UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ERIC MICHAEL ROSEMAN, ALEXANDER LEE, and WILLIAM VAN VLEET, individually and on behalf of others similarly situated,

Plaintiffs,

v.

BLOOMBERG L.P.,

Defendant.

Case No.: 1:14-cv-02657-TPG

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO CERTIFY STATE LAW CLASSES

Respectfully Submitted,

by

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INTRODUCTION

This is a wage and hour case raising overtime claims under state and federal labor law. Plaintiffs bring this case as a collective action under the Fair Labor Standards Act (FLSA) on behalf of "Analytics Representatives" also known as "Reps", "ADSK Reps", "Help Desk Reps" and "Customer Service Reps." Ex. A Saven 30(b)(6) Deposition at 55:10-16 (Analytics Representatives referred to as "Help Desk" to customers); Ex. B Hannawacker Deposition at 78:5-20 (Referring to Analytics Representatives as Customer Service Representatives). The Analytics Reps at issue in this case were employed by Bloomberg in either New York City or San Francisco. All provide customer support for Defendant's customers concerning the functions contained within the Bloomberg Terminal.[1] This Court previously certified an FLSA collective action class. Doc. No. 37. Plaintiffs now seek to certify separate New York and California classes under Rule 23 of the Federal Rules. As in two other class actions against Bloomberg for its failure to pay two other types of customer service representatives overtime pay, classes should be certified for the claims of the Analytics Reps here. *See, Jackson v. Bloomberg, L.P.,* 298 F.R.D. 152 (S.D.N.Y. Mar. 19, 2014)(certified class of Global Customer Support Reps, class settlement subsequently granted final approval); *Enea v. Bloomberg, L.P.*, No. 12 CIV. 4656 GBD FM, 2014 WL 1044027 (S.D.N.Y. Mar. 17, 2014)(certified class of Global Technical Support Reps, class settlement pending final approval).

Plaintiffs seek certification of two separate state law classes. *See* Third Amended Complaint, Doc. No. 103, ¶¶13-19 (New York class) and ¶¶20-32 (California class). Excluded

[1] The "Bloomberg Terminal" is the proprietary software which allows financial professionals and others to access Bloomberg's financial data streams, and to tally, filter, manipulate, or show this data in a variety of different ways. *See* Ex. A Saven 30(b)(6) deposition at pp. 30-53, 344, 359.

from the class are individuals who have signed a severance agreement releasing state wage hour claims.[2]

FACTS AND PROCEDURAL BACKGROUND

I. BACKGROUND

Defendant Bloomberg L.P. is a Delaware limited partnership registered in New York. Doc. Nos. 103 (Third Amended Complaint) at ¶ 33 and 106 (Answer) at ¶ 33. The Defendant lists its business address as 731 Lexington Avenue, New York, New York 10022. *Id.* Defendant's business is a multinational mass media corporation that provides financial software tools such as analytics and equity trading platforms, data services and news to financial companies and organizations around the world through the Bloomberg Terminal. *See* Ex. A Saven 30(b)(6) Deposition at 30:10-53:9; Eric Michael Declaration, Doc. No.17 at ¶ 4. From its inception in or about 1980 up through 2013, Bloomberg never paid overtime premium pay to a

