UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 14-1242 JGB (VBKx)**	Date	July 16, 2015
Title	***Alexander Brown, et al. v. Abercrombie & Fitch Co., et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) DENYING Defendants' Motion to Strike (Doc. No. 85); and (2) GRANTING Plaintiffs' Motion for Class Certification (Doc. No. 72) (IN CHAMBERS)**

Before the Court are Defendants' Motion to Strike Portions of the Declaration of Hallie Von Rock and Declarations by Plaintiffs (Doc. No. 85) and Plaintiffs' Motion for Class Certification. After considering the papers submitted in support of and in opposition to the motions, as well as the oral argument presented at the July 13, 2015 hearing, the Court DENIES Defendants' Motion to Strike and GRANTS Plaintiffs' Motion for Class Certification.

I. BACKGROUND

A. Procedural History

On September 16, 2013, Plaintiffs Alexander Brown ("Brown") and Arik Silva ("Silva") (collectively, "Plaintiffs") filed a putative class action Complaint in California Superior Court for the County of Alameda against Defendants Abercrombie & Fitch Co. and Abercrombie Stores, Inc. (collectively, "Defendants" or "Abercrombie"). ("Compl.," Doc. No. 1 at 19-33.) On October 7, 2013, Plaintiffs amended their complaint. ("FAC," Doc. No. 1 at 35-50.) Defendants answered the FAC on November 7, 2013. (Doc. No. 1 at 53-64.)

On November 8, 2013, Defendants removed this action to federal court in the Northern District of California. ("Not. of Removal," Doc. No. 1.) Upon Defendants' motion, the case was then transferred to the Central District of California on February 14, 2014. (Doc. No. 28.) Plaintiffs filed a Second Amended Complaint that summer, ("SAC," Doc. No. 61), which Defendants answered on July 24, 2014, (Doc. No. 62).

Plaintiffs filed a Motion for Class Certification on January 12, 2015. (Doc. No. 72.) In support of their Motion, Plaintiffs filed the following documents:

- Memorandum of Points and Authorities, ("Motion," Doc. No. 80);
- Declaration of Hallie Von Rock, attaching Exhibits One through Forty-six, ("Von Rock Decl.," Doc. No. 73 to 73-2);
- Request for Judicial Notice, ("RJN," Doc. No. 74);
- Trial Plan, ("PTP," Doc. No. 75);
- Declaration of Alexander Brown, ("Brown Decl.," Doc. No. 76);
- Declaration of Arik Silva, ("Silva Decl.," Doc. No. 75); and
- Declaration of Carey A. James, attaching Exhibits A through AAR, ("James Decl.," Doc. No. 78 to 78-4).

On January 16, 2015, the Court approved the parties' stipulation to continue the hearing on Plaintiffs' Motion and allow for an extended briefing schedule. (Doc. No. 83.) On March 2, 2015, Defendants filed their Opposition to Plaintiffs' Motion, ("Opp'n," Doc. No. 88), along with the following supporting documents:

- Objections to Plaintiffs' Evidence, ("D. Obj.," Doc. No. 86);
- Objections to Plaintiffs' Request for Judicial Notice, ("Obj. RJN," Doc. No. 87);
- Opposition to Plaintiffs' Trial Plan, ("Opp'n PTP," Doc. No. 89); and
- Declaration of Mark Knueve, attaching ninety-three exhibits, ("Knueve Decl.," Doc. No. 90).[1]

Also on March 2, 2015, Defendants filed a Motion to Strike, asking the Court to strike certain declarations filed in support of Plaintiffs' Motion for Class Certification. ("MTS," Doc. No. 85.) Plaintiffs opposed the Motion to Strike on April 13, 2015, ("MTS Opp'n," Doc. No. 92), supporting their opposition with an additional Declaration of Hallie Von Rock, which attached Exhibits A and B, ("MTS Von Rock Decl.," Doc. No. 92-1). Defendants filed a reply brief in support of their Motion to Strike on April 17, 2015. ("MTS Reply," Doc. No. 95.)

[1] The Court notes that both parties failed to submit their motion papers in accordance with the requirements of the Court's Standing Order. For example, "[i]f documentary evidence in support of or in opposition to a motion . . . exceeds 200 pages, the documents shall be placed in a binder, with an index and with each item of evidence separated by a tab divider." (Standing Order at 5.) Defendants' voluminous submissions in opposition to class certification were particularly unmanageable (hundreds of pages bound together with pronged fasteners in a single stack) and almost impossible to open and review. Accordingly, the Court directs the parties to follow the requirements in its Standing Order as to the form of submissions for all future filings.

In addition, the Court directs Plaintiffs to follow Local Rule 5-4.3.1 when submitting future briefing. Scanned PDF documents are more difficult for the Court to review, and the submission of non-searchable documents slows the Court's consideration of a motion, particularly for lengthy filings. The Court may strike either parties' filings for failure to comply with either of these requirements in the future.

On April 20, 2015, Defendants filed a document they titled "Supplemental Authority and Evidence in Opposition to Plaintiffs' Motion for Class Certification," ("Supp. Auth.," Doc. No. 96), attaching Exhibits A through L, (Doc. No. 96-1).

Also on April 20, 2015, Plaintiffs replied in support of their Motion for Class Certification. ("Reply," Doc. No. 97.) In support of their Reply, Plaintiffs filed the following documents:

- Reply Declaration of Carey A. James, attaching Exhibits One through Sixty, ("James Decl. 2," Doc. No. 97-1 to -5);
- Reply to Defendants' Opposition to Plaintiffs' Evidence, ("Reply D. Obj.," Doc. No. 97-6);
- Reply to Defendants' Objections to Plaintiffs' Request for Judicial Notice, ("Reply Obj. RJN," Doc. No. 97-7);
- Reply to Defendants' Objections to Plaintiffs' Trial Plan, ("Reply PTP," Doc. No. 97-8);
- Objections to Evidence in Reply to Defendants' Opposition to Plaintiffs' Motion for Class Certification, ("P. Obj.," Doc. No. 97-9); and
- Objections to Defendants' Supplemental Authority and Evidence, ("Obj. Supp. Auth.," Doc. No. 97-10).

On June 10, 2015, the Court ordered supplemental briefing as to the proposed subclass definitions. (Doc. No. 103.) Plaintiffs provided such a supplemental brief on June 17, 2015. ("Supp. Br.," Doc. No. 104.) Defendants responded to Plaintiffs' supplemental brief on June 24, 2015, ("Resp. Supp.," Doc. No. 105), filing a ten-page response brief, as allowed for in the Court's June 10th Order.[2]

The Court stayed the litigation as to Plaintiffs' rest break claims on June 24, 2015 because of a proposed class action settlement pending in a similar suit in California Superior Court. (Doc. No. 106.)

On July 13, 2015, the Court heard oral argument from the parties on Plaintiffs' Motion for Class Certification.

[2] Much of Defendants' response brief was irrelevant to Plaintiffs' clarifications as to their subclass definitions and instead merely repeated arguments made in Defendants' Opposition. In addition, Defendants filed the Declaration of Adam Chmielewski, ("Chmielewski Decl.," Doc. No. 105-2) and the Declaration of Michael J. Ball, attaching fourteen exhibits, ("Ball Decl.," Doc. No. 105-1). When the Court ordered supplemental briefing, it limited Defendants' response to"a written brief of no more than ten pages." (Doc. No. 103.) Instead of complying with that instruction, Defendants improperly attempted to submit numerous exhibits and provide other evidence that was not submitted along with their Opposition. Accordingly, the Court STRIKES the Chmielewski Declaration and the Ball Declaration as well as the attached exhibits. (Doc. Nos. 105-1, 105-2.)

B. Factual History

The operative SAC sets forth nine causes of action: (1) failure to provide rest breaks in violation of California Labor Code §§ 226.7 and 1198; (2) failure to indemnify business expenses in violation of California Labor Code § 2802; (3) compelled patronization of employer and/or other persons in violation of California Labor Code § 450; (4) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1194.2, 1197, and 1197.1; (5) failure to furnish accurate wage statements in violation of California Labor Code § 226; (6) waiting time penalties for violations of California Labor Code §§ 201, 202, and 203; (7) unfair business practices in violation of California Business and Professions Code § 17200, et seq.; (8) penalties under the Private Attorney General Act ("PAGA"), California Labor Code § 2699, et seq.; and (9) injunctive relief pursuant to California Business and Professions Code § 17200, et seq.

Defendants operate retail clothing stores throughout the United States, including over 100 stores in California. (SAC ¶ 9.) Plaintiffs are employees in Defendants' California stores. (SAC ¶¶ 11-12.) Brown has been employed as a non-exempt retail sales associate at four of Defendants' California stores since approximately October 2011.[3] (SAC ¶ 11.) Silva has been employed as a non-exempt retail sales associate since approximately October 2012 in one of Defendants' California stores. (SAC ¶ 12.)

