 87 Cal. App. 4th 805 (2001)5

Blackwell v. SkyWest Airlines, 245 F.R.D. 453 (S.D. Cal. 2007).....10

Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1187 (9th Cir. Cal. 2007).....10

Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974)7

Gotthardt v. National R.R. Passenger Corp., 191 F.3d 1148, 1152-55 (9th Cir. 1999).....11

Molski v. Gleich, 318 F.3d 937, 947 (9th Cir. 1982).....11

Ramirez v. Yosemite Water Co., 20 Cal.4th 785, 797-798, 803, fn. 5 (1999)8, 9

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal.4th 319, 340 (2004)5

Statutes

42 U.S.C. § 198111

California *Civil Code* §35347

Rules

Fed. R. Civ. Proc. 23(b)(2)11

RULE 23 (b)(2)10

1 Regulations

2 Cal. Code Regs., Tit. 8, §11040(1)(A)(3)(b)7

3
4 Cal. Code Regs., Tit. 8., §11040(1)(A)(3)7

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1 **I. SUMMARY OF REPLY**

2 In its Opposition D&T does not dispute the following common questions: (1)
3 TAs and TSs do not give tax advice; (2)TAs spent nearly *all* of their time preparing
4 tax returns; (3) TSs prepare tax returns and review TAs work; (4) Class Members
5 perform, as part of their duties, mundane tasks such copying and scanning documents;
6 (5) Class Members do not have discretion to approve the final tax return forms; (6)
7 Class Members are not authorized to sign tax returns; and (7) Class Members work
8 thousands of over-time hours annually and get straight salary.

9 Notwithstanding all of the foregoing common questions, D&T seeks an order
10 from this Court denying Plaintiff’s motion for class certification primarily on two
11 grounds. First, according to D&T, the exemption question cannot be addressed with
12 common proof. Second, the question of whether the Class Members are exempt
13 employees is an individualized question.

14 However, both the common questions and the issue of exemption are
15 susceptible to common proof and may be resolved on class wide basis. The
16 Opposition contains misstatements and half truths about the evidence. The Opposition
17 papers contain *no* evidence that Class Members perform duties that require the
18 exercise of judgment and independent discretion on matters of significance. The
19 Court should not be detained for long by D&T’s misleading anecdotal information
20 clothed as “evidence” which purports to show differences in the TAs and TSs’ job
21 duties.¹ Scant evidence of minor variations in Class Members’ job duties appear to be
22 de minimus.

23 D&T’s arguments that the Class Members perform exempt tasks are also
24 without merit. Class Members perform mundane, repetitive, and robotic task of
25 producing tax returns more than 50% of their working time. A task that is non-
26 exempt, pure and simple.

27
28 ¹ Plaintiff respectfully directs the Court to the Prefatory Statement contained in Plaintiff’s
Evidentiary Objections filled concurrently herewith.

1 **II. WHAT BETTER CASE FOR CLASS CERTIFICATION THAN**
 2 **THIS CASE? THE CLASS MEMBERS DO THE SAME WORK**

3 Subsequent to the filing of his class certification motion, Defendant took 7
 4 depositions of Plaintiff's declarants, typically lasting 2-3 hours each. (McCulloch
 5 Supplemental Decl. ¶2.) Having elicited almost 700 pages of oral testimony from
 6 these declarants, D&T includes *only* eleven (11) pages in support of its Opposition.
 7 The unvarnished and unrehearsed testimony rebuts any notion that this case is not
 8 appropriate for class treatment. The Opposition, rather than using this testimony as a
 9 starting point for its arguments, ignores it almost entirely. D&T's evasion speaks
 10 volumes on how *oral testimony* -- not attorney prepared declarations -- supports its
 11 case. The *oral testimony* shows that Class Members are in remarkably similar
 12 circumstances, i.e., they have the same training², use the same repetitive techniques
 13 and templates³ and labor under the same minimal expectations⁴.