[2] In discovery, Defendant produced 56 severance agreements, signed by Named Plaintiff Roseman and other Reps purporting to release state wage hour claims. Getman Dec. ¶43, Bates Nos. BLP-ROSEMAN-00000001-BLP-ROSEMAN-00000027 and BLP-ROSEMAN-00001836 - BLP-ROSEMAN-00002048. Defendant never produced severance agreements or purported releases for Named Plaintiffs Lee and VanVleet or any other putative Class Member. In this motion, Named Plaintiff Roseman does not seek to be a Class Representative for the New York Class. The proposed New York and California classes do not include the 56 individuals identified in Defendant's production as Reps who signed severance agreements. Named Plaintiff Roseman and the 55 other Reps who signed the purported releases have not settled or waived their wage and hour claims under the FLSA. Private waivers of FLSA claims are not valid. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945); *Caserta v. Home Lines Agency, Inc*., 273 F.2d 943, 946 (2d Cir. 1959). Whether the purported releases are valid waivers of the state wage and hour claims must be analyzed under the applicable state law. Under New York law, for the purported releases to be valid they must be clear and unambiguous and must be entered into "knowingly and voluntarily" and not as the result of fraud, duress, or undue influence. *Difilippo v. Barclays Capital, Inc.*, 552 F. Supp. 2d 417, 426 (S.D.N.Y. 2008); *Neal v. JPMorgan Chase Bank, N.A.*, 10-1157 JFB ETB, 2012 WL 3249477, at *9 (E.D.N.Y. Aug. 8, 2012). Under California law, "[a]n employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made." Cal. Lab. Code Ann. § 206.5. Plaintiffs concede however, that these claims are not classable as Defendant secured a waiver as to them which may or may not be valid based on individual facts.

single worker in the United States. *See* Ex. C Wheatley 30(b)(6) Deposition at 18:2-20. A detailed narrative of Bloomberg's history of FLSA violations and its internal review of its failure to pay overtime to any class of workers can be found in plaintiffs' brief in support of Plaintiffs' motion to compel, *Enea v Bloomberg L.P.*, No. 12CV4656-GBD-FM, (S.D.N.Y.), Doc. No. 102, at pp. 7-12, [3] Ex. D hereto.

Beginning in 2006, various help-desk employees began filing lawsuits against the company. *Id.* at p. 7. And another worker filed a complaint with the U.S. Department of Labor ("DOL"). *Id.* at 10. Since these legal actions, and an audit by the DOL that resulted from the DOL complaint, Bloomberg has begun paying overtime to more than thirty different job classifications including various other customer service positions, such as Global Customer Service (GCUS) Reps, who help customers with password and authentication issues, and Service Desk Reps, who help Bloomberg's own employees with their hardware and software questions. (*Id.* at p. 11). And Bloomberg settled and has begun to pay overtime to Global Technical (GTEC) Reps (who help customers with network and hardware questions). *Enea v Bloomberg L.P.*, No. 12CV4656-GBD-FM, (S.D.N.Y.), Order Granting Preliminary Approval of Settlement, Doc. No. 135.

This action was filed on April 4, 2014. The Court previously found that Reps were "similarly situated" and certified Plaintiffs' federal overtime claims as a collective action under 29 U.S.C. §216(b). Doc. No. 37. Now, the New York City based Reps move this court to certify a class under New York state overtime laws and the San Francisco based Reps seek to certify California state overtime and related claims as a class to bring parallel state wage hour claims arising from the same failure by Bloomberg to pay overtime to Analytics Reps.

[3] For ease of reference, when citing to docketed court documents, Plaintiffs cite to the docket page numbers rather than the page numbers in the original documents.

II. FACTS

A. Analytics Reps Have the Same Primary Job Duty of Providing Customer Service and Support to Bloomberg's Customers Regarding the Bloomberg Terminal.

Bloomberg's 325,000 subscribers can access help directly through the Bloomberg Terminal by hitting the "Help" key twice, which opens a chat with ADSK Reps manning the support desk. *See* Ex. A Saven 30(b)(6) Deposition at 53:10-23, 129:7-16; Ex. B Hannawacker Deposition at 70:11-71:112; Ex. E Amanda Lownes Deposition at 117:22 to 118:2 ("the way the Help Desk worked is you hit the help key and it would open a live chat."). Subscribers can also find answers to their questions through Bloomberg's online FAQs ("Frequently Asked Questions") or Help Pages. *See* Saven Deposition at 54:13-55:9. Because the terminal is used throughout the world, Bloomberg's support desk (Analytics Division) is staffed 24 hours per day, 7 days per week. *See* Saven Deposition at 17:6-18:7.