As discussed more fully below, Plaintiffs move to represent a class of approximately 62,000 non-exempt employees of Defendants' California stores, who worked for Defendants between September 16, 2009 to the present. (Mot. at 1; FAC ¶¶ 3, 24.) Plaintiffs seek certification of six subclasses within that overall class: (a) two rest break subclasses, (b) two Labor Code Section 450 subclasses, (c) a uniform subclass, and (d) a footwear subclass. (Supp. Br. at 2-10.) With regard to the rest break subclass, Plaintiffs assert that Defendants failed to provide Plaintiffs with a ten-minute rest period for every four hours (or major fraction thereof) worked and failed to pay rest break penalties to compensate employees for those failures. (FAC ¶¶ 16-17.) As for the Labor Code Section 450 subclasses, Plaintiffs allege that Defendants compelled or coerced Plaintiffs to patronize Defendants' stores and purchase Abercrombie clothing. (FAC ¶ 20.) With respect to the uniform and footwear subclasses, Plaintiffs assert that Defendants failed to reimburse Plaintiffs for the purchase of clothing, including footwear, that satisfies Defendants' "Look Policy" and essentially constitutes a uniform. (FAC ¶¶ 18-19.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23 ("Rule 23") governs the litigation of class actions. A party seeking class certification must demonstrate the following prerequisites: "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citing Fed. R. Civ. P. 23(a)). The party may not rest on mere allegations; it must provide facts to satisfy those requirements. See Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1309 (9th Cir. 1977) (citing Gillibeau v.

[3] Brown was terminated in approximately August 2012 but subsequently rehired. (SAC ¶¶ 11, 18.)

Richmond, 417 F.2d 426, 432 (9th Cir. 1969)). Although not mentioned in Rule 23(a), the party seeking certification must also demonstrate that the class is ascertainable. See Keegan v. Am. Honda Motor Co., Inc., 284 F.R.D. 504, 521 (C.D. Cal. 2012).

After satisfying the five prerequisites of numerosity, commonality, typicality, adequacy, and ascertainability, a party must also demonstrate one of the following: (a) a risk that separate actions would create incompatible standards of conduct for the defendant or prejudice individual class members not parties to the action; (b) the defendant has treated the members of the class as a class, making appropriate injunctive or declaratory relief with respect to the class as a whole; or (c) common questions of law or fact predominate over questions affecting individual members and that a class action is a superior method for fairly and efficiently adjudicating the action. See Fed. R. Civ. P. 23(b)(1) to (3).

Pursuant to Rule 23(c)(5), "[w]hen appropriate, a class may be divided into subclasses that are each treated as a class under [Rule 23]." Fed. R. Civ. P. 23(c)(5). "[E]ach subclass must independently meet the requirements of Rule 23 for the maintenance of a class action." Betts v. Reliable Collections Agency, LTD, 659 F.2d 1000, 1005 (9th Cir. 1981).

A trial court has broad discretion regarding whether to grant a motion for class certification. See Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 712 (9th Cir. 2010). However, a party seeking class certification must affirmatively demonstrate compliance with Rule 23—that is, the party must be prepared to prove that there are in fact sufficiently numerous parties and common questions of law or fact. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. __, 131 S. Ct. 2541, 2550-51 (2011). Thus a district court must conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." Id.

III. DISCUSSION

A. Preliminary Issues

1. Evidentiary Objections

At the outset, the Court addresses the myriad evidentiary issues that have been raised by the parties. First, Defendants filed twenty-one pages of objections to the evidence submitted by Plaintiffs in support of their Motion for Class Certification. (D. Obj. 1-21.)[4] Plaintiffs replied with dozens of pages of responses. (Reply D. Obj. 1-53.) Second, Plaintiffs filed their own set of objections to the evidence provided with Defendants' Opposition. (P. Obj.)

Numerous courts in this circuit have made clear that "[f]or purposes of the class certification inquiry, the evidence need not be presented in a form that would be admissible at trial." Stitt v. San Francisco Mun. Transp. Agency, No. 12-CV-3704 YGR, 2014 WL 1760623, at *1 n.1 (N.D. Cal. May 2, 2014); Keilholtz v. Lennox Hearth Prods., Inc., 268 F.R.D. 330, 337 n.3 (N.D. Cal. 2010). "The court need not address the ultimate admissibility of the parties'

[4] The first four pages of those objections are discussed below in relation to Defendants' Motion to Strike portions of the Von Rock Declaration.

proffered exhibits, documents and testimony at this stage, and may consider them where necessary for resolution of the [motion for class certification]." Alonzo v. Maximus, Inc., 275 F.R.D. 513, 519 (C.D. Cal. 2011).

Accordingly, the Court OVERRULES without prejudice both parties' objections to evidence.

2. Motion to Strike Declarations

In addition to their multitude of evidentiary objections, Defendants move to strike portions and/or the entirety of several declarations filed by putative class members in support of Plaintiffs' Motion for Class Certification. (MTS at 1.) The Court DENIES Defendants' Motion for the following reasons.

a. Von Rock Declaration

Defendants first ask the Court to strike numerous paragraphs from the Von Rock Declaration on the basis that those paragraphs constitute legal argument. (MTS at 1.) Defendants argue that paragraphs seven through twenty-three include arguments from the attorneys rather than admissible evidence. (Id. at 2.) Defendants ask the Court to strike those paragraphs pursuant to its inherent power to manage its docket and strike improper documents. (Id.) Plaintiff states that the objected-to statements in the Von Rock Declaration "are not offered as evidence, but as a reference to the applicable factual allegations." (MTS Opp'n at 4.)

The Court declines to strike paragraphs seven through twenty-three of the Von Rock Declaration. However, the Court agrees with the parties that some of the substance of those paragraphs does not constitute admissible evidence. Thus the Court will only consider the paragraphs as directing the Court to the relevant declarations and not as evidence in and of itself.[5]

b. Putative Class Member Declarations

Second, Defendants move to strike a total of forty-one declarations filed by Plaintiffs in support of the Motion for Class Certification. (MTS at 10.) Defendants object to the declarations—from Plaintiff and other putative class members—for violating procedural requirements, including lacking a handwritten signature and/or date. (Id.)

In their reply brief, Defendants retract their motion with respect to most of the declarations. (MTS Reply at 5.) Defendants maintain their motion only with respect to the Declarations of Justin Valdez, Tyree Wilson, Adam Taylor, and Ryan Wilson (Von Rock Decl., Exs. 40, 41, 43, 44, Doc. No. 73-2 at 52-63, 72-83.) Defendants assert that the signatures of Adam Taylor and Ryan Wilson are illegible and that the Declarations of Justin Valdez and Tyree Wilson improperly include only electronic signatures. (MTS Reply at 5-6.)

[5] The Court thus sustains Defendants' objections to paragraphs seven through twenty-three of the Von Rock Declaration. (D. Obj. at 1-4.)

The Court disagrees with Defendants' assertion regarding the legibility of the Taylor and Ryan Wilson Declarations. To ensure that the content was legible, Plaintiffs included both a clear, unsigned last page as well as a less clear, signed last page. (Doc. No. 73-2 at 55-56, 76-77.) Although the quality of those scanned last pages is not ideal, the Court considers the signatures sufficient and declines to strike those declarations.

With regard to the Declarations of Valdez and Tyree Wilson, which were e-signed, the Court declines to strike the declarations in response to Defendants' apparent objection to the authenticity of those declarations. In their Opposition, Plaintiffs explain that Valdez and Tyree Wilson authorized the use of their e-signatures. (MTS Opp'n at 7.) Plaintiffs attach email correspondence and a text message from Tyree Wilson, indicating that Tyree Wilson lacked access to a computer and thus could not print and sign his declaration. (Doc. No. 92-1 at 30-32.) Plaintiffs also assert that Valdez typed his own signature and the date because he also lacked a printer/scanner to hand-sign the declaration. (Declaration of Hallie Von Rock ¶¶ 6-7, Ex. B at 39-45, Doc. No. 92-1.)

As the Court explained above, the evidence presented in support of a motion for class certification need not be presented in a form that would be admissible at trial. See,e.g., Stitt, 2014 WL 1760623, at *1 n.1. Although some issues certainly exist with regard to the signatures on the Valdez and Tyree Wilson Declarations, the declarations are sufficient for the purposes of supporting the Motion for Class Certification and the Court declines to strike them.

3. Request for Judicial Notice

Plaintiffs ask this Court to take judicial notice of various documents that were filed in other federal court cases involving one or both of Defendants. (PRJN at 1-2.) Specifically, Plaintiffs ask the Court to take judicial notice of three documents filed in EEOC v. Abercrombie & Fitch Stores, Inc., Case No. 09-CV-602-GKF-FHM in the Northern District of Oklahoma: (1) the Supplemental Written Testimony of Erich A. Joachimsthaler; (2) Defendant's Motion for Summary Judgment; and (3) Excerpts from the Deposition of Deon Riley. (Id. at 1.) Plaintiffs ask the Court to take judicial notice of "Defendants' Separate Statement of Material Facts Relevant to Undue Hardship," filed in EEOC & Umme-Hani Khan v. Abercrombie & Fitch Stores, Inc., et al., Case No. CV 11-03162-YGR in the Northern District of California. (Id.) Last, Plaintiffs ask the Court to take judicial notice of the Brief of Respondent Abercrombie & Fitch Stores, Inc. in Opposition to Petition for Writ of Certiorari, filed in EEOC v. Abercrombie & Fitch Stores, Inc., Docket No. 14-86 (2014) in the U.S. Supreme Court. (Id.)

