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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 GOPI VEDACHALAM and KANGANA
17 BERI, on behalf of themselves and all
others similarly situated,

18 Plaintiffs,

19 v.

20 TATA AMERICA INTERNATIONAL
CORPORATION, a New York
21 Corporation; TATA CONSULTANCY
SERVICES, LTD, an Indian Corporation;
22 and TATA SONS, LTD, an Indian
Corporation,

23 Defendants.
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CASE NO. C 06-0963 (CW)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR CLASS CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 14, 2011

Time: 2:00 p.m.

Judge: Hon. Claudia Wilken

Courtroom: 2

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on July 14, 2011 at 2:00 p.m. in Courtroom #2 of the
3 United States District Court for the Northern District of California, Oakland Division, located at
4 1301 Clay Street, Oakland, California, 94612, the Honorable Claudia Wilken presiding, pursuant
5 to Fed. R. Civ. P. 23, Plaintiffs will move, and hereby do move, the Court for certification of: (1)
6 a Rule 23(b)(3) National Class of all non-U.S. citizens whom Defendants employed in the United
7 States at any time from February 14, 2002 through June 30, 2005, alleging breach of contract; (2)
8 a Rule 23(b)(3) California Class of all non-U.S. citizens whom Defendants employed in
9 California at any time from February 14, 2002 through the date of judgment;¹ and (3) a Rule
10 23(b)(2) California Current Employee Wage Statement Subclass of all non-U.S. citizens whom
11 Defendants employed in California on or after February 14, 2006. Plaintiffs Gopi Vedachalam
12 and Kangana Beri seek appointment as class representatives for the National Class and California
13 Class. Mr. Vedachalam seeks appointment as class representative for the California Subclass.
14 Plaintiffs base this motion on the memoranda of points and authorities, *infra*, the accompanying
15 declarations and exhibits, and any further briefing and arguments of counsel.²

16 By this motion, Plaintiffs seek certification under Rule 23(b)(3) of Plaintiffs' National
17 Class for breach of contract claims based on Defendants' forced collection of tax refunds and
18 improper deduction of Indian salary. Plaintiffs also seek certification under Rule 23(b)(3) for
19 Plaintiffs' California Class claims for improper recoupment of wages, vacation pay, waiting time
20 penalties, and inaccurate wage statements. In addition, Plaintiffs seek certification of current
21 California Class Members' claims for violations of California Labor Code §§ 226 and 1174

22
23 ¹ The California Class alleges five claims: (1) wrongful collection of wages previously earned in
24 violation of Cal. Labor Code § 221, from February 14, 2002 through June 30, 2005 (First
25 Amended Complaint ("FAC") (Dkt. No. 24) Count IV); (2) failure to pay vacation pay in
26 violation of Cal. Labor Code § 227.3 from February 14, 2002 through judgment (Count VII); (3)
27 failure to provide itemized wage statements, in violation of Cal. Labor Code §§ 226(a), 1174
28 from February 14, 2003 through judgment (Count VIII); (4) failure to pay dismissed Class
Members' wages within 72 hours of dismissal, in violation of Cal. Labor Code §§ 201-3 from
February 14, 2003 through judgment (Count VI); and (5) violations of Cal. Bus. & Prof. Code §
17200 (Count IX), from February 14, 2002 through judgment.

² Plaintiffs separately seek an order appointing undersigned counsel as class counsel under Fed.
R. Civ. P. 23(g). *See* Motion for Appointment of Class Counsel (Dkt. No.181).

1 (failure to provide accurate wage statements) under Rule 23(b)(2). Plaintiffs, therefore, request
2 certification of the following Classes, which fully satisfy Rule 23 requirements:

3 **NATIONAL CLASS**: All non-U.S. citizens who were employed by Tata in the
4 United States at any time from February 14, 2002 through June 30, 2005;

5 **CALIFORNIA CLASS**: All non-U.S. citizens who were employed by Tata in
6 California at any time from February 14, 2002 through the date of judgment; and

7 **CALIFORNIA CURRENT EMPLOYEE WAGE STATEMENT SUBCLASS**:
8 All non-U.S. citizens who were employed by Tata in California on or after
9 February 14, 2006 through the date of judgment.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiffs and the proposed Class Members are non-U.S. citizen employees of Defendants
13 Tata Consultancy Services, Inc. and Tata Sons, Ltd. (collectively, “Tata”) who were sent (or
14 “deputed”) to the United States from India to work for Tata in information technology jobs.
15 Plaintiffs allege that Tata has uniformly: (1) breached the standard employment contract for
16 deputed employees by forcing all deputed employees to pay back to Tata their federal and state
17 tax refunds and by deducting their Indian salary from their compensation; and (2) deprived
18 deputed employees in California of earned wages, vacation pay, and accurate wage statements in
19 violation of the California Labor Code. As reflected in the evidence submitted with this
20 motion—which includes standardized policies, testimony of senior corporate representatives,
21 Class Member data from Tata’s document production, and Class Member declarations³—Tata
22 has instituted these practices through centralized procedures, enforcing them against a vulnerable
23 population of foreign workers, in breach of their employment agreements and California law.

24 Plaintiffs meet all the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3)
25 for the National and California classes, as well as Rule 23(a) and 23(b)(2) for the California
26 Current Employee Wage Statement Subclass.

27 ³ Evidentiary citations are to the Declaration of Daniel M. Hutchinson (“Hutchinson Decl.”), and
28 are identified as follows for ease of reference: (1) “EX” are documents produced in this
litigation; (2) “D” and “P” are Class Member or named Plaintiff declarations, respectively; and
(3) “Dep.” are deposition transcripts, identified by the deponent’s last name.

1 **II. RELEVANT BACKGROUND AND FACTS**

2 Tata, an India-based conglomerate, provides products and services across many
3 industries, including informational technology (“I/T”) consulting. In order to staff its consulting
4 projects, Tata sends (or “deputes”) workers from India to the United States. Class Members here
5 were hired by Tata in India to work on tech-related projects in the United States. Mukherjee
6 Dep., 274:7-17. From February 14, 2002 through June 30, 2005, Tata had a uniform policy
7 requiring deputed workers to pay back to Tata their federal and state tax refund checks. In
8 addition, Tata had a uniform practice of deducting employees’ Indian salary from their U.S.
9 compensation. Moreover, from February 14, 2002 through the present, Tata has maintained an
10 unlawful “use it or lose it” vacation policy in violation of California law. Finally, from February
11 14, 2002 through the present, Tata has deprived deputed California employees of accurate
12 itemized wage statements due to its practice of changing employees’ claimed tax exemptions
13 without authorization or consent.

14 **A. Tata’s Uniform Employment Contracts Present Common Questions**

15 **1. Tata’s Standard Deputation Process**

16 Throughout the Class Period, Tata has used a standard deputation process. In India, Tata
17 presented form documents to employees selected for deputation on a take-it-or-leave-it basis. *See*
18 D3 ¶3; D13 ¶3; D40 ¶3; D46 ¶4; Vedachalam Dep., 191:1-192:10 (received just before flight);
19 Beri Dep., 96:19-22. Tata required employees to sign these documents either the day of or day
20 before their flight to the U.S. without time to read the paperwork. *See* Vedachalam Dep., 194:17-
21 195:2; D3 ¶3.⁴ These standard deputation agreements (“DAs”) and deputation terms agreements
22 (“DTAs”) enable Tata to regulate every aspect of Class Members’ employment in the U.S.

23 From February 2002 to July 1, 2005, Tata used the same form DAs and DTAs that
24 “outline the terms and conditions of each employee’s employment in the United States.”⁵ *See*
25 *infra* sources cited in footnote 6. Paragraph 4 of the standard DTA sets forth the following
26

27 ⁴ D7 ¶3; D8 ¶3; D11 ¶3; D13 ¶3; D14 ¶3; D16 ¶3; D21 ¶3; D22 ¶3; D24 ¶2; D25 ¶3; D26 ¶2; D27
28 ¶2; D29 ¶3; D30 ¶3; D31 ¶3; D32 ¶3; D33 ¶3; D36 ¶3; D37 ¶3; D40 ¶3; D42 ¶3; D46 ¶4; P1 ¶4.

⁵ *See* Hutchinson Decl., EX1-EX6 (DAs and DTAs from 2002 to 2005).