Bloomberg has help desks in New York City, Sao Paolo, San Francisco, Tokyo, Hong Kong, Mumbai, Singapore, Beijing, and London which operate on a rolling basis with overlap between office hours to ensure seamless integration, with help chats routed through its internal software. *See* Saven 30(b)(6) Deposition at 16:11-21:11.

All U.S. based Reps are supervised by Team Leaders, who report to the Regional Head of Analytics for the Americas, who reports to the Global Manager for Analytics (currently Ian Yeulett, formerly Chris Saven). *See* Saven 30(b)(6) deposition at 64:4-66:4.

Upon hire, Bloomberg gives approximately 5 weeks of training for all incoming Reps on the functionality of the Bloomberg Terminal, sufficient to allow them to answer certain general questions. Saven Declaration, Doc. No. 25 at ¶ 11; Van Vleet Deposition at 96:23 to 97:2 (10 weeks of training, with a break in the middle during which they took customer chats); Amanda Lownes Deposition at 23:21 to 24:9 (describing an initial 5 week training period). Reps who

complete this training work first as "generalists." Through additional trainings and certifications, generalists learn one or more additional specialized areas, either an asset class or a product application, such as "Fixed Income" "Foreign Exchange" or "Launchpad" at which point they are called "specialists." *See* Saven 30(b)(6) Deposition at 26:22-27:18, 72:18-74:17; Amanda Lownes Deposition at 111:22 to 112:24 (describing training process and how Reps go from Generalists to Specialists). Additional trainings and certifications may result in their progression to being called "advanced specialists." *See,* Saven 30(b)(6) Deposition at 72:18-74:8. Bloomberg's "People Soft" data records the what level of training each Analytics Rep has attained. Bloomberg intends for Reps who are specialists to move on to a position in its Sales Department, but a few Reps become Team Leaders who supervise the teams of Analytics Reps, or remain advanced specialists indefinitely. Saven Deposition at 72:18 to 74:8; Hannawacker Deposition at 89:20 to 90:2 and 114:18 to 115:20.

The Analytics Reps in this case answer help requests which come from customers who hit <help> <help> on the Bloomberg Terminal when they have a problem getting the system to work, or when they do not know how to get the terminal to do something for them they wish it to do. *See* Bloomberg Saven 30(b)(6) deposition at 53:10-23; Ex. F Yeulett Deposition at 182:11-15. These help requests appear as chats (known as "instant Bloombergs" or IBs). All Reps handle up to 4, or sometimes up to 6, chats at a time. Saven Deposition at 116:7 to 117:23; Amanda Lownes Deposition119:25 to 120:17 (describing being on multiple chats, 2, 3, up to 6 chats at once); Van Vleet Deposition at 64:9 to 64:21.

The Bloomberg Terminal contains approximately 30,000 separate functions. *See* Saven 30(b)(6) deposition at 150:7-11. Analytics Reps -whether generalists, specialists, or advanced specialists—all have the same primary job: to answer help requests from Bloomberg's customers who need assistance with the Bloomberg Terminal. *See* Ex. A Saven30(b)(6) deposition at

211:22-212:16; Ex. F Yeulett Deposition at 183:17 to 185:12[4]; Ex. G Renny Deposition at 150:14 to 151:13 (even as an advanced specialist, the questions were so repetitive it felt like working in a salt mine); Ex. H Johnson Deposition at 318:14-319:10 ("We all had the same duty, just to reply to client inquiries about Bloomberg functionality"); Michael Declaration, Doc. No. 17 at ¶¶ 6, 9, 10; Ex. I Green Deposition at 19:15 to 20:9 ("The goal of the training [for ADSK Reps] was to give me the ability to find a way to help the client"); Ex. E Amanda Lownes Deposition at 114:10 to 114:12 ("95 percent of my day was spent taking chats, whether I was a Generalist or a Specialist."); Ex. J Alexander Lee Deposition 29:10-17 ("It [the ADSK position] was described to me as a purely customer support role") ; Ex. K William Van Vleet Deposition 39:15-18 (other than training, 100% of time spent consulting with clients on their questions.); Ex. L Roseman Deposition at Page 97:16 to 97:23 (98% of time as a generalist responding to chats) and 36:11 to 36:24 (At interview, job was explained as being primarily customer support); Ex. O Held Deposition at 49:5 to 49:11, 157:14 to 157:23, and 249:12 to 249:15; Ex. R Leyfman Deposition at 18:25 to 19:13 and 26:9 to 28:3; Ex. Q Psulkowski Deposition at 50:14-17, 57:9-14 and 65:3 to 65:12; Ex. M Bloomberg Recruitment web page; Ex. S Bloomberg Job Requisitions. Analytics reps also assist customers on occasion by proactively reaching out to explain functions or conduct trainings. Yeulett Depo. 183:17 -185:19.[5]