Defendants object to the judicial notice of those documents for several reasons. First, Defendants argue that the requested documents are not relevant to this case and that, as a result, the Court may not judicially notice them. (Obj. PRJN at 2.) Second, Defendants contend that, even if the Court may judicially notice filings in other cases, such judicial notice may not be used to supply evidence necessary to support a contention in this action. (Id. at 2.)

Filings in other cases, as public records, are the proper subject of judicial notice. See Armstead v. City of Los Angeles, 66 F. Supp. 3d 1254, 1260-61(C.D. Cal. 2014). The Court may take judicial notice of the existence of such a court filing—which the Court does here—but a court need not accept as true the facts asserted in such filings or the correctness of any

conclusions reached by another court, unless an issue decided has a preclusive effect on this case (an exception which is not applicable here).

Plaintiffs seem to request that the Court not only take notice of the existence of the court filings, but also consider their contents as evidence in this case. (PRJN at 1-2.) However, judicial notice is not the proper vehicle for obtaining the Court's consideration of such information. Instead, the documents should be authenticated and presented as evidence. Defendants, however, do not appear to dispute the authenticity of the documents to which Plaintiffs direct the Court's attention. Moreover, the contents to which Plaintiffs refer the Court largely consist of statements by Defendants' representatives and thus appear admissible for the truth of the matter asserted as an opposing party's statements. See Fed. R. Evid. 801(d)(2). As the Court explained above, upon a motion for class certification, "evidence need not be presented in a form that would be admissible at trial." Stitt, 2014 WL 1760623, at *1 n.1. Accordingly, given the more lenient evidentiary standard applicable here, the Court will consider as evidence the contents of the prior court filings of which Plaintiffs seek judicial notice.

4. Defendants' Supplemental Authority

As noted above, on April 20, 2015, Defendants untimely filed "Supplemental Authority and Evidence in Opposition to Plaintiffs' Motion for Class Certification," attaching 138 pages of exhibits. (Doc. No. 96.) Pursuant to the extended briefing schedule that was approved by the Court, Defendants were required to submit their Opposition and supporting materials by March 2, 2015. (Doc. No. 81.) Despite the extended briefing schedule, Defendants nonetheless submitted their Supplemental Authority and Evidence on April 20, 2015, (Doc. No. 96), the deadline for Plaintiffs to file their Reply, (Doc. No. 81), and Plaintiffs thus lacked an adequate opportunity to respond to Defendants' late-filed submission.

Accordingly, the Court declines to consider Defendants' untimely filed Supplemental Authority and Evidence and STRIKES it from the record. (Doc. No. 96.)

B. Class Certification

Plaintiffs bear the burden of demonstrating that class certification is proper. Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186 (9th Cir. 2001). Plaintiffs move to certify six subclasses under various legal theories, which the Court will briefly discuss before turning to the relevant inquiries pursuant to Federal Rule of Civil Procedure 23.

1. Proposed Class and Subclasses

Plaintiffs move to certify a class of approximately 62,000 non-exempt employees who worked in Abercrombie's California stores between September 16, 2009 and the present. (Mot. at 1.) As a whole, this case is brought on behalf of the following class: "All persons who are or were employed in California as non-exempt hourly employees in Abercrombie & Fitch,

Hollister, [abercrombie kids], and/or Gilly Hicks[6] stores during the Class Period." (SAC ¶ 24.) Plaintiffs define the Class Period as "September 16, 2009, to the present." (Mot. at 1.)

Plaintiffs Motion for Class Certification does not actually appear to seek certification of the broader class. Instead, Plaintiffs divide that broad class into several subclasses based on the legal claims asserted and seek certification of each of those subclasses. (Id. at 2.) In response to the Court's request for supplemental briefing clearly defining the subclasses, Plaintiffs set forth the following subclass definitions:

(1) Subclass 1: California Labor Code Section 450 — UCL Subclass:
"All persons who were employed as non-exempt hourly employees, excluding Store Managers, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores (including, Abercrombie & Fitch, abercrombie, Abercrombie Kids,[7] Hollister, and Gilly Hicks) from September 16, 2009, to the present, and who purchased "AAA"-classified clothing during employment according to Abercrombie's records."

(2) Subclass 2: California Labor Code Section 450 — Minimum Wage Subclass:
"All persons who were employed as non-exempt hourly employees, excluding Store Managers, who were paid no more than minimum wage, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores (including, Abercrombie & Fitch, abercrombie, Abercrombie Kids, Hollister, and Gilly Hicks) from September 16, 2009, to the present, and who purchased "AAA"-classified clothing during employment as shown by Abercrombie's records."

(3) Subclass 3: Uniform Subclass:
"All persons who were employed as non-exempt hourly employees, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores (including, Abercrombie & Fitch, abercrombie, Abercrombie Kids, Hollister, and Gilly Hicks) from September 16, 2009, to the present, who purchased Abercrombie clothing during their employment as shown by Abercrombie's records."

(4) Subclass 4: Footwear Subclass:
"All persons who were employed as non-exempt hourly employees, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores

[6] Defendants note that all Gilly Hicks stores have been closed since December 31, 2013 or earlier. ("Roth Decl." ¶ 3 n.1, Knueve Decl., Ex. 93, Doc. No. 90-7.) That fact does not impact this Court's class certification analysis.

[7] Plaintiffs have asserted that "Abercrombie Kids" and "abercrombie" are separate stores. In contrast, Defendants state that "abercrombie" is the name of their kids store, and that there is no separate "Abercrombie Kids" chain of stores. As the Court explained in its June 24, 2014 Order, "Abercrombie Kids" and "abercrombie" appear to be one and the same. (Doc. No. 106 at 5-6.) In the Court's final subclass definitions, which are listed at the end of this Order, the Court refers to Defendants' kids stores as "abercrombie kids" stores.

(including, Abercrombie & Fitch, abercrombie, Abercrombie Kids, Hollister, and Gilly Hicks) from September 16, 2009, to the present, who purchased footwear during their employment, according to Abercrombie's records."

(5) Subclass 5: Major-Fraction Shifts Subclass:
"All persons who were employed as non-exempt hourly employees, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores (including, Abercrombie & Fitch, abercrombie, Abercrombie Kids, and Hollister) from February 26, 2012, to August 26, 2014, or who worked in California at a Gilly Hicks store from September 16, 2009, to August 26, 2014, who worked shifts of the following durations: 3.5–4 hours, 6–8 hours, 10–12 hours, 14–16 hours, 18–20 hours, 22–24 hours."

(6) Subclass 6: California Policies Subclass:
"All persons who were employed as non-exempt hourly employees, who worked at Abercrombie & Fitch Co.'s and Abercrombie & Fitch Stores, Inc.'s California stores (including, Abercrombie & Fitch, abercrombie, Abercrombie Kids, Hollister, and Gilly Hicks) from March 17, 2012, to August 26, 2014, who as a result of Abercrombie's California rest break policies were not authorized and permitted the amount of rest break time called for under Occupational Wage Order No. 7-2001."

Because the Court has stayed the litigation as to the rest break claims, (Doc. No. 106), the Court will not now determine whether the rest break subclasses—subclasses five and six—are appropriate for class certification. Accordingly, the Court addresses only Plaintiffs' first four proposed subclasses, which relate to Plaintiffs' clothing claims.

2. Law Applicable to Claims Underlying the Subclasses

The four proposed subclasses addressed by this Order are based on several legal theories, which the Court briefly summarizes here before turning to the specific requirements of class certification.

a. UCL Subclasses

Plaintiffs' first and second subclasses are brought under California's Unfair Competition Law (the "UCL"), California Business & Professions Code § 17200, et seq. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. Violations of other laws satisfy the "unlawful" prong and thus may be treated as unfair competition pursuant to the UCL. Kasky v. Nike, Inc., 27 Cal. 4th 939, 949 (Cal. 2002); Hudgins v. Neiman Marcus Grp., Inc., 34 Cal. App. 4th 1109, 1126 (Cal. Ct. App. 1995) ("[A] wage policy or practice that violates the Labor Code may also be held to violate section 17200 of the Business and Professions Code.").

i. Subclass One: the Labor Code § 450 Subclass

Plaintiffs' first proposed subclass aims to address Defendants' alleged violations of California Labor Code Section 450 ("Section 450"). That section prohibits any employer from "compel[ling] or coerc[ing] any employee . . . to patronize his or her employer, or any other

person, in the purchase of any thing of value." Cal. Labor Code § 450(a). Plaintiffs assert that Defendants coerced their employees into purchasing "AAA clothing" for two reasons: first, Defendants desired to realize the profits from those purchases, and second, Defendants wanted their employees to wear AAA clothing as a marketing strategy such that the employees would effectively act as walking advertisements for Abercrombie.

ii. Subclass Two: the Minimum Wage Subclass

Through their second proposed subclass, Plaintiffs also seek to remedy alleged violations of California Labor Code Section 450, this time for minimum wage violations that allegedly occurred because Abercrombie employees earning minimum wage were coerced into purchasing AAA clothing, and as a result, their net wages fell below minimum wage.[8] One district court has explained this legal theory as follows: "An employee who has ostensibly been paid the minimum wage but has been required to make an expenditure which reduces the employee's net income below the minimum wage is, in essence, in the same position as an employee who was paid less than the minimum wage at the outset. Both have been required to satisfy their living expenses with less than the minimum wage." Sanchez v. Aerogroup Retail Holdings, Inc., No. 12-CV-05445-LHK, 2013 WL 1942166, at *10 (N.D. Cal. May 8, 2013). California Labor Code Sections 1194, 1194.2, 1197, and 1197.1 allow for the recovery of wages unlawfully withheld when an employee is paid less than minimum wage. See id.

b. Subclass Three: the Uniform Subclass

Plaintiff's third proposed subclass is grounded in Defendants' alleged violations of California Labor Code Section 2802 ("Section 2802"), which requires employers to indemnify their employees for certain expenditures. In relevant part, Section 2802 provides as follows:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful . . . .

Cal. Labor Code § 2802(a). California Industrial Welfare Commission ("IWC") Wage Order No. 7-2001 ("Wage Order 7") provides that, "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color." Wage Order 7, § 9(A). Plaintiffs argue that Abercrombie has required its employees to wear distinctive apparel that constitutes a uniform yet failed to indemnify the employees for the expense of those uniforms.

[8] Plaintiffs' second subclass is proposed as an alternative theory to that suggested in support of their first subclass. (Supp. Br. at 6.) Recovery by both subclasses would constitute double recovery; thus, if the members of Subclass One are compensated for their purchases of AAA clothing, the members of Subclass Two may not also recover damages for those purchases.

c. Subclass Four: the Footwear Subclass

Plaintiff's fourth subclass addresses their allegation that Defendants coerced their employees to purchase specific types of footwear, contrary to California Labor Code Sections 450 and 2802 as well as Wage Order 7, which are summarized above. (Mot. at 15; Supp. Br. at 8.) The subclass seeks reimbursement for the purchase of rubber and leather Abercrombie flip flops.

3. Ascertainability

"In addition to the explicit requirements of Rule 23, an implied prerequisite to class certification is that the class must be sufficiently definite; the party seeking certification must demonstrate that an identifiable and ascertainable class exists." Xavier v. Philip Morris USA Inc., 787 F. Supp. 2d 1075, 1089 (N.D. Cal. 2011); see also Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc., 209 F.R.D. 159, 163 (C.D. Cal. 2002) ("Once an ascertainable and identifiable class has been defined, plaintiffs must show that they meet the four requirements of Rule 23(a), and the two requirements of Rule 23(b)(3)."). "Courts have held that the class must be adequately defined and clearly ascertainable before a class action may proceed." Schwartz v. Upper Deck Co., 183 F.R.D. 672, 679-80 (S.D. Cal. 1999). A class is ascertainable if it is "administratively feasible for the court to determine whether a particular individual is a member" using objective criteria. Keegan, 284 F.R.D. at 521 (citation omitted).

All four of Plaintiffs' proposed subclasses are sufficiently ascertainable. Defendants do not oppose certification on the basis of ascertainability. Whether a person was an employee of one of Defendants' stores in California between specific dates is a question that can easily be answered by Defendants' own records, as is whether an employee was paid minimum wage. Moreover, Defendants do no dispute that they maintain records of purchases made by their employees and that those records reveal which employee purchases were of clothing items, AAA clothing items, and footwear. Accordingly, the members of each of the four clothing subclasses can be ascertained from Defendants' own employee records. The Court concludes that the four subclasses thus satisfy the ascertainability requirement.

4. Rule 23(a)

a. Numerosity

Rule 23(a)(1) requires the class to be so numerous that joinder of individual class members is impracticable. See Fed. R. Civ. P. 23(a)(1). Additionally, there is no particular number cut-off, as the specific facts of each case may be examined. Ballard v. Equifax Check Servs., Inc., 186 F.R.D. 589, 594 (E.D. Cal. 1999). "Courts have not required evidence of exact class size or the identities of class members to satisfy the requirements of Rule 23(a)(1). See Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993).

Plaintiffs assert that the size of the proposed subclasses varies from approximately 54,948 employees to 62,442 employees. (Mot. at 17.) Defendants do not refute the accuracy of these

numbers; more generally, Defendants do not dispute that that the subclasses are sufficiently numerous. Accordingly, the Court concludes that the numerosity requirement is satisfied.[9]

b. Commonality

Courts have construed Rule 23(a)(2)'s commonality requirement permissively. See Staton v. Boeing Co., 327 F.3d 938, 953 (9th Cir. 2003). "All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Jimenez v. Allstate Ins. Co., 765 F.3d 1161, 1165 (9th Cir. 2014) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998)). Nevertheless, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." Dukes, 131 S. Ct. at 2551 (citation omitted). The "claims must depend on a common contention" and "[t]hat common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id. The common question or questions must also be "apt to drive the resolution of the litigation," which turns on the nature of the underlying legal claims in the case. Jimenez, 765 F.3d at 1165 (quoting Abdullah v. U.S. Sec. Associates, Inc., 731 F.3d 952, 962 (9th Cir. 2013)). Thus commonality requires an understanding of the nature of the underlying claims. Id. (citing Parsons v. Ryan, 754 F.3d 657, 676 (9th Cir. 2014)).

Plaintiffs assert that each of the four subclasses involves a common question, the resolution of which will resolve an issue that is central to the validity of the class members' claims. That common question varies somewhat between the first two subclasses and the second two subclasses; however, in general, the inquiry centers on whether Defendants' employees were compelled or coerced to make certain purchases of Abercrombie clothing items and whether the requirements for an employee's work clothing constituted a uniform.

i. First and Second Subclasses: the Labor Code § 450 Subclass and the Minimum Wage Subclass

The legal theories underlying Plaintiffs' first and second subclasses are closely related—both turn on whether Defendants coerced or compelled their employees to purchase AAA clothing, contrary to California Labor Code Section 450. Because Subclasses One and Two rely on similar legal theories, the Court discusses them together.

As explained above, Section 450 prohibits an employer from "compel[ling] or coerc[ing] any employee . . . to patronize his or her employer, or any other person, in the purchase of any thing of value." Cal. Labor Code § 450(a). Plaintiffs assert that Defendants compelled store employees to purchase Abercrombie clothing items, and more specifically, AAA clothing.

[9] Even if those employees holding management positions are eliminated from Subclasses One and Two, as discussed below, the Court concludes that the subclasses remain sufficiently numerous.

"AAA clothing" refers to those clothing items pictured in Defendants' seasonal "AAA Style Guides," which employees could purchase at a heightened discount. (Mot. at 8; Opp'n at 6; "Associate Handbook," James Decl., Ex. D at 29.)

The theory underlying Plaintiffs' first and second subclasses is as follows: despite Defendants' formal written policy of not requiring employees to purchase or wear Abercrombie clothes, managers coerce store employees to purchase Abercrombie clothing, particularly AAA clothing. (Mot. at 6-11; Supp. Br. at 2-6.) Plaintiffs assert that Defendants exert such coercive pressure for two reasons: first, Defendants desire to obtain the profit from the sale of clothing items to store employees, (Supp. Br. at 3), and, second, Defendants benefit from its employees acting as in-store models by wearing AAA clothing while working, (id.; Mot. at 7).

Plaintiffs' second subclass constitutes a subset of the employees included in the first subclass—those who earned only minimum wage—because they may have suffered an additional violation of their right to earn at least minimum wage. (Mot. at 6; Supp. Br. at 5-6.)

The Section 450 claims (asserted on behalf of the members of the first and second subclasses) turn on whether the subclass members were coerced into purchasing AAA clothing. As Plaintiffs' theory is grounded in an alleged unwritten policy of having managers coerce store employees into making such purchases, one significant question is common to all members of the first and second subclasses: the existence of such an unwritten policy or practice. "Proving at trial whether such informal or unofficial policies existed will drive the resolution of" Plaintiffs' claims under Section 450. Cf. Jimenez, 765 F.3d at 1166. The second subclass will also involve the common legal questions of whether compelled expenditures effectively push the wages of minimum wage earners below minimum wage and whether such wage deficits may be recovered pursuant to California law.

Defendants' focus their opposition on the first common question: the existence of an informal policy of coercing employees to make AAA clothing purchases. Defendants argue that they have a written policy that employees are not required to purchase and wear Abercrombie clothes. (Opp'n at 18-19.) Thus they essentially assert that no informal coercive policy or practice exists. Defendants' argument, however, is highly analogous to that addressed by the Ninth Circuit in Jimenez v. Allstate Insurance Co., 765 F.3d 1161 (9th Cir. 2014), which involved claims for overtime pay by a putative class of employees. The Ninth Circuit explained and rejected the defendant's argument against commonality as follows: "[Defendant] argues that its formal policies which call for employees to be paid for all overtime worked are lawful, and that the alleged informal 'policy-to-violate-the-policy' does not exist. This argument is appropriately made at trial or at the summary judgment stage, as it goes to the merits of the plaintiffs' claim." Id. at 1166. Similarly, whether Plaintiffs can prove the existence of Defendants' common practice or informal policy is a merits inquiry better-suited for a later stage of this case.[10]

[10] Defendants point to the fact that some percentage of associates did not purchase any AAA clothing while employed at an Abercrombie store. This fact does not defeat commonality, as employees may have withstood external pressure to purchase AAA clothing despite an (continued . . .)