1 compensation provisions:

2 (B) Salary and Benefits in India. As stated in the Deputation Agreement, you
3 will continue to receive your salary and benefits in India during the period of the
4 Deputation, subject to any tax requirements of the United States and its states.

5 (C) Compensation in the United States. In addition to the compensation and
6 benefits you currently receive and will continue to receive in India while on
7 Deputation, you shall receive additional compensation in the United States in the
8 gross amount of \$[salary term], less deductions required by law or otherwise
9 voluntarily authorized by you. This compensation shall be for living and other
10 expenses in the United states.

11 (D) Total Gross Compensation. Amounts of salary paid by TCS in India
12 (under Paragraph 4 (b) above) and the additional compensation in the United
13 States (under Paragraph 4(c) above) shall be aggregated and thus shall be treated
14 as your total gross compensation for purposes of U.S. law with respect to your
15 employment in the United States.⁶

16 Thus, Tata's standard employment promised: (1) gross U.S. compensation, and (2) a separate
17 Indian salary in addition to the U.S. salary.⁷

18 Tata's standard form DTA was created by its corporate headquarters and used for all
19 deputed employees. Mukherjee Dep., 143:8-144:12. A review of 227 DTAs from February 14,
20 2002 through June 30, 2005 demonstrates that the language in these paragraphs was identical for
21 deputed employees. See Tran Decl., ¶¶ 2-4.

22 **B. Tata's Standard Compensation System Presents Common Questions**

23 **1. Mandated Return of Tax Refunds**

24 Tata's uniform policy required deputed employees to endorse and return their tax refund
25 checks to Tata during the National Class Period (from February 14, 2002 through June 30, 2005).
26 Venkataraman Dep., 223:5-225:22. To ensure compliance, Tata sent the same standardized
27 documents to each employee, including a tax questionnaire, power of attorney agreement, and
28 "urgent" memo to sign and return the tax refund checks. *Id.*, 223:5-225:22; Hutchinson Decl.,
EX7-EX11. Also, the tax refund checks themselves were stamped on the back with a stamp that

⁶ See Mukherjee Dep., 139:14-140:21, EX1, ¶ 4(C); *id.*, 141:4-143:11 EX3, ¶ 4(C); *id.*, 142:12-25, EX5, ¶ 4(C); *id.*, 145:14-146:12, 147:6-24, EX6, ¶ 4(C).

⁷ Tata obtains a visa for each deputed employee. Mukherjee Dep., 176:2-180:21. Tata provides employees' salary information on their visa questionnaires "because we want the employee to know what salary you get." Mukherjee Dep., 181:12-21. Thus, for the small minority of employees who have a blank salary term on their DTAs, the visa application is evidence of the U.S. salary to be paid.

1 read: “Pay to the Order of . . . Tata Consultancy Services, Ltd.”⁸ All checks produced by Tata in
2 a complete format uniformly contained this stamp. Shaver Decl., ¶9.

3 If an employee wanted to file his or her own taxes, Tata refused to provide the W-2 form
4 until the employee paid Tata the amount Tata predicted the tax refund would amount to. *See* D3
5 ¶ 7; D8 ¶11; D10 ¶10; D25 ¶10; D32 ¶7; D40 ¶9-10 (“Tata informed me that the company would
6 only provide me with my W-2 form [for 2004] if I first sent Tata a check for my estimated tax
7 refund that year, which was approximately \$2440”); D42 ¶7; P1 ¶6.

8 **2. Wrongful Deduction of Indian Salary**

9 As described above, from February 14, 2002 through June 30, 2005 Tata’s standard DTAs
10 promised to pay employees a U.S. salary “in addition to” their Indian salary. During this time
11 period, Tata paid employees two monthly sums: A U.S. portion in the U.S. in dollars, and an
12 Indian portion in an account in India in rupees. Mukherjee Dep., 206:25-207:5. However, the
13 company’s uniform practice was to deduct the amount of the employee’s Indian salary from their
14 gross U.S. compensation every month. *See* EX12; EX13; D5 ¶6; D8 ¶ 9; D10 ¶6; D12 ¶9; D16
15 ¶6; D19 ¶6; D21 ¶6; D22 ¶5; D24 ¶5; D26 ¶5; D27 ¶7; D30 ¶11; D31 ¶11; D33 ¶10; D36 ¶8; D37
16 ¶6; D42 ¶5; P1 ¶5; P2 ¶6; *see also* Shaver Decl., ¶8 (100% of the 125 sets of earnings statements
17 from February 14, 2002 through December 31, 2004 produced by Tata in this litigation deducted
18 Indian salary). Thus, deputed employees’ promised U.S. salary, as set forth in the DTA or visa
19 petition, was not paid “in addition to” the Indian salary; instead, it was lessened each month by
20 the amount of the Indian salary. Tata’s practice of deducting Indian salary remained unchanged
21 until July 1, 2005, after which the company paid deputed employees a single salary in the U.S. in
22 dollars. *See* Sivasubramini Dep. 177:24-178:5.

23 **3. Tata’s Incorrect Wage Statements**

24 From February 14, 2002 to the present, deputed employees working in California have not
25 been provided with accurate, itemized wage statements. As required by law, deputed employees
26

27 ⁸ D1 ¶7; D2 ¶ 6; D3 ¶6; D5 ¶8; D6 ¶7; D7 ¶7; D8 ¶10; D9 ¶7; D11 ¶9; D12 ¶7; D13 ¶8; D14 ¶9;
28 D15 ¶8; D16 ¶8; D17 ¶7; D18 ¶8; D20 ¶8; D21 ¶8; D22 ¶7; D23 ¶7; D24 ¶7; D25 ¶9; D28 ¶¶8-9;
D29 ¶8; D34 ¶7; D35 ¶6; D46 ¶7; D38 ¶7; D39 ¶7; D40 ¶7; D43 ¶7; D44 ¶7; P2 ¶7.

1 filled out forms stating their number of dependents. *See, e.g., Venkataraman Dep., 279:13-280:7*
2 (authenticating EX11). Instead of using the information reported by its deputed employees,
3 however, Tata regularly changed the number of the deputed employees' exemptions without
4 informing the employees of the changes, the reasons for the changes, or their consequences--thus
5 manipulating the amount of money withheld from their paycheck. *See Vedachalam Dep., 37:25-*
6 *38:25 (exemptions kept changing), EX14; D1 ¶8; D10 ¶8; D11 ¶11; D14 ¶7; D16 ¶10; D23 ¶10;*
7 *D25 ¶11; D27 ¶8; D29 ¶6; D35 ¶8; D42 ¶10; P1 ¶11; P2 ¶11; see also, Shaver Decl., ¶10 (over*
8 *50% show increases to between 6 and 10 exemptions). Moreover, from February 14, 2002*
9 *through June 30, 2005, the wage statements misstated employees' gross and net income because*
10 *the statements did not account for Indian salary or tax refund wage deductions returned to Tata.*

11 **4. Tata's Vacation Pay Policy**

12 Throughout the Class Period, every Tata employee was eligible for approximately one
13 month of paid vacation per year. *See Sivasubramani Dep., 151:25-153:13.* From June 14, 2002
14 to the present, however, Tata did not allow employees deputed to the U.S. to take vacation while
15 on deputation; rather, they could only take vacation after returning to India. *Sivasubramani*
16 *Dep., 149:21-150:7.* In addition, Tata did not pay its deputed employees vacation pay based on
17 U.S. salary, the rate of pay when the vacation vested. Instead, Tata paid employees who accrued
18 vacation days while working in the U.S. for unused days based only on their lower Indian salary.
19 *Id., 203:13-205:7, 178:20-183:15.* Finally, any employee who quit while in the U.S. did not
20 receive payment for unused vacation at all. *Id., 191:23-198:15. See also D1 ¶9; D5 ¶11-12; D8*
21 *¶12; D16 ¶12; D24, ¶11; D26, ¶11; D29 ¶11; D30 ¶12; D32 ¶ 11; D35 ¶10; D36 ¶9; D37 ¶ 7; D42*
22 *¶9; D46 ¶ 9; P1 ¶12.* This was an unlawful "use-it-or-lose-it" policy. *Saustez v. Plastic Dress-Up*
23 *Co., 31 Cal. 3d 774, 784 (1982).*

24 Effective July 1, 2005, TCS changed its policy to allow employees to take paid vacation in
25 the U.S. EX15, TCS 1398-1403. Tata paid any employee who took vacation while on deputation
26 in the U.S. for that vacation based on her U.S. salary. *Sivasubramani Dep., 177:11-178:5.*
27 However, if an employee did not use the vacation she earned while on deputation, the unused
28 vacation would eventually be paid out based on the Indian salary only. *Id., 263:15-266:4; EX 16*

1 at TCS 638; EX17 at TCS 1424.