[4] Yeulett also claims that Reps engage in proactive support for customers through Bloomberg initiated campaigns, calls and trainings. But he testified that the purpose of this proactive work and reactive work of answering help chats is the same. "It's problem-solving, to start off, before you give the knowledge. So it's problem-solving. You try to figure out what the customer needs. You try to isolate the item that they're trying to sell for. And once you understand and the customer knows you understand, you just try to give them the solution. Yeulett 224:11-18. The difference between a good Analytics Rep and a not-as-good Rep is knowledge level. Yeulett 207:13-15.

[5] Bloomberg tracks the customer service work of all Reps by recording for posterity every customer interaction the Reps have through its ticketing system. *See*, Ex. N Coleman ESI 30(b)(6) Deposition at 116:24 to 128:11 (extensive description of how a ticket is created); *Id.* at 40:7-41:12, 45:11-47:25 (describing how ticket data is used to track and evaluate customer

B. Analytics Reps Work More Than 40 Hours Per Week.

Analytics Reps work more than 40 hours per week in the Office and Off-the-Clock While Away from the Office. Reps are generally assigned a shift of 9 hours with one hour off for lunch (e.g., 7am–4pm, 8am–5pm, or 9am–6pm). Ex. C Wheatley 30(b)(6) Deposition at 214:24 to 215:15; Ex. A Saven 30(b)(6) Deposition at 18:16 to 19:12; Ex. I Green Deposition at 93:16-94:22; Michael Declaration, Doc. No. 17 at ¶ 12; Ex. G Renny Deposition at 325:3-17. Reps are expected to be at work, booted up, logged in, and ready to take help chats as soon as their shift commences. Saven 30(b)(6) Deposition155:7 to 156:18; Hannawacker Deposition at 206:7-12; Van Vleet Deposition at 65:16 to 66:12; Lee Deposition at 332:4 to 334:10; Held Deposition at 268:19 to 269:12; Amanda Lownes Deposition 294:2 to 296:5 (explaining that she came in early to be ready to take help chats because it was frowned upon to have a late start). They are expected to work through the end of their shift before leaving. Hannawacker Deposition at 211:22-212:1. Often chats continue past their shift end and Reps are expected to continue their work until complete for the day. Saven Deposition at 112:2 to 112:19, 113:13 to 114:3; Michael

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service by measuring how long customers must wait for assistance and how promptly Reps can assist customers). Bloomberg also tracks the quality of its customer service Reps through periodic reviewing a group of prior chats and assigning them a Quality Review score. Roseman Deposition at 80:24 to 82:22. Bloomberg also gives its customers the option to grade Reps after their help chats are completed and these surveys are compiled as the Reps' Customer Satisfaction (or C-Sat) scores. Saven Deposition at 311:21-312:22; Wheatley Deposition at 152:18-25; Coleman ESI 30(b)(6) at 104:18 to 105:23 (customers are asked if they were satisfied with the service Reps provided). The ticket data and customer satisfaction survey scores document the quality of customer service work of all Class Members and these scores (known as "metrics") are the backbone of Bloomberg's performance evaluation system for all Reps.[5] Bloomberg uses its performance evaluation system to determine salary level, bonus, and tenure of all of its Analytics Reps. Wheatley Deposition at 160:9 to 160:17. Reps also conduct proactive assistance–trainings or campaign calls for customers for the "same purpose of supporting the customer in using the terminal to its fullest potential." Yeulett 183:17-23. Bloomberg does not track any metrics for any proactive work that Reps do. Yeulett 113:22-114:25. Reps conduct an average of 1.5-2 trainings for customers per year. Yeulett 72:13-19.