Plaintiffs have presented evidence of a common practice or informal policy of pressuring employees to purchase Abercrombie clothing. First, Plaintiffs look to Abercrombie's written "Look Policy," which dictates what an employee may wear while working. (Mot. at 7-8.) Although the Look Policy doesn't require employees to wear clothing from Defendants' stores, work clothes must be "similar to the brand" and "[a]ll clothing choices should reflect what a customer would expect to see when they think about the brand." (Associate Handbook at 26-27.) The clothes must be "consistent with the current fashion season and colors," (id. at 27), as pictured in Abercrombie's "AAA Style Guides" (i.e., AAA clothing), ("Deposition of James V. Roth" at 72-73, James Decl., Ex. AAK). Plaintiffs assert that Defendants' written Look Policy was so strict as to make it difficult for employees to wear anything other than Abercrombie and AAA clothing while working. (Mot. at 7-9.)[11]

Second, Plaintiffs highlight Defendants' written policy—part of Defendants' "Orientation Checklist" for all new associates—of requiring every newly hired employees to "try on a variety items" during a "Fit Session/'AAA' Purchase." ("Orientation Checklist" at 3, James Decl., Ex. AE.)

Third and perhaps most importantly, Plaintiffs point to various communications among Abercrombie management regarding the importance of "pushing" or "driving" sales of AAA clothing items to employees. For example, Plaintiffs attach a 2013 email from Abercrombie's Director of Stores for the west coast, Bonnie Costello, explaining that AAA purchases by employees were down relative to the previous year and that she wanted to talk to the Regional Managers "about how we are pushing this." (James Decl., Ex. AAP at A&F043592.) Thus Plaintiffs present evidence that executives on the west coast tracked AAA purchases by employees and instructed management to "push" such purchases.

Plaintiffs further point to internal analysis of sales data assessing the significant revenue created by employee purchases of AAA items. (Reply at 6.) Defendants' 30(b)(6) witness,

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(. . . continued)
informal policy of pressuring associates to make such purchases. Moreover, such evidence is relevant to whether a coercive policy in fact existed, an inquiry that is more appropriate for summary judgment or trial. See Jimenez, 765 F.3d at 1166. In addition, the first and second subclass definitions are limited to those employees who purchased AAA clothing items, thus non-purchasers are not included in Subclasses One and Two.

[11] Although the California Division of Labor Standards Enforcement ("DLSE") reviewed Abercrombie's Look Policy in 2003, their approval of the 2003 policy does not end this inquiry. First, contrary to Defendants' assertions, the Look Policy reviewed by DLSE was quite different from the one Plaintiffs challenge. It addressed clothing and footwear in three sentences, merely stating as follows: "Clothes and footwear should be clean and neat at all time. Choices should reflect body types so that associates look attractive and classic, not provocative (e.g. tanks should be worn with an undergarment). Any questions pertaining to appropriate clothing should be addressed to the Store Manager." (Knueve Decl., Ex. 16.) Moreover, given Plaintiffs' evidence of coercion *outside of the written Look Policy*, the fact that the written Look Policy may have been lawful is not dispositive.

James Roth, testified at his deposition that, between July 2011 and February 2013, Defendants compiled AAA participation reports summarizing the purchases by employees of AAA clothing. ("Deposition of James Roth" at 136-37, James Decl., Ex. AAK.) He testified that those documents were distributed to certain people within the company, including District Managers and Regional Managers. (Id.)

District and Regional Managers apparently reviewed the AAA participation reports and used the numbers therein as a measure of success for their stores and Store Managers. For example, Regional Manager[12] Josh Buck emailed his District Managers on the topic of "AAAs": "with pay . . . yesterday, we need to be driving this with our teams . . . . In every 5 minute meeting this [s]hould be a topic with every associate. We will be looking at overall AAA sales on Monday and I expect us to be near the top of the reporting as a region." (James Decl., Ex. AAP at A&F043795.) Another Regional Manager, Jennifer Tini, sent an email informing her District Managers that "triple [A] sales have been down as a company" and asking, "what are we doing to drive this in our districts?" (James Decl., Ex. AAP at A&F040570.) Plaintiffs also include numerous other emails from Regional and District Managers that discuss the topic of pushing or driving AAA clothing sales. (James Decl., Ex. AAP.) The Court finds it unnecessary to detail each email in this Order.

In addition to emails, Plaintiffs include the declarations and depositions of various Store Managers and Associates. One Store Manager, Keegan Ewing, testified at her deposition that District Managers regularly conducted conference calls with Store Managers. ("Ewing Depo." at 178-79, James Decl., Ex. Q.) She explained that, when new AAA Style Guides were released, her District Manager stressed on those conference calls that one job duty of a Store Manager is to encourage sales of AAA clothing among employees. (Id.) Another Store Manager, Brittany Gardener, reported similar conference calls with the District and Store Managers in which her Regional Manager instructed Store Managers to keep track of how much each employee purchased and to "push" employees to buy AAA clothing. ("Declaration of Brittany Gardener" ¶ 14, Von Rock Decl., Ex. 26.)

Although these emails, depositions, and declarations do not express the views and experiences of every Abercrombie employee, they provide a sufficient basis for concluding that Defendants might very well have had a practice or informal policy of pressuring associates to purchase AAA clothing. At this stage of the litigation, the Court need not decide whether this evidence is sufficient to demonstrate that such a policy or practice existed. See Jimenez, 765 F.3d at 1166. However, Plaintiffs have provided much stronger evidence than the Plaintiffs in Dukes, 131 S. Ct. at 2556, as they have not merely provided anecdotal evidence of individual experiences but have set forth at least some evidence of a broader, company-wide policy that was disseminated downward from top management to store associates. Furthermore, this case is

[12] Plaintiffs report the following regarding the structure of the management of Defendants' California stores: Each of the approximately seventeen District Managers in California oversees approximately six to seven stores (and Store Managers). (Reply at 2.) District Managers report to Regional Managers; two to five Regional Managers cover all of California's 119 stores, each overseeing twenty-three to sixty stores. (Id.)

distinguishable from the facts of Morgan v. Wet Seal, Inc., 210 Cal. App. 4th 1341, 1362 (Cal. Ct. App. 2012). There, a California Court of Appeal affirmed the trial court's denial of class certification for California Wet Seal employees; the case alleged that Wet Seal improperly required the purchase of Wet Seal clothing. Id. at 1345. The Wet Seal written policy appeared facially lawful, stating that employees need not wear Wet Seal clothing, similar to Defendants' Look Policy. Id. at 1347-48. The plaintiffs asserted that managers instructed Wet Seal employees to purchase apparel, as evidenced by employee declarations and emails from one Los Angeles district director discussing the importance of employees wearing the "new trends." Id. at 1345, 1350-52. Unlike the facts of Wet Seal, Plaintiffs submit more than just several emails from a single district director; they provide numerous emails from Regional Managers, District Managers, and the Director of Stores for the entire west coast. In addition, Plaintiffs demonstrate that Abercrombie tracked the AAA clothing purchases of employees and present evidence that Defendants used those numbers as a measure of success for managers. Thus while the plaintiffs in Wet Seal failed to adequately evidence a common policy or practice, see id. at 1356-57, Plaintiffs here have supported their assertion that such a common practice or informal policy may exist (and proving the existence of that policy or practice at trial won't depend wholly on individual testimony).[13]

Plaintiffs thus set forth common questions based on an asserted policy or practice of coercing store employees to purchase AAA clothing and have provided evidence supporting the existence of that common practice or informal policy. Therefore, the Court concludes that Plaintiffs have satisfied the commonality requirement of the class certification inquiry with regard to their first and second subclasses.

ii. Subclass Three: the Uniform Subclass

As described above, the legal theory underlying Plaintiffs' third subclass is that Defendants' employees were required to purchase certain clothing items, which Plaintiffs assert constituted a uniform, and that Defendants failed to indemnify employees for those purchases. (Mot. at 11-15; Supp. Br. at 6.) California Labor Code Section 2802 and Wage Order 7 require that an employer must indemnify employees for all necessary expenditures and that uniforms must be provided by the employer. Cal. Labor Code § 2802(a); Wage Order 7, § 9(A). Moreover, apparel of "distinctive design or color" constitutes a uniform. Wage Order 7, § 9(A). One relevant exception to the category of uniforms for which an employer must pay is a uniform that is "generally usable in the [employees'] occupation," such as a nurse's white uniform. (See "DLSE Opinion Letter No. 1991.02.13," James Decl., Ex. AW.)