2 **C. Tata's Lack of Compliance With Relevant Compensation and Tax**
3 **Requirements Presents Common Questions**

4 **1. Lack of Training**

5 Senior Tata officials from India have lacked the appropriate knowledge and training to
6 meet the requirements of U.S. law. For example, the head of Tata's U.S. Finance department,
7 responsible for compliance with U.S. compensation laws and preparing and filing tax returns, had
8 no training on U.S. tax regulations, U.S. wage-and-hour law, or U.S. compensation laws.
9 Venkataraman Dep., 61:16-62:17; Mukherjee Dep., 41:4-17, 59:25-60:18.⁹

10 **2. History of Non-Compliance with U.S. Laws**

11 Tata has also forged signatures on employees' tax refund checks in order to collect tax
12 refunds checks without permission. Venkataraman Dep., 292:14-294:2; D35 ¶6-7; Vedachalam
13 Dep., 72:9-19. Many deputed employees complained to Tata about illegal conduct, but Tata did
14 nothing to respond to their complaints (*see* D7 ¶10; D17 ¶8; D20 ¶9; D21 ¶9; D35 ¶7; D39 ¶10;
15 D42 ¶10; P2 ¶12). Other employees have been unwilling to complain because they feared
16 unlawful retaliation. *See* D7 ¶10; D8 ¶ 14; D10 ¶ 13; D16 ¶13; D21 ¶13; D22 ¶11; D27 ¶10;
17 D30 ¶15; D32 ¶ 9 ("I protested to Tata. I was then subjected to harsh verbal harassment by my
18 Manager, the Finance Manager, and the Human Resources Manager."); D34 ¶10; D36 ¶11; D39
19 ¶10; D41 ¶12; D43 ¶10; P2 ¶13.¹⁰

20 **III. THE PROPOSED CLASSES**

21 By this motion, Plaintiffs seek certification under Rule 23(a) and (b)(3) of Plaintiffs'
22 National Class claims involving breach of contract for failure to pay promised wages as a result
23 of forced collection of tax refunds and improper deduction of Indian salary. Plaintiffs also seek

24 _____
25 ⁹ The departments charged with preparing employees' tax returns were also understaffed. From
26 February 14, 2002 through June 30, 2005, Tata employed only 1 or 2 permanent employees and 5
27 or 6 temporary employees to prepare tax returns for over 12,000 employees annually.
28 Venkataraman Dep., 209:17-210:16; EX18 at 4.

¹⁰ In 2002, Tata also paid the IRS for failure to pay taxes on the Indian portion of its employees'
salaries. Venkataraman Dep., 181:18-182:17. Tata still failed to pay related taxes to state
agencies for this amount, claiming it did not need to do so because the limitations period had
expired. *Id.*, 214:10-215:20.

1 certification under Rule 23(a) and (b)(3) for Plaintiffs' California Class claims for improper
2 recoupment of wages, vacation pay, waiting time penalties, and inaccurate wage statements. In
3 addition, Plaintiffs seek 23(b)(2) certification of current California Class Members' claims for
4 violations of California Labor Code §§ 226 and 1174.¹¹

5 **IV. THE NATIONAL CLASS MEETS THE REQUIREMENTS FOR**
6 **CERTIFICATION UNDER RULE 23(A) AND 23(B)(3)**

7 Class certification is proper if Plaintiffs have satisfied the requirements of Rule 23(a)
8 and one of the prongs of Rule 23(b) as to each proposed class. Rule 23 requires a "rigorous
9 analysis" of underlying facts and legal issues going to the certification question. *Gen. Tele. Co.*
10 *of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). However, a class motion tests Plaintiffs' theory of
11 the case, not whether the merits of the theory are proved. *United Steel Workers v. Conoco-*
12 *Phillips Co.*, 593 F.3d 802, 808-9 (9th Cir. 2010) (reversing denial of certification). The Court
13 has broad discretion to certify a class, and district courts are accorded noticeably more
14 deference when they certify a class than when they deny certification. *Wolin v. Jaguar Land*
15 *Rover N. Am., LLC*, 617 F.3d 1168, 1171 (9th Cir. 2010). The Rule 23(a) requirements are met
16 where (1) the class is so numerous that joinder of all members is impracticable; (2) there are
17 questions of law or fact common to the class; (3) the claims of the representative parties are
18 typical of the claims of the class; and (4) the representative parties will fairly and adequately
19 protect the class. These prerequisites are met here.

20 **A. The National Class Is Sufficiently Numerous**

21 The proposed National Class is sufficiently numerous that "joinder of all members is
22 impracticable." Fed. R. Civ. P. 23(a)(1); EX18 at 4 (showing approximately 12,367 Class
23 Members currently employed with Tata as of March 1, 2010.); *see also Jordan v. Los Angeles*
24 *County*, 669 F.2d 1311, 1319-20 (9th Cir. 1982), *rev'd on other grounds*, 713 F.2d 503 (9th Cir.
25 1983) (as few as 39 Class Members sufficient for numerosity).

26 _____
27 ¹¹ Current Class Members seeking primarily injunctive or declaratory relief may have claims
28 certified under 23(b)(2) rather than 23(b)(3). Fed. R. Civ. P. 23(b)(2). A Class Member's status
as a "current" or "former" employee is established at the time of filing the complaint. *ACLU of*
Nev. v. Lomax, 471 F.3d 1010, 1015 (9th Cir. 2006).

1 **B. There Are Common Questions Of Fact and Law**

2 The standard for commonality under Rule 23(a)(2) is “permissive[]” and “flexible.”
3 *Parra*, 536 F.3d at 978. Either “shared legal issues with divergent factual predicates” or “a
4 common core of salient facts coupled with disparate legal remedies” suffices. *Id.*; *Hanlon v.*
5 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The Court must be satisfied that common
6 *questions* of law or fact exist, not that those questions will be answered favorably to Plaintiffs, as
7 that is a merits inquiry. *Conoco-Phillips Co.*, 593 F.3d at 808-9. Commonality does not require
8 complete congruence or that all questions of fact and law be common. *Rodriguez v. Hayes*, 591
9 F.3d 1105, 1122 (9th Cir. 2010). Rather, a single significant common issue is sufficient to
10 warrant certification. *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 648 (C.D. Cal. 1996); *Slaven v.*
11 *BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000); *see also Hanlon*, 150 F.3d at 1019-20 (9th
12 Cir. 1998) (commonality based on one common factual predicate). Moreover, “a proposed class
13 can consist of members with widely differing experiences as they relate to the case.” *Parra*, 536
14 F.3d at 978.