14 **A. Tax Associates Worked Thousands of Unpaid Overtime Hours Doing**
 15 **Repetitive and Mundane Non-Exempt Work: Producing Tax Returns**

16 D&T has only the most basic expectations for its TAs, and this shows from
 17 D&T's own statements and the testimony elicited by D&T. (*See* fn.3; Exh. 27, pp.83
 18 ¶ 3, 93-94.) D&T employs several procedures or techniques to make their work
 19 product as foolproof as possible, including "save as", "copy and paste"⁵, and SALY⁶.
 20 D&T's claim that TAs regularly conduct substantial "research" is plain poppycock in

21
 22 ² Blaske, Exh. 28, 13:7-14:12; Calderon, Exh. 29, 25:1-26:19, 52:4-11; Davis, Exh. 68:1-10,
 70:6-24; Gee, Exh. 32, 86:12-24.

23 ³ Blaske, Exh. 28, 6:1-7:9; Calderon, Exh. 29, 22:16-22, 25:5-10, 31:2-32:5, 32:19-33:16;
 24 Coffey, Exh. 30, 60:6-61:16; Lynch, Exh. 34, 100:7-101:15; Wilder, Exh. 39, 142:8-25, 147:6-
 148:1; Wurtz, Exh. 40, 167:17-168:7.

25 ⁴ Calderon, Exh. 29, 45:16-46:11; Davis, Exh. 31, 68:17-70:5, 74:23-75:19; Wurz, Exh. 40,
 161:3-19, 162:5-16.

26 ⁵ Sato, Exh. 23, 302:2-25-304:9; Blaske, Exh. 28, 7:10-25

27 ⁶ Blaske, Exh. 1, p.8, ¶ 17; Davis, Exh. 4, p.32, ¶ 6; Johnson-Huelsman, Exh. 5, p.41, ¶ 7; Flores, Exh. 16,
 28 83:24-25, 84:1-20; Kossick, Exh. 20, 229:21-25, 230:1-25; Sato, Exh. 23, 309:2-25, 310:1-24; Tam, Exh.
 24, 354:21-25, 355:1-2; Blaske, Exh. 28, 14:23-15:24; Calderon, Exh. 29, 35:16-25; Coffey, Exh. 30,
 62:5-22; Gee, Exh. 32, 83:5-15; Lynch, Exh. 34, 100:18-101:12, 102:18-103:3, 115:7-116:10; Wilder,
 Exh. 39, 142:11-25.

1 the face of testimony concerning the company-wide “ten-minute rule.”⁷ Rebuttal
 2 evidence shows that TAs are under constant supervision. (Calderon, Exh. 29, 49:23-
 3 50:25.) Regardless of the obvious differences that might exist between engagements
 4 due to the nature of a client’s business or the language they speak (i.e. Japanese), the
 5 duties that TAs and TSs perform are the same – preparation of tax returns. (Coffey,
 6 Exh. 30, 60:6-14; Davis, Exh. 31, 73:7-75:2; Sato, Exh. 37, 132: 22-134:4.) Therefore,
 7 it flies in the face of logic and is not credible to suggest that TAs- a starting position at
 8 D&T- possess such wide discretion and independent judgment that defeats class
 9 certification. What *is* credible is the substantial uncontroverted evidence before this
 10 Court presented by Plaintiff showing the type of non-exempt work TAs perform (tax
 11 return production).

12 **B. Tax Seniors Are Dedicated Non-Exempt Employees Who Also Worked**
 13 **Thousand of Uncompensated Overtime Hours Producing Tax Returns and**
 14 **Performing Mechanical Review of Tax Papers**

15 D&T fails to provide competent evidence that either TAs or TSs provide tax
 16 advice. Instead, D&T attempts to hoodwink the Court by implying in vague and
 17 ambiguous terms that “LTS professionals” provide tax advice. D&T’s attempt to
 18 paint the TSs’ work as sophisticated and complex, and thus presumably as exempt,
 19 also does not defeat commonality and is undermined by the miserly annual
 20 compensation paid to TSs (mid to high \$40,000s during Plaintiff’s tenure). (Plaintiff
 21 Decl., ¶ 11.) The evidence before this Court demonstrates that TSs perform
 22 substantially identical work to the unlicensed TAs, which is non-exempt tax
 23 production work much like a production worker in an assembly line producing or
 inspecting widgets.