In support of their argument that Defendants require a uniform, Plaintiffs point to Abercrombie's "Look Policy," which dictates what an employee may wear while working. (Mot. at 12-13; Supp. Br. at 6-7.) That Look Policy, which is included in Abercrombie's Store Associate Handbook, requires that associates wear "clean and classic" clothes with a "style and

[13] Much of this discussion of Wet Seal relates to the predominance inquiry, addressed below. The California Court of Appeal decided Wet Seal based on California's "community of interests requirement," which appears to collapse the Rule 23 commonality and predominance inquiries. See id. at 1356-57. Under the Federal Rules, those inquiries are closely related.

fit" similar to the Abercrombie brand. ("Associate Handbook," James Decl., Ex. D at 26-27.) Although the Look Policy states that associates are not required to buy or wear clothing from Abercrombie stores, their clothes must be "similar to the brand" and "[a]ll clothing choices should reflect what a customer would expect to see when they think about the brand." (Id.) The clothes must be "consistent with the current fashion season and colors." (Id. at 27.) Moreover, "[a]ssociates are prohibited from wearing apparel that has an obvious label, name, logo, or identifiable trademark (i.e. pocket stitching) of a competitor." (Id.) The Look Policy applies to all associates working in Defendants' stores, (id. at 26), and thus to all subclass members.

In sum, Plaintiffs object to one of Defendants' written policies that applies to all of Defendants' store employees and thus to all members of Subclass Three. Accordingly, the merits inquiry in this case will largely involve the application of relevant legal standards to the requirements of the company-wide Look Policy. The questions common to all class members will include: (i) whether Abercrombie's Look Policy requires employees to wear clothes of such distinctive design and color that those clothes constitute a uniform, and (ii) whether Look Policy-compliant clothing is generally useable in the occupation or profession. Accordingly, at least one "significant question of law" exists, Mazza v. Am. Honda Motor Co., 666 F.3d 581, 589 (9th Cir. 2012), that is "apt to drive the resolution of the litigation" as to this subclass, Dukes, 131 S. Ct. at 2551. The Court therefore finds the commonality requirement satisfied for Subclass Three.

iii. Subclass Four: the Footwear Subclass

Plaintiffs' fourth subclass involves a legal framework similar to that applicable to Subclass Three, as discussed above. Instead of questioning whether the Look Policy requires employees to purchase and wear clothing constituting a uniform, the Footwear Subclass turns on whether a portion of that Look Policy—the footwear restrictions—constitutes a uniform or necessary expenditure.

Like the rest of the Look Policy, the footwear restrictions appear in Defendants' Associate Handbook. (Associate Handbook at 27.) Specifically, the footwear section of the Look Policy provides that "[f]ootwear style should be similar to the brand" and that "[a]ssociates are prohibited from wearing footwear that has an obvious label, name, logo, or identifiable trademark (i.e. tag) of a competitor." (Id.) More specifically, "[a]cceptable footwear is limited to: [i] Rubber flip flops in current style colors; [ii] Leather flip flops; [iii] Lo-top convas Converse ("chucks") in blue, white, grey, brown, or black; [and] [iv] Lo-top slip-on Vans for Hollister associates in solid blue, white, grey, brown, black or black/white checker." (Id.) Like the rest of the Look Policy, the footwear restrictions apply to all associates in Defendants' stores, (id. at 26), including all members of Subclass Four.

As with Subclass Three, the legal theory underlying the Footwear Subclass turns on a single written policy that is applicable to all associates in Defendants' stores. The questions common to the entire class thus mirror those relevant to the Uniform Subclass: (i) whether the footwear restrictions in Abercrombie's Look Policy required employees to wear footwear of such distinctive design and color that it constituted a uniform, and (ii) whether footwear complying with the Look Policy is generally useable in the occupation or profession. These significant questions are central to the resolution of the claims of the Footwear Subclass members.

Accordingly, the Court concludes that Subclass Four satisfies Rule 23's commonality requirement.

c. Typicality

"The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Wolin v. Jaguar Land Rover North Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010). "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" Ellis, 657 F.3d at 984 (quoting Hanon, 976 F.2d at 508). Typicality is thus satisfied if the plaintiff's claims are "reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020.

Plaintiffs assert that the typicality requirement is satisfied because Brown and Silva were non-exempt, hourly employees, who worked in Defendants' California stores and purchased Abercrombie clothing items after being pressured by management to make such purchases. (Mot. at 17.) Both named plaintiffs were paid minimum wage during their employment. (Brown Decl. ¶¶ 18, 20; Silva Decl. ¶¶ 17, 19.) Brown was employed as a Model (i.e., Sales Associate) in California at both Hollister and Abercrombie & Fitch. (Brown Decl. ¶ 17.) Silva was employed as both a Model and an Impact Associate (i.e., a stock room employee) at an Abercrombie & Fitch store in California. (Silva Decl. ¶¶ 9, 17.)

i. Common Pressures

Defendants first contend that Brown and Silva are not typical of the overall subclasses because they fail to demonstrate that the coercive pressure exerted on the named Plaintiffs was not unique to them and that other class members were injured by the same course of conduct. (Opp'n at 22.) However, as discussed in relation to the commonality requirement, Plaintiffs have asserted the existence of a common practice or informal policy of pressuring employees to purchase Abercrombie clothing (and presented some evidence supporting the existence of that policy). Merely because a named plaintiff's experience varied somewhat from that of each class member, their claims are not necessarily atypical if they were subject to a common practice or policy. See Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 613 (9th Cir. 2010), rev'd on other grounds, 131 S. Ct. 2541 (2011). Class representatives may satisfy Rule 23(a)(3)'s "permissive standards," Hanlon, 150 F.3d at 1020, even if they were not injured in exactly the same degree as the absent class members, see Dukes, 603 F.3d at 613. The Court concludes that the coercive pressure exerted upon the named Plaintiffs is sufficiently typical of the class.

ii. Other Positions

Defendants also argue that the named Plaintiffs are not sufficiently typical because they never held twenty of Abercrombie's twenty-two non-exempt job positions, including certain management positions. (Opp'n at 22.) Defendants cite no authority indicating that such a specific degree of representation is necessary. Class representatives need not have held each job category included in the class in order to satisfy the typicality requirement. See Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003). In general, class representatives are considered

sufficiently typical as long as they hold positions "somewhat similar to those of the class members, even if [they] do not hold every job position in the class." William B. Rubenstein, Newberg on Class Actions § 3:38 (5th ed.).

Defendants raise only one argument as to whether some positions are not sufficiently similar to those of the named plaintiffs. Specifically, they argue that, because those with managerial positions were responsible for enforcing the Look Policy and allegedly pressured employees to purchase AAA items, they were not subject to the same pressures as other employees, including the named Plaintiffs. (Opp'n at 22.) Plaintiffs have excluded Store Managers from their first and second proposed subclasses because they were allegedly "part of the instrumentality of the illegal policy" of coercing employees to purchase AAA clothing. (Supp. Br. at 4.) Plaintiffs' briefs do not address other hourly, non-exempt positions, such as Assistant Managers. At the hearing, Defendants argued that Assistant Managers are responsible for enforcing the Look Policy and were often responsible for managing stores in the absence of a Store Manager. Thus Assistant Managers may very well have shared in Store Managers' alleged exertion of coercive pressure on employees and not been merely on the receiving end of such pressures. Although the Court lacks additional information regarding the role Assistant Managers played in stores, Plaintiffs bear the burden of demonstrating the propriety of certifying each subclass. Accordingly, the Court elects to exclude Assistant Managers from the definitions of the First and Second Subclasses.

As for Subclasses Three and Four, however, the Court concludes that those in managerial positions need not be excluded merely because they may play a role in enforcing the Look Policy. Store managers are subject to the same Look Policy as other store employees. That policy is widely distributed in written form and does not depend on communications from those in managerial positions.

iii. Gilly Hicks and abercrombie kids Stores

Last, Defendants assert that the named Plaintiffs are not typical of class members who worked in abercrombie kids or Gilly Hicks stores because Brown and Silva never worked for those store chains. (Opp'n at 22.) However, Defendants do not assert that the relevant policies and practices applicable to employees at these stores were somehow different from those at Abercrombie & Fitch and Hollister. For example, Defendants do not argue that an identical or similar Look Policy didn't apply to employees at all of its stores or that relevant emails and conference calls among Regional, District, and Store Managers (those regarding the sale of AAA clothing to employees) excluded managers responsible for Gilly Hicks and abercrombie kids stores.

d. Adequacy

Under Rule 23(a)(4), the named plaintiff must be deemed capable of adequately representing the interests of the entire class, including absent class members. See Fed. R. Civ. P. 23(a)(4) (requiring "representative parties [who] will fairly and adequately protect the interests of the class"). The adequacy inquiry turns on: (1) whether the named plaintiff and class counsel have any conflicts of interest with other class members, and (2) whether the representative plaintiff and class counsel can vigorously prosecute the action on behalf of the

class. See Ellis, 657 F.3d at 985. Furthermore, pursuant to Rule 23(g), before appointing class counsel, the Court "must consider" the following

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law; and
> (iv) the resources that counsel will commit to representing the class

Fed. R. Civ. P. 23(g)(A). The Court "may" also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(B).

Defendants do not oppose certification based on the adequacy requirement. The named Plaintiffs assert that they do not know of any conflicts of interest with absent class members and that they will vigorously pursue the legal claims for the class. (Mot. at 17; Brown Decl. ¶¶ 4-15; Silva Decl. ¶¶ 4-8, 10-13.) Plaintiffs are adequate class representatives because they have personal experience with the claims in the lawsuit and are familiar with the underlying facts. (Brown Decl. ¶¶ 17-22; Silva Decl. ¶¶ 9, 17-21.) Plaintiffs commit to participating in the litigation to its resolution. (Brown Decl. ¶ 15; Silva Decl. ¶ 14.)