15 Courts have repeatedly held that standard, form contracts, like the one at issue in this case,
16 present common questions. *See, e.g., Ewert v. eBay, Inc.*, No. C-07-02198 RMW, 2010 WL
17 4269259, at * 7 (N.D. Cal. Oct. 25, 2010) (quoting *Kleiner v. First Nat’l. Bank of Atlanta*, 97
18 F.R.D. 683, 692 (N.D. Ga. 1983) (citing cases)); *Menagerie Prods. v. Citysearch*, No. CV 08-
19 4263 CAS (FMO), 2009 WL 3770668, at *10 (C.D. Cal. Nov. 9, 2009); *Mortimore v. F.D.I.C.*,
20 197 F.R.D. 432, 438 (W.D. Wash. 2000) (“Since this case involves the use of form contracts, it is
21 particularly appropriate to use the class action procedure.”). Courts also frequently certify
22 contract claims by foreign nationals alleging they were not paid their promised wages.¹²

23 _____
24 ¹² *Perez-Benites v. Candy Brand, LLC*, 267 F.R.D. 242 (W.D. Ark. 2010) (certifying contract
25 claim for foreign workers); *Moreno-Espinosa v. J & J Ag Prods., Inc.*, 247 F.R.D. 686, 687 (S.D.
26 Fla. 2007) (same); *Napoles-Arcila v. Pero Family Farms, LLC*, No. 08-80779-CIV, 2009 WL
27 1585970 (S.D. Fla. Jun. 6, 2009); *Rosiles-Perez v. Superior Forestry Serv., Inc.*, 250 F.R.D. 332,
28 349 (M.D. Tenn. 2008) (certifying contract claims for failing to pay wages); *Hester v. Vision*
 Airlines, Inc., 2009 U.S. Dist. LEXIS 122287, at *10 (D. Nev. Dec. 15, 2009) (certifying contract
 claims for failure to pay hazard pay); *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL
 3633177, at *4, 9, 2010 U.S. Dist. LEXIS 95636, at *14-15, 26, No. 09cv2268-IEG(BGS) (S.D.
 Cal. Sept. 13, 2010) (certifying contract claims to enforce promises in employee handbook); *see*
 also Leon-Granados v. Eller & Sons Trees, Inc., No. 05-1473-CC, 2006 U.S. Dist. LEXIS 73781,

1 Among other common issues, the proposed National Class presents the following
2 common factual questions:

- 3 • Whether Tata had a policy and practice of requiring deputed employees to pay to
4 Tata their tax refund checks (or the amounts that were over-withheld for taxes);
and
- 5 • Whether Tata had a policy and practice of deducting the Indian salary of deputed
6 employees from their gross U.S. wages rather than paying them the gross U.S.
wages in addition to their Indian salary.

7 In addition, Plaintiffs evidence demonstrates that the proper interpretation of the form DTA is a
8 common legal question. From February 14, 2002 until June 30, 2005, the proposed National
9 Class Members entered into a uniform DTA with Tata that provided identical compensation
10 provisions. The DTA provides that the deputed employee will be paid a *gross* amount of
11 compensation “in addition to the compensation and benefits” the employee “currently receive[s]
12 and will continue to receive in India while on Deputation” See footnote 6, *supra*. The DTA
13 and Tata’s class-wide employment policies raise the common legal questions of:

- 14 (1) whether the form employment contract should be interpreted (as Plaintiffs allege)
15 to mean that employees are entitled to *gross* compensation, such that if money is
16 over-withheld out of that gross amount for taxes, that over-withheld money
17 belongs to the employee,¹³ or instead (as Tata has argued), that employees are
promised a *net* salary that is then “grossed up” to include taxes, such that any over-
withheld amounts belong to the company¹⁴; and
- 18 (2) whether the form contract’s provision that gross compensation in the U.S. is to be
19 paid “[i]n addition to the compensation and benefits” the deputed employee
20 “currently receive[s] and will continue to receive in India while on Deputation”
means that the Indian salary should *not* be deducted from the employee’s gross
21 U.S. compensation (as was Tata’s practice from February 14, 2002 until June 30,
2005) but instead paid in addition to it.

22 Plaintiffs’ evidence is sufficient to raise these common questions. See *Conoco-Phillips Co.*, 593
23 F.3d 808-9. As described in Sections II.B.1.-2., above, Tata’s company-wide policies were to

24 at *28 (N.D. Ga. Sept. 28, 2006) (certifying Migrant and Seasonal Agricultural Worker Protection
25 Act claims by foreign workers for failure to pay amounts in visa applications), *aff’d by Leon-*
Granados v. Eller & Sons Trees, Inc., 497 F.3d 1214 (11th Cir. 2007).

26 ¹³ See *Peres-Benetis*, 267 F.R.D. at 247 (alleging that deductions for recruitment, visa, and travel
27 expenses reduced wages below the promised amount); *Rosiles-Perez*, 250 F.R.D. at 339 (same);
Moreno-Espinosa, 247 F.R.D. at 687 (same); *Napoles-Arcila*, 2009 WL 1585970, at *6 (same);
Leon-Granados, 2006 U.S. Dist. LEXIS 73781, at *20-21 (same).

28 ¹⁴ See Mot. for Partial Summ. Judgment, Dkt. 150 at 5-6; Mot. to Dismiss, Dkt. 117, at 13-16.

1 require Class Members to pay to Tata their tax refunds and to deduct their Indian pay from their
2 gross compensation. These uniform practices present a common legal question of whether the
3 amounts of these paybacks to Tata in the form of tax refunds and deducted Indian salary should
4 be included when determining whether the deputed employee was paid what he or she was
5 promised under the form contract's compensation provision. Sections II.B.1.-2.

6 Class Member testimony further demonstrates that Tata engaged in these common
7 practices of deducting Indian salary and requiring tax refund checks to be repaid to the
8 company.¹⁵ These statements support a finding of commonality. *Cf. Int'l Bhd. of Teamsters v.*
9 *United States*, 431 U.S. 324, 339 (1997) (such evidence brings common statistical evidence to
10 life).

11 **C. The Named Plaintiffs' Claims Are Typical Of The National Class's Claims**

12 Like commonality, the typicality standard is "permissive," and requires only that the
13 named plaintiffs' claims be "reasonably coextensive with those of absent class members[,] not
14 substantially identical." *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). It suffices that
15 the class representatives are "part of the class and possess the same interest and suffer the same
16 injury as the class members." *Falcon*, 457 U.S. at 156 (quotation marks omitted). Any factual
17 variations do not defeat typicality where, as here, the underlying claims rely on the same legal or
18 remedial theory. *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010)
19 (reversing district court's denial of class certification in breach of warranty case). "The fact that
20 Class Members must individually demonstrate their right to recover, or that they may suffer
21 varying degrees of injury, will not bar a class action, nor is a class action precluded by the
22 presence of individual defenses against class plaintiffs." 1 Herbert B. Newberg, *Newberg on*
23 *Class Actions*, § 3.12 at p. 315 (4th ed. 2002).

24 Here, Plaintiffs Vedachalam and Beri have been subjected to the same uniform
25 requirement to repay to Tata the amount of over-withheld taxes and to lose Indian pay from their

26 ¹⁵ See D1 ¶7; D2 ¶ 6; D3 ¶6; D5 ¶¶6,8; D6 ¶7; D7 ¶7; D8 ¶¶9-10; D9 ¶7; D10 ¶¶6,12; D11 ¶9;
27 D12 ¶¶7,9; D13 ¶8; D14 ¶9; D15 ¶8; D16 ¶¶6,8; D17 ¶7; D18 ¶8; D20 ¶8; D21 ¶8; D22 ¶¶5,7;
28 D23 ¶7; D24 ¶7; D25 ¶9; D28 ¶¶8-9; D29 ¶8; D33 ¶¶6-7; D35 ¶6; D36 ¶7; D37 ¶6; D38 ¶7; D39
¶7; D40 ¶9; D43 ¶7; D44 ¶7; P1 ¶¶5-6; P2 ¶¶6-7.

1 gross compensation, in violation of their employment contracts. *See supra* Sections II.B.1.-2.¹⁶
2 As a result, neither received the full benefit of his or her employment contracts. They are thus
3 members of, and allege the same injuries as, the class they seek to represent.

4 **D. The Named Plaintiffs Will Adequately Represent The National Class**

5 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect
6 the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy is a two-part test: (1) Do the
7 representative plaintiffs and their counsel have any conflicts of interest with other Class
8 Members, and (2) will the representative plaintiffs and their counsel prosecute the action
9 vigorously on behalf of the class?” *Staton*, 327 F.3d at 957; *Hanlon*, 150 F.3d at 1020.

10 The named Plaintiffs’ interests are not antagonistic to those of proposed Class Members:
11 they share common grievances with the class and are typical of Class Members. Plaintiffs and
12 their counsel have also prosecuted the case vigorously on behalf of the proposed class from the
13 outset of the case over five years ago—both in this Court and in the Ninth Circuit—and have the
14 ability, expertise, and resources to continue doing so. *See* Plaintiffs’ Appointment Mot. (Dkt. No.
15 181). Plaintiffs Vedachalam and Beri have reviewed the complaints, provided discovery, sat for
16 depositions, and conferred with counsel regularly throughout the litigation. P1 ¶13; P2 ¶14.
17 Furthermore, Plaintiffs’ counsel are highly experienced in prosecuting complex class litigation in
18 general and complex employment class actions in particular. *See* Declarations of Steven Tindall
19 and Kelly Dermody in support of Appointment Mot. Dkt. Nos. 182, 183. Plaintiffs, therefore,
20 satisfy both Rule 23(a)(4) and Rule 23(g).