24 **III. THE EXEMPTION QUESTION CAN BE ADDRESSED BY**
 25 **COMMON PROOF**

26
 27
 28 ⁷ Class Members can spend 10 minutes “researching” a problem on their own and then they are
 required to ask a manager or partner for a solution. *See* Calderon, Exh. 29, 36:24-38:17, 49:7-22,
 52:4-10.

1 Both the administrative and professional exemptions can be properly tried class
 2 wide. *See Bell v. Farmers Ins. Exchange*, 87 Cal. App. 4th 805 (2001)⁸. Rather than
 3 holding that no overtime exemption case could ever be a class action, the California
 4 Supreme Court, in a case involving overtime, held that trial courts should engage in a
 5 “comparative analysis” in determining whether to certify a class.⁹ *Sav-On Drug*
 6 *Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004) (hereinafter “*Sav-On*”).

7 *Sav-On*’s analysis of the cost of separate proceedings exposes the folly of
 8 arguing there can be no certification of an exemption case. The *Sav-On* Court
 9 concluded that “[p]redominance is a comparative concept, and ‘the necessity for class
 10 members to individually establish eligibility and damages does not mean individual
 11 fact questions predominate.’” (*Sav-On*, 34 Cal.4th at 334.)

12 **A. Both The Administrative And The Learned Professional Exemptions**
 13 **Require Exercise of Discretion And Independent Judgment On Matters**
 14 **of Significance And May Be Determined By Common Proof As**
 15 **Demonstrated By The Evidence Before This Court**

16 D&T relies on the administrative and the learned professional exemptions to
 17 support its decision classifying the Class Members’ positions as exempt from the
 18 California wage and hour laws. The most critical requirement, and common to each
 19 of those exemptions, is whether Class Members customarily and regularly exercise
 20 discretion and independent judgment regarding matters of significance.

22 ⁸ In *Bell*, the appellate court affirmed an order of summary adjudication on behalf of a
 23 class of insurance adjusters. Plaintiff- adjusters sought an order against the employer
 24 determining that there was no triable issue as to the employer’s affirmative defense of the
 25 exemption. In defense to the motion, the employer relied on the administrative exemption. The
 trial court granted the employees’ motion and the appellate court affirmed. *Id.* at 809-829.

26 ⁹ *Sav-On* described this comparative analysis as follows: The relevant comparison lies
 27 between the costs and benefits of adjudicating plaintiffs’ claims in a class action and the costs
 28 and benefits of proceeding by numerous separate actions—not between the complexity of a class
 suit that must accommodate some individualized inquiries and the absence of any remedial
 proceeding whatsoever. *Sav-On* at 339 fn. 10.

1 **1. The Administrative Exemptions Is Inapplicable Because Class**
2 **Members Perform Production Work and Do Not Exercise Discretion**
3 **and Independent Judgment on Matters of Significance**

4 Class Members are not covered by the administrative exemption because in
5 performing their work (production of tax papers), using the SALY methodology, they
6 do not exercise discretion and independent judgment. (*See* fn. 5,6 *supra*.) Lack of
7 discretion and independent judgment is best illustrated by testimony elicited from a
8 former D&T Tax Senior at one of the depositions which *D&T* recently took. In
9 response to the question whether the witness exercised discretion, he responded by
10 stating:

11 “Not if it affected taxable income. If it started affecting taxable
12 income, you would need to go to a manager. First of all, you
13 would look at last year. If last year set precedence, then you
14 follow last year. **Even if it was wrong, you just follow last**
year. Let the manager find that it needs to be changed.” (Lynch,
Exh. 34, 115:7:18, emphasis added.)

15 It is abundantly clear from Mr. Lynch’s testimony that TSs (and therefore TAs) do not
16 have discretion and independent judgment when it came down to significant matters
17 such as “taxable income”, matters that affect the “client”, or matters that “the IRS”
18 cares about. (Lynch, Exh. 34, 115:19-116:2.)