Plaintiffs' counsel, attorneys from the firm of Aiman-Smith & Marcy, have experience in prosecuting California wage-and-hour class suits and have been found to be qualified class counsel in prior actions. (Mot. at 17.; "Firm CV," James Decl., Ex. AAJ.) The lead attorney on this case, Randall B. Aiman-Smith, has worked on plaintiff-side wage-and-hour and employment law cases for the past fifteen years. (Id. at 2.) Plaintiffs' counsel provide a sample of cases in which they have acted as class counsel, including two class actions in the Central District of California and three in the Northern District of California. (Firm CV at 5-6.) Thus counsel have significant experience with both this area of law and class actions in general. Plaintiff's counsel appear to have invested significant time and effort into investigating the claims of this case; they obtained dozens of potential class member declarations, (Von Rock Decl., Exs. 1-46), took depositions, (James Decl., Exs. B, Q-R), and obtained a variety of documents from Defendants through discovery, including purchase logs, internal handbooks, and emails, (James Decl., Exs. C-P, S-T).[14] Moreover, attorney Hallie Von Rock declares that the firm "has sufficient resources to represent the Class." (Von Rock Decl. ¶ 25.)

Accordingly, the Court concludes that the requirements of Rule 23(a)(4) and Rule 23(g) are satisfied and that the class representatives and class counsel are adequate.

[14] The Court does not cite to every such document and deposition attached to Plaintiffs' Motion, only a sample.

5. Rule 23(b)(3)

Rule 23(b) sets forth three possible bases for certification, and Plaintiffs seek certification under Rule 23(b)(3), which requires that "the questions of law or fact common to the members of the class predominate over any questions affecting individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

a. Predominance

The analysis under Rule 23(b)(3) "presumes that the existence of common issues of fact or law have been established pursuant to Rule 23(a)(2)." Hanlon, 150 F.3d at 1022. "Rule 23(b)(3) focuses on the relationship between the common and individual issues." Id. Rule 23(b)'s requirement that common issues of law or fact predominate over individual issues is similar to, but more stringent than, Rule 23(a)'s commonality requirement. Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432, (2013) ("Rule 23(b)'s predominance criterion is even more demanding than Rule 23(a). . . . Rule 23(b) requires that courts 'take a "close look"' at whether common questions predominate over individual ones.") (citation omitted). The focus in the predominance inquiry is "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." In re Wells Fargo Home Mortg. Overtime Pay Litigation, 571 F.3d 953, 957 (9th Cir. 2009) (internal quotation omitted). Class certification under Rule 23(b)(3) is proper when common questions present a significant portion of the case and can be resolved for all members of the class in a single adjudication. Hanlon, 150 F.3d at 1022. The predominance analysis begins with the elements of the underlying causes of action. See Erica P. John Fund, Inc. v. Haliburton Co., 131 S. Ct. 2179, 2184 (2011); Berger v. Home Depot USA, Inc., 741 F.3d 1061, 1067 (9th Cir. 2014).

One component of the predominance requirement is that Plaintiffs must "establish[] that damages are capable of measurement on a classwide basis." Comcast, 133 S. Ct. at 1433. Thus "plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability," Leyva v. Medline Indus. Inc., 716 F.3d 510, 514 (9th Cir. 2013), and "any model supporting a plaintiff's damages case must be consistent with its liability case"; Comcast, 133 S. Ct. at 1433. However, damages "[c]alculations need not be exact." Id. Moreover, "the presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)." Leyva, 716 F.3d at 514.

Defendants raise two main arguments with regard to each of the four subclasses. First, Defendants assert that individualized inquiries predominate over common questions with respect to liability. (Opp'n at 23-24.) Defendants next contend that Plaintiffs cannot establish that damages are capable of measurement on a classwide basis. (Opp'n at 24-25.)

i. Individualized Inquiries

(A) Subclass One: the Labor Code § 450 Subclass

As discussed above, the central inquiry underlying the Labor Code Section 450 claims is whether the subclass members were coerced into purchasing AAA clothing. Pursuant to Plaintiffs' theory of the case, the main question common to all members of the first subclass is

whether Defendants had a practice or informal policy of coercing store employees into purchasing Abercrombie clothing, particularly AAA clothing. With regard to its commonality inquiry, the Court explained that Plaintiffs have presented a variety of evidence in support of the existence of such a common practice or informal policy.

Defendants assert that individual differences among Subclass One members predominate over the common questions in this case. In essence, Defendants argue that, because they have no informal policy or practice of coercing employees to make purchases, Plaintiffs' claims depend entirely on "alleged oral statements" from certain managers as well as employees' individual subjective feelings as to whether they were required to purchase or wear Abercrombie clothing. (Opp'n at 23.) As the Court explained above, however, Plaintiffs have set forth sufficient evidence to demonstrate that a common practice or informal policy may have existed. Unlike the facts of the non-binding cases on which Defendants rely,[15] Plaintiffs do not merely rely on the perceptions of individual employees and potentially atypical oral instructions from managers. Rather, Plaintiffs' proof includes emails among upper-level managers evidencing top-down pressure on employees to purchase AAA clothing. See Subsection III.B.4.b.i., supra. Moreover, declaration and deposition testimony establishes that, during conference calls, upper-level managers instructed Store Managers to exert such pressure. See id. Such evidence distinguishes the facts of this case from those involving only employee testimony that a few particular managers instructed them to make certain purchases. Cf. Dukes, 131 S. Ct. at 2556 n.9 ("[W]hen the claim is that a company operates under a general policy of discrimination, a few anecdotes selected from literally millions of employment decisions prove nothing at all."). Here, Plaintiffs have presented evidence of a company-wide policy or practice; even if variations exist as to how that policy or practice was conveyed to employees, and the fact that some employees may not have actually succumbed to the pressure exerted upon them,[16] those facts do not necessarily defeat class certification.

(B) Subclass Two: the Minimum Wage Subclass

Subclass Two is a subset of the first subclass, and the common questions relevant to Subclass One—specifically those relating to coercion to purchase AAA clothing—are also relevant to Subclass Two. Because minimum wage earners may have suffered a violation of their right to earn at least minimum wage, the second subclass will also involve the common legal questions of whether coerced expenditures effectively reduced the wages of minimum wage

[15] See Morgan v. Wet Seal, Inc., 210 Cal. App. 4th 1341, 1362 (Cal. Ct. App. 2012) (applying California's class certification standards and explaining that there was no proof, other than the oral instructions received by individual employees, that the employer had a class-wide policy or practice); Madrigal v. Tommy Bahama Grp., Inc., No. CV 09–08924 SJO (CWx), 2011 WL 10511339, at *7 (C.D. Cal. June 27, 2011) (noting that plaintiffs relied on employee declarations and did not submit any "evidence of a common scheme" underlying the alleged oral instructions); Howard v. Gap, Inc., No. C 06–06773 WHA, 2009 WL 3571984, at *4 (N.D. Cal. Oct. 29, 2009) (primarily relying on employee declarations to evidence coercive policies).

[16] In addition, employees who did not purchase AAA clothing are not members of the First or Second Subclasses.

earners below minimum wage and whether such wage deficits may be recovered under California law.

As for the predominance inquiry, Defendants raise the same arguments with respect to Subclass Two as Subclass One. For the same reasons discussed above, those arguments fail. The Court concludes that the common factual questions and legal questions predominate over individual inquiries relevant to class members.

(C) Subclasses Three: the Uniform Subclass

The elements of the legal claims underlying the Uniform Subclass and the major questions common to the claims of the subclass members are discussed above as part of the Court's commonality inquiry. The Court now turns to whether individualized or common questions predominate when analyzing whether the Look Policy requires associates to wear clothes of a "distinctive design or color" that are not "generally usable in the occupation" and thus constitute a uniform. See Wage Order 7, § 9(A); DLSE Opinion Letter No. 1991.02.13.

Defendants contend that individualized inquiries predominate. In making that argument, Defendants primarily focus on the fact that some Abercrombie employees never purchased any Abercrombie clothes and/or wear non-Abercrombie clothing to work. However, Defendants appear to misunderstand Plaintiffs' legal claim. Although Plaintiffs limit Subclass Three to those employees who purchased Abercrombie clothing and seek reimbursement for those purchases, Plaintiffs could potentially have sought damages for a wider category of purchases, including non-Abercrombie purchases. California Labor Code Section 2802 and Wage Order 7 do not limit "necessary expenditures" and "uniforms" to those items that are purchased from the employer. If a required piece of clothing is of a sufficiently distinctive design or color, an employer may be required to reimburse the employee for that purchase even if the item of clothing was purchased elsewhere. Accordingly, if Defendants' Look Policy is so narrow that compliant clothes constitute a uniform, Defendants could be required to indemnify or reimburse employees for Look Policy-compliant items that were purchased at both Abercrombie stores and elsewhere. Therefore, the mere fact that an employee may have purchased a Look Policy-compliant item elsewhere (i.e. not at an Abercrombie store) does not necessarily mean that the Look Policy doesn't describe a uniform. In sum, class certification is not rendered inappropriate just because Plaintiffs' third subclass may be somewhat under-inclusive.