21 **E. Common Questions Of Law And Fact Predominate**

22 “The predominance inquiry focuses on ‘the relationship between the common and
23 individual issues’ and ‘tests whether proposed classes are sufficiently cohesive to warrant

24 ¹⁶ To the extent that Tata claims that the named plaintiffs are not typical of the Class because their
25 DTAs contain different salary terms, such a claim is without merit both because the amount of a
26 class member’s damages does not defeat typicality, (*Yokoyama v. Midland Nat’l Life Ins. Co.*,
27 594 F.3d 1087, 1089 (9th Cir. 2010) (“[t]he potential existence of individualized damage
28 assessments . . . does not detract from [an] action’s suitability for class certification”), and
because Ms. Beri’s employment contract is typical of the 89% of Class Members with a specific
salary term and Vedachalam’s contract is typical of the remaining 11% with a “\$_____” salary
term. *See* Shaver Decl. ¶ 11.

1 adjudication by representation.” *Vinole v. Countywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th
2 Cir. 2009) (quoting *Hanlon*, 150 F.3d at 1022). “When common questions present a significant
3 aspect of the case and they can be resolved for all members of the class in a single adjudication,
4 there is clear justification for handling the dispute on a representative rather than on an individual
5 basis.” *Hanlon*, 150 F.3d at 1022 (citation omitted). Like commonality, the predominance
6 inquiry tests only plaintiffs’ theory of the case, not whether the merits of the theory are proved.
7 *Conoco-Phillips Co.*, 593 F.3d at 808-09; *see also Wren v. RGIS Inventory Specialists*, 256
8 F.R.D. 180 (N.D. Cal. 2009) (rejecting defendant’s argument that common issues did not
9 predominate because defendant contested the existence of a common policy, as whether there is
10 in fact a common policy is itself a common issue).

11 This case closely resembles several recent cases in which courts have found that common
12 factual issues predominated and certified Rule 23(b)(3) breach of contract class actions by foreign
13 nationals alleging they were not paid their contractually promised wages. *See supra* footnote 12.
14 As Judge Whyte recently held in certifying a consumer breach of contract class action:

15 [W]hen there is a standardized agreement like the form contract at
16 issue in this case, the agreement ‘is interpreted wherever reasonable
17 as treating alike all those similarly situated, without regard to their
18 knowledge or understanding of the standard terms of the writing.’
19 Restatement (Second) of Contracts § 211(2). “[C]ourts in
20 construing and applying a standardized contract seek to effectuate
21 the reasonable expectations of the average member of the public
22 who accepts it. The result may be to give the advantage of a
23 restrictive reading to some sophisticated customers who contracted
24 with knowledge of an ambiguity or dispute.” *Id.* at Comment e.
25 Accordingly, in construing the form contract between [defendant]
26 and Class Members, the court need not delve into the actual
27 knowledge of individual Class Members. The court therefore
28 concludes that plaintiffs’ breach of contract claim does not raise
individual issues likely to be the object of most of the court’s and
the parties’ efforts.

Ewert v. eBay, Inc., No. C-07-02198 RMW, 2010 WL 4269259, at *7 (N.D. Cal. Oct. 25, 2010).

Here, Tata policies and form documents, rather than individual events, will be the focus of
the National Class Claims. The key legal and evidentiary issues will not vary based on Class
Members’ individual circumstances. With respect to Tata’s liability for breaching the
employment contracts, neither Tata’s nor individual Class Members’ subjective understanding of

1 the DTA is relevant, as “[t]he language of a contract is to govern its interpretation.” Cal. Civ.
2 Code § 1638. The standard for interpreting a contract is objective reasonableness, not subjective
3 knowledge.¹⁷ Here, what will matter – as with all contracts – is what the parties actually
4 expressed to each other at the time of the contract in the form of a written agreement.¹⁸

5 The predominant, common question underlying the National Class’s breach of contract
6 claim is the proper interpretation of the compensation provisions of the uniform employment
7 contract—the DTA—that governed the employment of each member of the proposed National
8 Class. To decide the Class Members’ breach of contract claim, the Court must determine whether
9 the DTA’s compensation provision should be interpreted to mean that employees are entitled to
10 gross compensation, such that employees are entitled to money that is over-withheld out of that
11 gross amount for taxes (as Plaintiffs allege), or instead that they are entitled to a *net* salary that is
12 then “grossed up” to include taxes, such that any over-withheld amounts belong to Tata (as Tata
13 has argued). This legal question is common to every National Class Member’s breach of contract
14 claim. The Court must also determine for all National Class Members the common legal question
15 of whether the DTA’s provision that gross compensation in the U.S. is to be paid “[i]n addition to
16 the compensation” the deputed employee receives in India means that the Indian salary should *not*
17 be deducted from the employee’s gross U.S. compensation but instead paid in addition to it.

18
19 ¹⁷ See, e.g., *Kashmiri v. Regents of the Univ. of Cal.*, 156 Cal.App.4th 809, 838, 848 (2007)
20 (applying California contract law to class claim); *Allen v. Smith*, 94 Cal.App.4th 1270, 1277
21 (2002) (contracts are “governed by objective manifestations, not the subjective intent of any
22 individual involved”); *Winet v. Price*, 4 Cal.App.4th 1159 (1992) (“It is the outward expression
of the agreement, rather than a party’s unexpressed intention, which the court will enforce.”);
Shaw v. Regents of Univ. of Cal., 58 Cal.App.4th 44 (1997) (“The true intent of the contracting
party is irrelevant if it remains unexpressed.”).

23 ¹⁸ Class Members’ damages in this action can be readily calculated by the same formula,
24 accounting for all amounts retained by Tata that constitute (1) tax refunds, or (2) Indian salary.
Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 180 (4th Cir. 2010). In *Ward*, the court upheld
25 certification of a breach of contract class action and held that “the district court did not abuse its
26 discretion in determining that the damage calculation in this case was, at least in one important
27 respect, not individualized. As the court explained, for all Class Members, damages equal ‘actual
28 charges less amount paid.’ In other words, the formula for damages was identical for all Class
Members, awarding them the difference between the amount defendants should have paid (the
higher amount charged by medical providers) and the amount defendants actually paid (the lower
amount accepted by medical providers).” See also *Walker v. Maine Sports Complex, LLC*, 2004
WL 843386, at *1 (Me. Super. 2004) (contract damages equal difference between prevailing
wage and amount paid).

1 The determination of these common legal questions will establish for each Class Member
2 two key elements of their breach of contract claim: (1) what should Tata have paid them under
3 the DTA? and (2) did Tata pay them that amount? If the Court agrees with Plaintiffs that
4 employees are entitled to gross compensation under the DTAs—and gross U.S. compensation in
5 addition to their Indian salaries—then, as in *Ward*, the formula for calculating damages is
6 identical for all Class Members: the difference between the amount Tata should have paid them
7 in gross salary under the DTA *in addition to their Indian salaries*, and the amount Tata actually
8 paid them after (improperly) deducting their Indian salaries and (improperly) recouping tax
9 refund checks from them. *See Ward*, 595 F.3d at 180.

10 These two predominant common questions are the same for every Class Member, and
11 must be determined for every Class Members’ breach of contract claim. This is especially true
12 since the common questions of fact—Tata’s policies regarding tax refund checks and Indian
13 salary deductions—are likely uncontested: they were the express company policies during the
14 Class Period. *See Venkataraman Dep.*, 223:5-225:22; sources cited in Section II.B.2., *supra*.