19 Absence of discretion and independent judgment is fatal to D&T’s claim of
20 administrative exemption. This issue is susceptible to common proof thus making
21 class treatment of this case appropriate.

22 **2. The Professional Exemption Is Also Inapplicable to Unlicensed TAs**
23 **and TSs**

24 The professional exemption is inapplicable because Class Members do not
25 regularly exercise discretion and independent judgment. The professional exemption
26 is inapplicable also for another reason. The proposed Class excludes Class Members
27 with a CPA license. To satisfy the requirements of the professional exemption, a
28

1 license is required.¹⁰ While the learned professional exemption is another avenue for
 2 satisfying the requirements of the professional exemption, Class Members do not meet
 3 that exemption either. The learned professional exemption applies to those who are
 4 “primarily engaged in an occupation commonly recognized as a learned or artistic
 5 profession.” (Cal. Code Regs., Tit. 8, §11040(1)(A)(3)(b).) Clearly, the proposed
 6 Class cannot possibly satisfy the first avenue – since, by definition, the Class only
 7 encompasses unlicensed TAs and TSs.

8 The learned professional exemption cannot apply to the facts of this case,
 9 because it would require disregarding the specific requirements for the recognized
 10 profession of accounting in favor of the more general requirements for learned
 11 professions. A specific provision relating to a particular subject will govern a general
 12 provision, even though the general provision standing alone would be broad enough to
 13 include the subject to which specific provision related. (California *Civil Code* §3534.)
 14 *Even if* the learned professional exemption were applicable, it would also present a
 15 common predominant question susceptible to common proof.

16 **IV. DEFENDANT’S EVIDENCE OF VARIATIONS AMONG THE**
 17 **CLASS MEMBERS’ WORK DOES NOT ADD UP TO A**
 18 **MATERIAL DIFFERENCE FOR THE OVERTIME ANALYSIS**

19 Given an opportunity to put on its best case to show that certification is
 20 improper, the Opposition failed. To succeed, the Opposition should have shown that
 21 the Class Members' work varied so greatly between each other that class treatment
 22 could not be justified. Rather, D&T's evidence shows that Class Members spend the
 23 vast majority of their time doing the same thing, *i.e.*, preparing tax returns and work
 24 papers. This common fact alone justifies class certification. Though D&T portrays
 25 the Class Members’ work as exempt, the merits of the case cannot be decided at class
 26 certification. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974).

27
 28 ¹⁰ Cal. Code Regs., Tit. 8., §11040(1)(A)(3) (exemption applies to those who are licensed or
 certified in various professions including accounting).

1 According to D&T's own evidence, the Class overwhelmingly spends its time
 2 preparing tax returns. Most of D&T's declarations show that Class Members nearly
 3 exclusively worked on tax returns. (*See, e.g.*, Opp. Exh. 3, ¶4 [As a Tax Associate, he
 4 prepared work papers and tax returns], ¶7 [as a Senior, majority of his time spent
 5 reviewing TAs' work papers and tax returns, which Plaintiff contends constitutes
 6 non-exempt work.¹¹].) The declarations took pains to emphasize when the declarant
 7 worked on matters besides preparing returns, but despite these efforts, these other
 8 types of work are not material to the overtime analysis. (*See, e.g.*, Opp. Exh. 4, ¶4 [as
 9 a tax consultant (i.e. tax associate), 80% of time spent preparing tax returns], Opp.
 10 Exh. 5, ¶6 [as a Senior, 10% of time preparing tax provisions,¹² therefore substantial
 11 time preparing returns/reviewing Associates' returns and work papers] , Opp. Exh. 7,
 12 ¶6 [80% of her time preparing returns], Opp. Exh. 8, ¶7 [as a Senior, 65% of her time
 13 spent reviewing Associates' work papers and 15% spent preparing her own], and Opp.
 14 Exh. 16, ¶6 [60% of time preparing returns, 30% tax consulting and 10% of tax
 15 provision work].) D&T's depositions of Plaintiff's declarants provide similar
 16 testimony. (*See, e.g.*, Lynch, Exh.34, 107:9-16 [as a senior, 75% of his time spent
 17 reviewing TAs' work, and 15% time spent performing same duties as Associates].)