Defendants also argue that some Gilly Hicks employees and Abercrombie & Fitch and Hollister Greeters were provided with free clothes to wear to work and should thus be excluded from the subclass. (Opp'n at 16; Declaration of James Roth ¶¶ 10-11, Knueve Decl., Ex. 93.) The Court agrees that an employer's provision of free of clothes that may be worn to work could be sufficient to constitute an employer's provision of a uniform under Section 2802 and Work Order 7. However, Plaintiffs argue that the Look Policy requires employees to frequently update their work clothes to remain compliant with the "current fashion season and colors."[17]

[17] The Court need not, at this time, decide whether Plaintiffs are correct that the Look Policy required such seasonal updating of an employees' work clothes. Plaintiffs point to a common Look Policy that includes language indicating that employees should wear clothes (continued . . .)

(Associate Handbook at 27; Mot. at 8.) Therefore, Plaintiffs assert that receiving a one-time gift of compliant clothes would not prevent an employee from later being required to purchase additional clothing items for the current fashion season. While this issue of free clothes presents an interesting question, the Court concludes that it is appropriately characterized as part of the damages inquiry. More specifically, if an employee received free clothing, he or she may not be entitled to reimbursement for clothing purchased close in time to that gift, as an employee is not necessarily entitled to the provision of multiple uniforms. However, if an employee later purchased clothing during a different fashion season so as to comply with the Look Policy, the employee might be entitled to damages for that later purchase.

(D) Subclass Four: the Footwear Subclass

The common questions relevant to the Footwear Subclass are almost identical to those applicable to the Uniform Subclass, except that the fourth subclass consists of only a portion of the third subclass and the footwear restrictions are only one component of the overall Look Policy. Accordingly, for the same reasons discussed above with regard to the Uniform Subclass, the Court concludes that the questions common to the members of the Footwear Subclass predominate over any individual inquiries.

Defendants again argue that individualized inquiries predominate because some Abercrombie employees never purchased any Abercrombie footwear (i.e. rubber or leather flip flops). However, the footwear policy expressly provides that employees could wear certain Converse or Vans shoes. (Associate Handbook at 27.) Thus, if anything, Plaintiffs' subclass is under-inclusive of those who might be entitled to reimbursement from Defendants. California Labor Code Section 2802 and Wage Order 7 are not limited to those pieces of a uniform that are sold by the employer, and Plaintiffs might have sought reimbursement/indemnification for employee purchases of Vans and Converse footwear as well.[18] Furthermore, those who did not purchase Abercrombie footwear are excluded from the class, and their individualized reasons for not purchasing Abercrombie footwear would thus not apply to subclass members.

ii. Damages Inquiry

As the Court explained above, Plaintiffs must "establish[] that damages are capable of measurement on a classwide basis." Comcast, 133 S. Ct. at 1433. Thus "any model supporting a plaintiff's damages case must be consistent with its liability case." Id. Defendants assert that, because some employees likely purchased AAA clothing and other Abercrombie apparel for

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(. . . continued)
"consistent with the current fashion season and colors." (Associate Handbook at 27.) For the purposes of this Motion, the Court simply notes that the question of whether the Look Policy requires employees to regularly update their work clothes appears to be common to all associates in Defendants' stores and a question that drives the legal claims underlying this subclass.

[18] However, ascertaining the members of such a class would certainly have been more difficult. Moreover, such footwear would have a higher likelihood of being considered "generally usable in the occupation."

personal use or as gifts—not to wear to work—damages are not susceptible to common proof and cannot be calculated on a classwide basis. (Opp'n at 24-25.) Determining which purchases were likely made for wear to work may be a fairly individualized inquiry. However, "damages determinations are individual in nearly all wage-and-hour class actions." Jimenez, 765 F.3d at 1167. Moreover, the Ninth Circuit has clearly explained that "[i]n this circuit . . . damage calculations alone cannot defeat class certification." Id. (alterations in original).

Plaintiffs also explain that, for Subclasses One and Two, the purchased AAA clothes need not have been bought to wear to work; the theory underlying those subclasses is that Defendants coerced them to *purchase* AAA clothing—it is not necessarily relevant that those AAA clothing items may have been purchased as gifts or for personal use. (Reply at 12.) As for Subclass Three, Plaintiffs also explain that clothing items that are not work related, such as underwear, can fairly easily be excluded from the damages calculations. (Id.) Finally, even the Supreme Court has clearly acknowledged that damages "[c]alculations need not be exact," Comcast, 133 S. Ct. at 1433; thus class certification is not prohibited merely because it might not be possible to eliminate every gift or personal item from the damages calculations.

In sum, the Court concludes that Rule 23(b)(3)'s predominance requirement is satisfied as to each of the four subclasses.

b. Superiority

Rule 23(b)(3) requires the Court to find "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Considerations pertinent to this finding include:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3)(A)-(D). The superiority requirement tests whether "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." Valentino v. Carter–Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). "If each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not 'superior.'" Zinser v. Accuflix Research Inst., Inc., 253 F.3d 1180, 1192 (9th Cir. 2001).

Defendants do not challenge the superiority element. There is no evidence that individual class members have an interest in individually controlling their cases. The damages suffered by each class member are not large, "class members may fear reprisal in pursuing individual claims against their employer" or former employer, and "individual litigation against a well-funded defendant would be cost prohibitive." Campbell v. PricewaterhouseCoopers, LLP, 253 F.R.D. 586, 605 (E.D. Cal. 2008), adhered to, 287 F.R.D. 615 (E.D. Cal. 2012). Although litigation

concerning the rest break controversy has already been commenced by other class members, see Fed. R. Civ. P. 23(b)((3)(B), the Court has stayed the rest break claims and does not certify them at this time.

The Court finds that the proposed action is manageable. The class involves only California employees, making this forum appropriate and desirable. Although manageability issues may arise, Defendants have not identified any specific concerns; none sufficient to prevent class certification are apparent at this time. A class action is a superior method for resolving the class members' claims because it will "achieve economies of time, effort, and expense . . . without sacrificing procedural fairness or bringing about other undesirable results." Boyd, 2014 WL 2925098, at *13 (quoting Amchem Prods. v. Windsor, 521 U.S. 591, 615, (1997)). Moreover, as the Ninth Circuit has explained, "[i]f plaintiffs cannot proceed as a class, some—perhaps most—will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover." Local Joint Exec. Bd. of Culinary /Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1163 (9th Cir. 2001).

In light of the large number of potential class members and the relatively small monetary value of their individual claims, the Court concludes that a class action is a superior method for resolving this case.

IV. CONCLUSION

For the reasons set forth above, the Court DENIES Defendants' Motion to Strike. The Court sua sponte STRIKES Defendants' Supplemental Authority and Evidence, (Doc. No. 96), as well as the Declaration of Adam Chmielewski, (Doc. No. 105-2), as well as the Declaration of Michael J. Ball and attached exhibits, (Doc. No. 105-1).

The Court GRANTS Plaintiffs' Motion for Class Certification. The Court concludes that Plaintiffs have met their burden of demonstrating that the four clothing subclasses satisfy the requirements of Rules 23(a) and 23(b)(3). Incorporating the adjustments to the subclass definitions described above, as well as certain adjustments made to enhance clarity,[19] certification of the following four clothing subclasses is appropriate:

(1) Subclass 1: the Labor Code § 450 Subclass:
All persons who were employed in California as non-exempt, hourly employees at Abercrombie & Fitch, abercrombie kids, Hollister, and/or Gilly Hicks stores after September 16, 2009, and who purchased AAA clothing during their employment after September 16, 2009 (as shown by Abercrombie's records). This subclass excludes those purchase made while an employee held the managerial position of Store Manager or Assistant Manager.

[19] The Court also adjusts the wording of each subclass to clarify that, not only must each class member have been employed in one of Defendants' stores after September 16, 2009, but their purchase of clothing must also have been made during that portion of their employment that occurred after that date.

(2) Subclass 2: the Minimum Wage Subclass:
All persons who were employed in California as non-exempt, hourly employees, earning no more than minimum wage at Abercrombie & Fitch, abercrombie kids, Hollister, and/or Gilly Hicks stores after September 16, 2009, and who purchased AAA clothing during their employment after September 16, 2009 (as shown by Abercrombie's records). This subclass excludes those purchase made while an employee held the managerial position of Store Manager or Assistant Manager.

(3) Subclass 3: the Uniform Subclass:
All persons who were employed in California as non-exempt, hourly employees at Abercrombie & Fitch, abercrombie kids, Hollister, and/or Gilly Hicks stores after September 16, 2009, and who purchased Abercrombie clothing during their employment after September 16, 2009 (as shown by Abercrombie's records).

(4) Subclass 4: the Footwear Subclass:
All persons who were employed in California as non-exempt, hourly employees at Abercrombie & Fitch, abercrombie kids, Hollister, and/or Gilly Hicks stores after September 16, 2009, and who purchased Abercrombie footwear during their employment after September 16, 2009 (as shown by Abercrombie's records).

The four subclasses are certified pursuant to Rules 23(a) and 23(b)(3). Plaintiffs Alexander Brown and Arik Silva are appointed as representatives of the class. The law firm of Aiman-Smith & Marcy is appointed as counsel for the class, pursuant to Rule 23(g).

IT IS SO ORDERED.