15 **F. Class Litigation Is Superior To Piecemeal Resolution Of These Claims**

16 “Rule 23(b)(3) also requires that class resolution must be ‘superior to other available
17 methods for the fair and efficient adjudication of the controversy.’” *Hanlon*, 150 F.3d at 1023
18 (citation omitted). Plaintiffs here satisfy all of the Rule 23(b)(3) superiority factors:

19 The first factor—the interest of each Class Member in individually controlling his or her
20 own case—weighs in favor of class certification when the cost of many individual actions would
21 be prohibitively high. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).
22 Plaintiffs pursuing their claims as individuals would face great difficulty and expense in obtaining
23 discovery or amassing the evidence necessary to prove Tata’s wrongful compensation practices.
24 Moreover, declaration testimony from proposed Class Members indicates that many Class
25 Members fear retaliation from Tata if they assert their rights.¹⁹ *See* 5-23 Moore’s Federal
26

27 ¹⁹ *See* Vedachalam Dep., 34:14-17 (describing fears of retaliation); D1 ¶10; D7 ¶10; D8 ¶ 14;
28 D10 ¶ 13; D12 ¶9; D16 ¶13; D21 ¶13; D22 ¶11; D30 ¶15; D31 ¶15; D32 ¶13; D33 ¶12; D34 ¶10;
D36 ¶11; D39 ¶10; D41 ¶12; D42 ¶11; P2 ¶13.

1 Practice - Civil § 23.46[1] (3d ed. 2010) (class superior than no litigation at all).

2 Plaintiffs are unaware of other existing litigation addressing compensation. Thus, the
3 second superiority factor—the extent of other existing litigation—is also satisfied here.

4 The third factor—the desirability of concentrating the litigation in this forum—is also met.
5 Tata has deputed over 6,244 employees to California alone. *See* EX19 at 5. Since Tata’s policies
6 were uniform and had nationwide effect, it does not make sense to partition the class
7 geographically. Moreover, given that a large portion of the Class currently resides in India,
8 concentrating litigation of claims under U.S. law in one U.S. court is desirable. *See Rosiles-*
9 *Perez*, 250 F.R.D. at 348 (superiority where class consisted of “foreign nationals whose lack of
10 understanding of ... the laws of the United States pose substantial barriers to individual actions”).

11 The fourth factor—manageability—also weighs in favor of certification here. The
12 evidence will overwhelmingly focus on form documents and policies that had common effects on
13 Class Members. The Court has already held that California law governs Plaintiffs’ breach of
14 contract claims. Dkt. No. 127 at 4-6. Under the same analysis, California law applies to the
15 breach-of-contract claims of Class Members deputed to California, a significant portion of the
16 Class. *See id.* at 5-6. To the extent that the Court finds that some other state’s law may apply to
17 the claims of Class Members deputed to other states, “the applicable state laws governing contract
18 interpretation and breach are sufficiently identical to constitute common legal issues” in a
19 nationwide class action. *Klay v. Humana, Inc.*, 382 F.3d 1241, 1263 (11th Cir. 2004).

20 Thus, even if there could be theoretical difficulties in managing the case on a class basis, a
21 district court “may not ... assume, *arguendo*, that problems will arise, and decline to certify the
22 class on the basis of a mere potentiality that may or may not be realized.” *Conoco Phillips Co.*,
23 593 F.3d at 809-10. “The fact that administrative problems may arise is not dispositive of the
24 class-action question; they must be weighed against the benefits in maintaining the action under
25 Rule 23.” 7AA Charles Wright & Arthur Miller, *Federal Practice and Procedure* § 1780 (3d ed.
26 2010).

1 **V. THE CALIFORNIA CLASS MEETS THE REQUIREMENTS FOR**
2 **CERTIFICATION UNDER RULE 23(A) AND 23(B)(3)**

3 Plaintiffs seek certification of the California Class for their claims for: (1) wrongful
4 collection of wages previously earned (Count IV); (2) failure to pay earned but unused vacation
5 pay (Count VII); (3) failure to provide itemized wage statements (Count VIII); (4) waiting time
6 penalties (VI); and (5) violations of California Business & Professions Code § 17200 (Count IX).

7 **A. The California Class Satisfies The Numerosity Requirement**

8 There were at least 6,244 California Class Members as of March 2010. *See* EX19 at 5.
9 The numerosity requirement is satisfied.

10 **B. The California Class Satisfies Commonality**

11 The California Class presents the following common factual and legal questions:

- 12 • Whether Tata had a policy and practice of requiring deputed employees to pay to
13 Tata their tax refund checks (or the amounts that were over-withheld for taxes);
- 14 • Whether Tata had a policy and practice of deducting the Indian salary of deputed
15 employees from their gross U.S. wages rather than paying them the gross U.S.
16 wages in addition to their Indian salary;
- 17 • Whether Tata's vacation pay policy violates California law;
- 18 • Whether Tata's itemized wage statements issued to deputed employees who
19 worked in California violated California Labor Code § 226 in that they
20 inaccurately reported the employees' gross and net incomes, and number of tax
21 exemptions;
- 22 • Whether former-employee California Class Members are entitled to waiting time
23 penalties under Labor Code § 203 because Tata failed to pay them all
24 compensation owed to them at the time of termination in that Tata: (1) retained
25 tax refund checks owed to Class Members; (2) deducted Indian salary from U.S.
26 wages; (3) failed to pay for all vested vacation time; and (4) failed to pay Class
27 Members' correct salary under the contract; and
- 28 • Whether Tata's practices of requiring employees to sign over their tax refund
checks to Tata, deducting their Indian salary, inaccurately reporting the number
of tax exemptions, and failing to pay all vested vacation time constitute unfair,
unlawful, or fraudulent practices under California Business & Professions Code
§ 17200.

Plaintiffs can demonstrate these policies and practices using common proof. Such
common proof includes: (1) the company-wide practice of requiring employees to turn over their
federal and state tax refunds to Tata; (2) Tata's practice of deducting employees' Indian salary
from their U.S. wages; (3) Tata's practice of failing to pay employees for vacation pay earned in

1 California unless the employees returned to India—and then only at the Indian salary rate; and
2 (4) Tata’s practice of inaccurately reporting the number of exemptions listed on Plaintiffs’ wage
3 statements, and misstating deputed employees’ gross and net income due to tax refund practices.
4 *See* Section II.B.1.-4., *supra*. Given this common proof, a class action will be the most
5 efficacious way to resolve this dispute. Plaintiffs have established commonality.

6 **C. The Named Plaintiffs’ Claims Are Typical Of The California Class’s Claims**

7 Here, Plaintiffs’ claims are typical of the claims of the proposed California Class. Both
8 Plaintiffs were deputed to the United States and worked for Tata in California during the Class
9 Period. Mr. Vedachalam and Ms. Beri were both subject to the common, unlawful employment
10 practices as the other California Class Members: they were required to pay back to Tata portions
11 of their pay; Plaintiff Beri was either not paid for earned vacation or was paid at a reduced rate;
12 their wage statements were inaccurate; and they were not paid all that they were owed at the time
13 of their termination. Thus, Plaintiffs’ claims are coextensive with those of the California Class.

14 **D. The Named Plaintiffs Will Adequately Represent The California Class**

15 The Named Plaintiffs’ interests are consistent with those of the proposed class because
16 they allege that they suffered the same injuries that underlie the class claims and share common
17 goals of enforcing the compensation terms in Tata’s employment contracts and requiring Tata to
18 provide promised and earned wages and accurate wage statements. There is no antagonism
19 between the Named Plaintiffs and the Class. Moreover, Plaintiffs’ counsel are highly experienced
20 in prosecuting complex employment class actions. *See* Dkt. Nos. 182, 183.

21 **E. Predominance is Satisfied**

22 As with the National Class claims, common questions of law and fact predominate where,
23 as here, Tata’s policies and form documents will be the focus of the California Classes’ Claims.

24 **1. Wrongful Collection of Wages Claim**

25 Plaintiffs assert a wrongful collection of wages claim under Labor Code § 221 against
26 Tata on behalf of the California Class. Section 221 provides in pertinent part: “It shall be
27 unlawful for any employer to collect or receive from an employee any part of wages theretofore
28 paid by said employer to said employee.” Class-wide resolution is appropriate because Tata

1 uniformly applied its tax refund policy to Class Members throughout California and routinely
2 deducted these employees' Indian salary from their pay. *See Otsuka v. Polo Ralph Lauren Corp.*,
3 251 F.R.D. 439, 447 (N.D. Cal. 2008) (common issues predominated, in part, because plaintiffs'
4 claims addressed an employer's compensation policies and procedures throughout California).