18 This "other work" is immaterial because, under California law, the overtime
 19 analysis looks to what employees do for over half (greater than 50%) of their work
 20 time. To determine if an employee spends more than half of his or her time in exempt
 21 work, the court must "itemize the types of activities that it considers to be sales related
 22 [exempt], and the approximate average times that it finds the employee spent on each
 23 of these activities." *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 797-798, 803, fn.

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 26
 27 ¹¹ *See, e.g.*, Davis, Exh. 31, 73:4-74:3.

28 ¹² Preparing tax provisions involves "calculating numbers on a spreadsheet" like preparing a number for
 a tax return, and requires a training ("a one day" "quick training"). (Gee, Exh. 32, 86:3-19.)

1 5 (1999). The California Supreme Court holds that *Ramirez*' criteria is no barrier to a
2 class action like the one proposed at bench.¹³

3 Clearly, declarations filed by D&T in support of the Opposition show that there
4 is a finite list¹⁴ of Class Member duties which lends itself to resolution on a class-wide
5 basis. Also, to the extent there may be variations, there is *no evidence* before the
6 Court that these variations result in a fundamental difference in the overall
7 responsibilities and tasks of the Class Members, *or that the differences approach over*
8 *half of their work time.*

9 In its Opposition, D&T argues that Class Members performed "consulting" and
10 that work is varied and requires a significant discretion and judgment. (Opp.17:20-
11 18:11.) D&T's "consulting" evidence is immaterial.¹⁵

12 **A. The Opposition Misstates Facts And Errs On Others**

13 The Opposition makes numerous factual assertions that have no evidentiary
14 foundation. An example is footnote 41 at page 13. That footnote cites to the evidence
15 that purportedly supports the statements regarding prior work experience, educational
16 background, and training as factors that would preclude a finding of commonality.

17
18 ¹³ In *Sav-On*, at 336-337, the Supreme Court held: "Presence in a particular overtime class action of the
19 considerations reviewed in *Ramirez* does not necessarily preclude class certification. Any dispute over
20 'how the employee actually spends his or her time' (*Ramirez, supra*, 20 Cal.4th at 802), of course, has the
21 potential to generate individual issues. But considerations such as 'the employer's realistic expectations'
(*ibid.*) and 'the actual overall requirements of the job' (*ibid.*) are likely to prove susceptible of common
22 proof. Defendant's 'realistic expectations,' in particular, may become relevant in this case, and a
23 reasonable court could conclude these are susceptible of common proof."

24 ¹⁴ "Regardless of who is correct, the fact is the tasks discussed in both defendant's and plaintiffs'
25 submissions comprise a reasonably definite and finite list. As plaintiffs argued to the trial court, "[t]he
26 only difference between Defendant's declarations and Plaintiffs' evidence is that the parties disagree on
27 whether certain identical work tasks are 'managerial' or 'non-managerial.' ... This is an issue that can easily
28 be resolved on a class-wide basis by assigning each task to one side of the 'ledger' and makes the
manageability of the case not the daunting task Defendant has sought to portray." *Sav-On, supra*, at 331-
332.

¹⁵ For example, in his declaration Bettencourt indicates that rather than an individual class member taking
the initiative, "*we* formulated a plan" for the client. (Opp. Exh. 2, ¶6.) Clearly, Bettencourt assisted a
team in planning in a similar fashion to drafting tax documents and he is overstating his case. Similarly,
Ehrenberg's declaration (discussed but not cited) refers to an IRC §382 review thereby supporting the
Opposition's contention that TSs engaged in consulting. However, Ehrenberg's declaration fails to
disclose how often he undertook such "consulting" projects, and without more information, the Court
cannot analyze whether Ehrenberg's IRC §382 review was exempt or not. (Opp. Exh. 5, ¶4.)