Declaration, Doc. No. 17 at ¶ 16; Ex. P Krieger Deposition at 184:3 to 184:22; Held Deposition at 278:14 to 278:18.

Work does not end at the last chat. Bloomberg encourages Reps to constantly learn new areas of Terminal functionality. Saven Deposition at 72:23 to 74:8 and 183:7-18; Hannawacker Deposition at 78:16-20. Trainings and certifications continue throughout the period of employment. Reps are frequently assigned homework for their trainings. Hannawacker Deposition at 125:7-11; Lee Deposition at 440:20 to 441:7; Van Vleet Deposition at 75:7 to 75:16 (studied at home during training); Saven Deposition at 163:4 to 163:6 (studied from home while an ADSK Rep); Krieger Deposition at Pages 195:12 to 196:16. Bloomberg does not forbid work at home. Saven 164:6 to 165:7; Lee Deposition at 430:14 to 430:25. In fact, it assigns Reps a "B-Unit" allowing remote access to the Bloomberg Terminal from which they work, and trains them in "Bloomberg Anywhere" (web-based access to the Terminal) and "Bloomberg Mobile" allowing a light version of the software to run the Terminal from a mobile phone or tablet. Amanda Lownes Deposition at 304:18 to 305:25; Johnson Deposition at 266:4-19; Leyfman deposition at 327:6 to 332:21; Psulkowski Deposition at 347:4 to 348:3; Van Vleet Deposition at 227:21 to 228:20 (had remote access through VPN). Periodically, Bloomberg required Reps to sit for a sixth shift on a weekend so that each office would have weekend coverage.[6] Wheatley Deposition at 215:16 to 216:10; Hannawacker Deposition at 202:9-23; Van Vleet Deposition at 225:14 to 227:2; Michael Declaration, Doc. No. 17 at ¶ 22; Lownes Deposition 313:12 to 314:3 (describing weekend work).

[6] Defendant required Plaintiffs to work on weekends and holidays in addition to their regular shift, for which it allowed Plaintiffs to take "comp time" in a later pay week, under various restrictive conditions.

Bloomberg's badge system captures work on-site at 731 Lexington Ave, New York City, or Pier 3, The Embarcadero, San Francisco—including their regular shift work and when they stay late or come in early. Wheatley Deposition at 252:8 to 254:13; Van Vleet Deposition 210:15 to 211:10; Hannawacker Deposition at 37:1-23. Badge hours document that Reps frequently work more than forty hours in a week, with an average of 4.38 hours per week of overtime. Getman Dec. ¶¶1-5.

However, Bloomberg failed to record all the hours that Plaintiffs work off site—studying at home for tests and certifications, keeping abreast of the markets, handling chats, visiting with a customer, preparing "special projects," checking emails and doing paperwork, preparing special projects, etc. Saven Deposition at 327:9 to 328:25; Wheatley Deposition at 252:8 to 254:13 (Bloomberg counts badge hours as work for those who are eligible for overtime, does not track hours of work in analytics.). Bloomberg never records the hours Reps work away from the office (at home or on their mobile devices), nor does it ask Reps to record their work off-site. Saven Deposition at 327:9 to 328:25; Wheatley Deposition at 255:23 to 256:25; Hannawacker Deposition at 194:14-17. However, Bloomberg has data showing remote system log-ins, including terminal log-ins, VPN log-ins, ADD log-ins, ticket data, mobile log-ins. *See* Docket 150; Getman Dec. ¶7a.