5 Common questions exist as to whether (1) Tata compelled its California employees to
6 repay wages already earned; (2) Class Members' tax refund checks constitute "wages" under the
7 California Labor Code; and (3) Class Members consented to deduction of wages from their
8 paychecks. These central questions will predominate because the same policies with regard to tax
9 refund checks applied to all California Class Members. As with the Nationwide Class, answers to
10 these questions can be shown through common proof, including Tata's uniform tax return policy,
11 standard Indian salary deductions, form employment contracts and other common Tata
12 documents, testimony of Tata corporate representatives, and representative Class Member
13 testimony. As noted above, Tata's uniform DTA promised a gross U.S. salary in addition to the
14 Indian salary. *See Mukherjee Dep.*, 152:2-156:18.²⁰

15 First, it is undisputed that Tata drafted and distributed to Class Members common
16 documents requiring them to sign over their tax refund checks to Tata.²¹ These widely-distributed
17 documents provide common proof that Tata uniformly required Class Members to sign over their
18 tax refund checks or pay Tata the amount of their over-withheld taxes to receive their W-2 forms.
19 *See Wren*, 256 F.R.D. at 204-209 (corporate documents and representative testimony sufficient to
20 conclude that common questions arose from centralized policy and predominated over
21 individualized issues). Tata likewise followed a standard policy of deducting Indian salary from
22 proposed Class Members' gross salary. *See Section II.B.2., supra.*

23 Second, standardized employment agreements serve as common proof in demonstrating
24 that the tax refunds and Indian salary are wages because they constitute, respectively: (1) a part
25 of the gross U.S. salary, and (2) a separate salary to be paid in addition to the gross U.S. salary
26 that Tata promised to pay in the DTAs. *See Westways World Travel, Inc., v. AMR Corp.*, 218

27 ²⁰ Differences in damages among Class Members do not destroy class certification. *See*
Yokoyama, 594 F.3d at 1089 (9th Cir. 2010).

28 ²¹ *See Venkataraman Dep.*, 143:23-144:9, 223:5-225:22; EX7-EX11.

1 F.R.D. 223, 239 (C.D. Cal. 2003) (predominance where “[p]laintiffs’ contract claim involves the
2 interpretation of a common contract”); *see also* *Hudgins v. Neiman Marcus Group, Inc.*, 34 Cal.
3 App. 4th 1109, 1112, 1119, 1124 (1995) (deduction of paid commissions for unidentified returns
4 violates § 221 because it unlawfully deducts wages earned and relied upon by sales associates).

5 Third, testimony from Plaintiffs and Class Members confirms that Tata uniformly
6 followed these practices and did so without employee consent.²² *See Dilts v. Penske Logistics*
7 *LLC*, 267 F.R.D. 625, 638 (S.D. Cal. 2010) (granting Rule 23(b)(3) certification where plaintiffs
8 presented testimony from some Class Members that they were not permitted meal breaks).

9 **2. Vacation Pay Claim**

10 Plaintiffs allege that Tata’s vacation policy for deputed employees amounts to an unlawful
11 “use-it-or-lose-it” policy in violation of Cal. Lab. Code § 227.3. (FAC, ¶ 136). It is well-settled
12 under California law that if an employer has a policy of providing for paid vacation, “a
13 proportionate right to a paid vacation ‘vests’ as the labor is rendered.” *Saustez*, 31 Cal. 3d at 784.
14 In other words, “some share of vacation pay is earned daily.” *Id.* at 782. Furthermore, “[a]n
15 employer must . . . pay out vested vacation time at the rate at which the employee would have
16 been paid during a vacation, had he taken one.” *Drumm v. Morningstar, Inc.*, 695 F. Supp. 2d
17 1014, 1019 (N.D. Cal. 2010) (discussing § 227.3). Plaintiffs maintain that deputed employees in
18 California earned paid vacation on a day-by-day basis at the rate of their gross U.S. salary, and
19 not the lower, post-deputation, Indian-only salary. Thus, Tata’s policy of paying employees for
20 unused vacation at the rate of their Indian salary constitutes a violation of Cal. Lab. Code § 227.3.

21 This vacation pay claim is well-suited for class treatment because Tata has maintained
22 vacation policies that apply uniformly to all deputed employees during the class period. *See*
23 Section II.B.4., *supra*. Courts routinely grant class certification to vacation pay claims based
24 upon a standard employer practice. For example, in *Lopez v. G.A.T. Airline Ground Support,*
25 *Inc.*, 09-cv-2268-IEG (BGS), 2010 WL 3633177 (S.D. Cal. Sept. 13, 2010), the court certified a

26 ²² *See* D1 ¶7; D2 ¶6; D3 ¶6; D4 ¶7; D5 ¶8; D6 ¶7; D7 ¶7; D8 ¶10; D9 ¶7; D10 ¶¶6,8; D11 ¶9;
27 D12 ¶7; D13 ¶8; D14 ¶9; D15 ¶8; D16 ¶8; D17 ¶7; D18 ¶8; D19 ¶ 7; D20 ¶8; D21 ¶8; D22 ¶7;
28 D23 ¶7; D24 ¶7; D25 ¶ 9; D26 ¶7; D27 ¶¶6-8; D28 ¶8; D29 ¶ 8; D30 ¶8; D31 ¶8; D33 ¶ 8; D34
D35 ¶6; D36 ¶ 7; D38 ¶7; D39 ¶7; D40 ¶9; D42 ¶7; D43 ¶7; D44 ¶7; D46 ¶7; Vedechalam
Dep. 42:3-57:2; Beri Dep., 122:17-25, 200:19-201:17, 203:16-207:8.

1 class of employees who alleged that their employer's policy of denying vacation benefits to
2 employees who left the company before their one-year anniversary violated Cal. Lab. Code §
3 227.3. *Id.*, at *8. The *Lopez* court held that, "[w]here, as here, the claim asserted by the proposed
4 class is based upon a consistent employer practice, class certification is usually appropriate." *Id.*
5 (citations omitted).²³

6 The questions at issue in Plaintiffs' vacation pay claim are:

- 7 1) from February 14, 2002 to the present, did TCS's policy of failing to pay deputed
8 employees who quit during their deputations for unused vacation time violate Cal.
9 Lab. Code § 227.3?
- 10 2) from February 14, 2002 to July 2005, did TCS's policy of providing paid vacation
11 post-deputation only at the Indian salary violate Cal. Lab. Code § 227.3?
- 12 3) from July 2005 to the present, did TCS's policy of paying used vacation time at
13 the U.S. salary, and unused vacation time at the Indian salary only, violate Cal.
14 Lab. Code § 227.3?

15 These questions will predominate because the same policy applied to all California Class
16 Members.²⁴ Individualized questions as to whether or not Class Members took vacation pertain
17 solely to damages and do not preclude class certification. *See Lopez*, 2010 WL 3633177 6, at *8
18 ("The fact that some of the proposed Class Members (and named Plaintiffs) were employed more
19 than one year does not defeat Plaintiffs['] desire to have this claim adjudicated through a
20 proceeding under *Rule 23*. It can easily be ascertained from GAT's records which employees
21 were employed less than a year, and the amount of unpaid vested vacation benefits which were
22 unpaid.") (citations omitted).

23 **3. Itemized Wage Statement Claim**

24 Plaintiffs assert an itemized wage statement claim against Defendants on behalf of the
25 proposed California Class. Labor Code § 226 provides in pertinent part:

26 ²³ *See also Singer v. Becton Dickinson & Co.*, 2009 U.S. Dist. LEXIS 114547 (S.D. Cal. Dec. 9,
27 2009) (approving class settlement for "use-it-or-lose-it" claim because "all of the qualifying
28 Vacation Settlement Group Members were subject to this policy."); *Molina v. Lexmark Int'l, Inc.*,
2008 U.S. Dist. LEXIS 83014, at *9 (C.D. Cal. Sept. 30, 2008) (remanding to state court that had
granted class certification to § 227.3 use-it-or-lose it claim).

²⁴ Sivasubramini Dep., 191:23-198:15; D1 ¶9; D5 ¶11-12; D8 ¶12; D16 ¶12; D24, ¶11; D26, ¶11;
D29 ¶11; D30 ¶12; D31 ¶¶12-13; D32 ¶ 11; D35 ¶10; D36 ¶9; D37 ¶ 7; D41 ¶9; D45 ¶ 9; P1 ¶12.