1 However, the evidence cited has nothing to do with precluding a finding of
2 commonality.¹⁶

3 **V. CERTIFICATION UNDER RULE 23 (b)(2) IS PROPER BECAUSE**
4 **BACK PAY AND CIVIL PENALTIES FLOW DIRECTLY FROM A**
5 **FINDING OF LIABILITY**

6 The Opposition fails to meaningfully rebut the propriety of certification under
7 Rule 23(b)(2). In some ways, in challenging the propriety of certification under
8 Rule 23(b)(2), the Opposition contradicts itself. For example, the Opposition cites
9 *Blackwell v. SkyWest Airlines*, 245 F.R.D. 453 (S.D. Cal. 2007) for the proposition
10 that the plaintiff had not met her burden simply by stating that she was “committed to
11 bringing about change.” (Opp. 21:22; 22:1-2.) Then, D&T criticizes Plaintiff’s
12 declaration for not making such a statement! (Opp. 22:9-10.)

13 D&T’s basic argument is that certification of this case under Rule 23(b)(2) is
14 not warranted because money damages are sought. Contrary to D&T’s argument,
15 Plaintiff’s request for monetary damages does not preclude a Rule 23(b)(2) class
16 action. *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1187 (9th Cir. Cal. 2007). *Dukes*
17 involved back-pay in a Title VII discrimination case, its reasoning applies with equal
18 force in this case.

19 _____
20 ¹⁶ The Opp. Exh. 10, at ¶¶ 1-2, merely states the declarant’s work background and education. The
21 point of Opp. Exh. 8, ¶5, is difficult to understand but states that the declarant would have to
22 “think past” what she was given and would rely on, among other things, her Deloitte training in
23 doing her work and that she got informal training. The Opp. Exh. 7, ¶11, states that tax
24 consultant work requires, in the declarant’s opinion, an understanding of financial reporting,
25 flows of cash from account to account and a sound grounding in substantive tax issues. These
26 statements do not support the contention that prior work experience, educational background,
27 and training are factors that would preclude a finding of commonality.

28 To support this statement, the evidence should have shown that because of all of different
qualifications, the individual class members did vastly different work. However, that does not
appear to be the case anywhere in the evidence supporting the Opposition. In similar fashion, the
Opposition contains numerous foundationless assertions. Most of the evidentiary citations at
pages 13 and 14, which argue there is no commonality, do not support the corresponding
assertion of fact. Pointing out each such statement would take as much space as the rules allow
for a Reply.

1 That a request for back pay weighs against Rule 23(b)(2) certification,
 2 however, does not mean that certification under this rule is improper
 3 whenever back pay is requested. If it did, then the principal category
 4 of cases contemplated by the advisory committee as being certifiable
 5 under Rule 23(b)(2) -- i.e., "actions in the civil-rights field where a
 6 party is charged with discriminating unlawfully against a class," Fed.
 7 R. Civ. Proc. 23(b)(2), advisory committee's notes -- would no longer
 8 be eligible for (b)(2) certification unless the class members agreed to
 9 forego the back pay remedy Congress specifically made available to
 10 discrimination victims under Title VII. This non-sensical result would
 11 not only thwart legislative intent, but it would also put discrimination
 12 victims to the Hobson's choice of having to settle for only a partial
 13 remedy in order to proceed as a class action or having to bear the
 14 enormous costs of an individual lawsuit in order to receive the make-
 15 whole "injunction plus back pay" remedy authorized by Title VII. It is
 16 unlikely the Congress that approved both Rule 23(b)(2) and 42 U.S.C.
 17 § 1981a intended to put discrimination victims to such a choice.

18 This is true in part because back pay awarded under Title VII, while monetary
 19 in nature, is a form of equitable relief. *Gotthardt v. National R.R. Passenger Corp.*,
 20 191 F.3d 1148, 1152-55 (9th Cir. 1999). However, the Ninth Circuit "has stated
 21 expressly and unequivocally that, subject to the 'predominance' limitation, claims for
 22 monetary relief may be certified under [Rule 23] (b)(2) even where such relief is
 23 categorized as 'legal' damages rather than 'equitable' back-pay." *Arnold v. United*
 24 *Artists Theater Circuit*, 158 F.R.D. 439, 462 (citing *Probe*, 780 F.2d at 780); accord
 25 *Molski v. Gleich*, 318 F.3d 937, 947 (9th Cir. 1982).

26 D&T also argues absence "of support among current employees to reclassify
 27 their positions." (Opp., 22:21-22.) However, the notion of reclassification of the Class
 28 Members' positions has been floating around for some time, and since the filing of
 this action *current* Class Members have discussed the propriety of D&T's
 classification of their positions as exempt from the over-time pay requirements.¹⁷

¹⁷ *Current* Class Members comparing their compensation to those of paraprofessionals and discussing the fact that paraprofessionals can make more money than TAs because D&T pays paraprofessionals overtime pay. (Gee, Exh. 32, 84:1-20.)

1 **VI. PLAINTIFF IS AN ADEQUATE CLASS REPRESENTATIVE** [REDACTED]

2 [REDACTED]
3 D&T *again* fails to cite to evidence supporting its argument that Plaintiff is an
4 inadequate class representative. (See Opp., 20:21-25.) Putting aside its failure to cite
5 to facts supporting its position, a phenomenon rampant throughout D&T's Opposition,
6 D&T simply misleads this Court by playing a game of selectively presenting
7 evidence. [REDACTED]

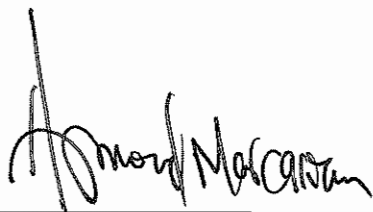
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **VII. CONCLUSION**

19 For the reasons set forth above, and those stated in the original moving papers,
20 Plaintiff respectfully requests this Court to grant Plaintiff's motion for class
21 certification.

22 Dated: July 21, 2008

MARCARIAN LAW FIRM

24
25
26 By 

27 Armond Marcarian
28 Co-counsel for Plaintiff

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15 Attorneys for Plaintiff Stepan Mekhitarian

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18	STEPAN MEKHITARIAN, an	)	Case No.: CV 07-0412 DSF (MANx)
19	individual, on behalf of all others)	
20	similarly situated,	)	[Assigned for all purposes to
21		)	Honorable Dale S. Fischer]
22	Plaintiff,)	
23	vs.	)	SUPPLEMENTAL
24		)	DECLARATION OF MARC L.
25	DELOITTE & TOUCHE (ICS), LLC, a	)	MCCULLOCH
26	Delaware Limited Liability Company;	)	RE: PLAINTIFF' S MOTION
27	and DELOITTE TAX, LLP, a Delaware	)	FOR CLASS CERTIFICATION
28	Limited Liability Partnership; and)	
	DOES 1 THROUGH 50 inclusive,	)	Hearing Date: August 25, 2008
		)	Time: 1:30 p.m.
	Defendants.	)	Courtroom: 840
)	
)	
)	

DECLARATION OF MARC L. McCULLOCH

I, Marc L. McCulloch, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am associated with the Marcarian Law Firm, co-counsel of record for plaintiff in this case. I 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. Since the filing of Plaintiff’s Motion for Class Certification (“Motion”), D&T noticed and took seven (7) depositions in this action. Those depositions were depositions of the some of the declarants whose declarations Plaintiff filed in support of the Motion. Each deposition took approximately 2-3 hours.

3. Filed concurrently with this Declaration as Exhibit “28” are true and correct copies of the deposition excerpts of BRANDY BLASKE which was taken in this action.

4. Filed concurrently with this Declaration as Exhibit “29” are true and correct copies of the deposition excerpts of CHRISTY CALDERON which was taken in this action.