1 Every employer shall, . . .at the time of each payment of wages,
2 furnish each of his or her employees, . . . an *accurate* itemized
3 statement in writing showing (1) gross wages earned, . . . (4) all
4 deductions, provided that all deductions made on written orders of
5 the employee may be aggregated and shown as one item, (5) net
6 wages earned,

7 Plaintiffs allege that Tata has violated this section by: (1) inaccurately reporting the number of
8 tax exemptions for Class Members; and (2) misstating Class Members' gross and net incomes by
9 failing to reflect Class Members' payments to the company in tax refund checks and the money
10 that Tata deducted for Indian salary.

11 The second violation of Labor Code § 226(a) identified above can be demonstrated using
12 common proof for the reasons stated above in Sections IV.E. and V.E.2. Common questions will
13 predominate because the same proof supporting the breach of contract claim and the Labor Code
14 § 221 claim also supports the itemized wage statement claim: Tata's deduction of Indian salary
15 from Class Members' gross salary and the requirement that they repay tax refunds demonstrate
16 that Tata failed to include accurate wage information on Class Members' wage statements.

17 The first violation is also subject to common proof because Plaintiffs, through
18 representative documents and a statistical sampling of Class Members' pay records, can
19 demonstrate that Tata regularly changed the number of Class Members' tax exemptions.²⁵ Such
20 evidence demonstrates that Tata's manipulation of Class Members' tax exemptions were not
21 isolated instances but Tata's common practice. At a Class trial, Plaintiffs will be able to
22 demonstrate efficiently that Tata has violated Labor Code § 226 on a Class-wide basis.

23 **4. Waiting Time Penalty Claim**

24 Under California law, when an employee quits, or is terminated, an employer is obligated
25 to pay that employee all wages owed. An employer who fails to pay the employee then owes that
26 employee additional amounts of up to 30 days of additional wages. Labor Code § 203 provides:

27 (a) If an employer willfully fails to pay, without abatement or
28 reduction, in accordance with §§ 201, 201.5, 202, and 205.5, any

29 ²⁵ See *Vedachalam Dep.*, 37:25-38:25 (exemptions kept changing); D1 ¶8; D10 ¶8; D11 ¶11; D14
30 ¶7; D16 ¶10; D23 ¶10; D25 ¶11; D27 ¶8; D29 ¶6; D35 ¶8; D42 ¶6; P1 ¶11; P2 ¶11; *see also*,
31 *Shaver Decl.*, ¶10 (50% of earnings statements show up to between 6 and 10 claimed
32 exemptions).

1 wages of an employee who is discharged or who quits, the wages of
2 the employee shall continue as a penalty from the due date thereof at
3 the same rate until paid or until an action therefore is commenced;
4 but the wages shall not continue for more than 30 days.

5 Plaintiffs' claims for waiting time penalties under Labor Code § 203 are predicated on
6 Tata's (1) requirement that employees return to Tata their tax refund checks; (2) deduction of
7 Indian salaries from gross U.S. wages; (3) failure to pay employees the correct salary as agreed to
8 in their DTAs; and (4) failure to compensate California employees fully for their earned vacation
9 time. Common questions predominate because, at the Class trial, Plaintiffs will rely on the
10 common proof identified above in Sections II.B.1.-4., above. Proving the breach of contract,
11 Labor Code § 221, and vacation pay claims will simultaneously prove Plaintiffs' § 203 claim
12 because if Plaintiffs and Class Members were required to pay back some of earned wages, were
13 not paid the correct salary, and were not paid all earned vacation time, then they were also denied
14 all wages due at the time of their termination, if they are former employees.

15 **5. Business & Professions Code § 17200 Claim**

16 Plaintiffs' class claim under California Business & Professions Code § 17200 also
17 presents predominant common questions because, like the Labor Code § 203 claim, this claim is
18 predicated on the other alleged violations of law presented in the case discussed above. *Cel-Tech*
19 *Commc'n, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999); *Lopez*, 2010 2010
20 WL 3633177 at *12; *Hudgins*, 34 Cal. App. 4th at 1126-27.

21 **F. Superiority is Satisfied**

22 Plaintiffs satisfy all Rule 23(b)(3) superiority factors. As with the National Class, the
23 interest of each proposed California Class Member in controlling his or her own case weighs in
24 favor of class certification when the cost of many individual actions would be prohibitively high.
25 *See, e.g., Amchem*, 521 U.S. at 617. California Class Members would face prohibitive costs to
26 seek individual recoveries for relatively small claims against a well-funded global entity like
27 Tata. Absent this case, there likely would be no litigation - no other litigation is pending now.
28 Concentrating the litigation in this forum is highly desirable because all California Class
Members worked in this State. Finally, manageability is satisfied because the evidence will

1 overwhelmingly focus on form documents and policies with common effects on Class Members,
2 and California law indisputably applies to all California Class Members. *See* Dkt. 127 at 5-6.

3 **VI. THE CURRENT EMPLOYEE CALIFORNIA WAGE STATEMENT SUBCLASS**
4 **MEETS THE REQUIREMENTS FOR CERTIFICATION UNDER RULE 23(B)(2)**

5 On behalf of at least 1,026 current employees as of February 14, 2006, Plaintiff
6 Vedachalam seeks certification of a Current Employee California Wage Statement Subclass for
7 his claim that Tata failed to provide accurate wage statements. *See* EX18 at 3. In addition to the
8 practices outlined above, Tata has over-reported the number of exemptions on employees' wage
9 statements since 2005. For example, Mr. Vedachalam's tax exemptions were changed from 3 to
10 8 in May, 2005; changed to 9 in June 2005; then changed from 9 to 6 in August 2005. *See* EX14.
11 He did not authorize these changes and did not, for example, suddenly have (and then lose)
12 multiple children. Vedachalam Dep., 348:23-349:9. Other Class Members testify that their wage
13 statements have been changed without notice or valid basis.²⁶

14 There is no difference between the California Class and California Subclass with respect
15 to the Rule 23(a)(2)-(4) factors; the only difference between the classes is regarding Rule 23(b)(2)
16 certification for injunctive and declaratory relief, which only the Subclass seeks.

17 **A. Certification of Plaintiffs' Claims for Declaratory and Injunctive Relief is**
18 **Warranted under Rule 23(b)(2)**

19 Class certification is proper under Rule 23(b)(2) when the defendant "has acted or refused
20 to act on grounds generally applicable to the class, thereby making appropriate final injunctive
21 relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ.
22 P. 23(b)(2). Pursuant to Rule 23(c)(4), courts may certify specific claims to be brought or
23 maintained as a class action under Rule 23(b)(2). *Sepulveda v. Wal-Mart Stores, Inc.*, 275 Fed.
24 Appx. 672 (9th Cir. 2008) (directing the district court to consider "using Rule 23(c)(4) to certify
25 specific issues under the Rule 23(b)(2) standard" on remand) (unpublished).

26 Plaintiffs allege that Tata has acted on grounds generally applicable to the Subclass and

27 ²⁶ *See* D1 ¶8; D10 ¶8; D11 ¶11; D14 ¶7; D16 ¶10; D23 ¶10; D25 ¶11; D27 ¶8; D29 ¶¶6-7; D35
28 ¶8; D42 ¶6; P1 ¶11; P2 ¶11; *see also* Shaver Decl., ¶10.

1 have requested declaratory and injunctive relief enjoining Tata from uniformly failing to issue
2 accurate wage statements. “What is important is that the relief sought by the named plaintiffs
3 should benefit the entire class.” *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 59 (3d Cir.
4 1994). Plaintiffs have standing to seek such relief because Plaintiff Vedachalam was a current
5 employee at the time the complaint in this case was originally filed. FAC, ¶ 13.

6 **VII. THE PROPOSED NOTICE SHOULD BE DISSEMINATED TO THE CLASS**

7 Plaintiffs respectfully request that the Court approve both the proposed Class notice,
8 attached as exhibit A to the [Proposed] Order Granting Plaintiffs’ Motion For Class Certification,
9 and its dissemination to Class Members by mail and e-mail. The proposed notice, based on the
10 Federal Judicial Center’s form at www.fjc.gov, provides accurate information about the lawsuit
11 and effectively informs the proposed Class Members of their options.

12 **VIII. CONCLUSION**

13 Plaintiffs respectfully request that the Court certify the National and California Classes.

14
15 Dated: April 25, 2011

Respectfully submitted,

16 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

17
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