1 5. Filed concurrently with this Declaration as Exhibit “30” are true and
2 correct copies of the deposition excerpts of JOANN COFFEY which was taken in
3 this action.
4

5 6. Filed concurrently with this Declaration as Exhibit “31” are true and
6 correct copies of the deposition excerpts of MARK DAVIS which was taken in this
7 action.
8

9 7. Filed concurrently with this Declaration as Exhibit “32” are true and
10 correct certified copies of the deposition excerpts of MICHELLE GEE which was
11 taken in this action.
12

13 8. Filed concurrently with this Declaration as Exhibit “33” are true and
14 correct certified copies of the deposition excerpts of SHANNON KOSSICK which
15 was taken in this action.
16
17

18 9. Filed concurrently with this Declaration as Exhibit “34” are true and
19 correct copies of the deposition excerpts of STEPHEN LYNCH which was taken
20 in this action.
21

22 10. Filed concurrently with this Declaration as Exhibit “35” are true and
23 correct certified copies of the deposition excerpts of NICOLE MINTER which was
24 taken in this action.
25
26
27
28

1 11. Filed concurrently with this Declaration as Exhibit "36" are true and
2 correct certified copies of the deposition excerpts of GINE PERRONE which was
3 taken in this action.
4

5 12. Filed concurrently with this Declaration as Exhibit "37" are true and
6 correct certified copies of the deposition excerpts of MITSUKO SATO which was
7 taken in this action.
8

9 13. Filed concurrently with this Declaration as Exhibit "38" are true and
10 correct certified copies of the deposition excerpts of PRISCILLA TAM which was
11 taken in this action.
12

13 14. Filed concurrently with this Declaration as Exhibit "39" are true and
14 correct copies of the deposition excerpts of LAURA WILDER which was taken in
15 this action.
16
17

18 15. Filed concurrently with this Declaration as Exhibit "40" are true and
19 correct copies of the deposition excerpts of KELLY WURTZ which was taken in
20 this action.
21

22 16. As part of my duties and responsibilities in connection with the
23 prosecution of this action, I interviewed several former or current employees of
24 Defendants.
25

26 17. Following each interview, I prepared draft declarations and provided
27 same to each interviewee via e-mail attachment and requested that each
28

1 interviewee carefully review the draft declaration and provide me with edit(s),
2 correction(s) and other comment(s), if any. The foregoing measure was designed
3
4 to ensure that each declaration correctly represented the interviewees' testimony.

5 18. My interviews and the follow-up communications with the putative
6
7 class members typically lasted between 45 to 90 minutes depending on the number
8 of follow-up communications.

9 19. I followed the process described above at paragraphs 16 through 18
10
11 regarding Angela Seo's declaration. After Ms. Seo reviewed the initial draft of her
12
13 declaration, she advised me via e-mail that paragraph 29 of Ms. Seo's declaration
14
15 which related to the reason for her separation from D&T might need to be changed,
16
17 and that she had forwarded the draft declaration to her attorney siblings for review.

18 20. The day following Ms. Seo's e-mail to me, she informed me via e-
19
20 mail that based on advice from her sibling(s), she had decided not to execute the
21
22 declaration as she did not want to be a front runner in this case.

23 21. Other than testimony contained at paragraph 29 of the draft
24
25 declaration, Ms. Seo did not object to any of the statements contained in the draft
26
27 declaration.

28 22. Filed concurrently with this Declaration as Exhibit "41" are true and
correct copies of the e-mail communications between Ms. Seo and I, as well as the
draft unexecuted declaration.

1 23. Filled concurrently with this Declaration as Exhibit “42” are true and
2 correct copies of documents our office received from Defendants’ counsel through
3
4 the course of discovery in this action.

5 24. From on or about 1999 until 2002, I was the Director of Information
6
7 Technology for Classroom Connect, Inc. who maintained its headquarters in
8
9 Brisbane, California.

10 25. The Director of Information position referenced in paragraph 24
11
12 required training and expertise in internet protocols and procedures and domain
13
14 name registration and domain name resolution, which I had as a result of my
15
16 training and certification as a Microsoft Certified Systems Engineer.

17 26. On or about June 14, 2008, using the training and experience
18
19 described in paragraph 25, I conducted a “WHOIS” search for the Registrant
20
21 (“Owner”) of Deloitte.Com and Deloittenet.Com.

22 ///

23 ///

24 ///

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