C. Bloomberg Fails to Pay Analytics Reps Overtime.

Bloomberg pays Analytics Reps a salary, and a yearly bonus, the levels of which are both set with reference to the Reps' yearly performance evaluation. Wheatley Deposition 128:19-23. Bloomberg never pays Analytics Reps overtime premium pay at the rate of time and one-half for hours worked over forty in a workweek, whether at or away from the office. Wheatley Deposition at 42:5 to 43:11; Held Deposition at 300:21 to 301:3; Michael Declaration Doc. No. 17 at ¶¶ 25-27; Saven Declaration, Doc. No. 25 at ¶ 7.

ARGUMENT

I. A Class Action is Appropriate in This Case

Federal courts in New York and around the country have consistently certified wage and hour class actions brought by help-desk employees who, similar to the Plaintiffs here, work out of a call center answering calls from customers who need service and support. *See, Jackson v. Bloomberg, L.P.*, 298 F.R.D. 152 (S.D.N.Y. 2014) (certifying a Rule 23 class of Global Customer Support Representatives in overtime wage action against Bloomberg under New York Labor Law); *Enea v. Bloomberg, L.P.*, 12 CIV. 4656 GBD FM, 2014 WL 1044027 (S.D.N.Y. Mar. 17, 2014) (certifying a Rule 23 class of Global Technical Support Representatives in overtime wage action against Bloomberg under New York Labor Law); *see also, Burch v. Qwest Communications Intern., Inc.*, 677 F. Supp. 2d 1101 (D. Minn. 2009) (certifying Rule 23 class actions in 4 states and nationwide collective action for Sales and Service Consultants at a Qwest Call Center for off the clock work booting up their computers pre-shift and logging out after the end of their shifts); *Nolan v. Reliant Equity Investors*, LLC, 3:08–CV–62, 2009 WL 2461008 (N.D. W.Va. 2009) (Rule 23 certification for call center operators' WARN Act claims in 2 states).

"By its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (supplemental state claims subject to Rule 23 notwithstanding different state procedures). Courts in this District regularly permit classing state wage claims along with a federal FLSA collective action. *See, e.g., Flores v. Anjost Corp.*, 284 F.R.D. 112 (S.D.N.Y. June 19, 2012); *Ansoumana v. Gristede's Operating Corp.*, 201 F.R.D. 81 (S.D.N.Y. 2001); *Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363 (S.D.N.Y. 2007); *Lee v. ABC Carpet & Home*, 236 F.R.D. 193 (S.D.N.Y. 2006); *Velez v. Majik Cleaning Service, Inc.*,

No. 03 CIV. 8698 (SAS), 2005 WL 106895 (S.D.N.Y. Jan. 19, 2005); *Noble v. 93 University Place Corporation,* 224 F.R.D. 330 (S.D.N.Y. 2004); *see also Krueger v. NY Telephone Company,* 163 F.R.D. 433 (S.D.N.Y. 1995); *Brzychnalski v. Unesco, Inc.*, 35 F. Supp. 2d 351 (S.D.N.Y. 1999) (state wage class certified along with federal FLSA collective action).

The Second Circuit clarified the court's responsibilities in determining a Rule 23 class certification, in *Initial Public Offering Securities Litigation v. Merrill Lynch & Co., Inc.* 471 F.3d 24, 41 (2d Cir. 2006), holding that "a district judge may certify a class only after making determinations that each of the Rule 23 requirements has been met." The court went on to find that the fact that determining a Rule 23 requirement overlapped with a merits review did not preclude such a review. The certifying court should not make any factual findings or merits determinations that are not necessary to the Rule 23 analysis, however, and any factual determinations made at the certification stage are not binding on a subsequent fact-finder, even the certifying court. *Id.* at 41.

> "A motion for class certification should not . . . become a mini-trial on the merits." *Lewis Tree Serv., Inc. v. Lucent Techs*.,211 F.R.D. 228, 231 (S.D.N.Y. 2002). "The dispositive question is not whether the plaintiff has stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Kowalski v. YellowPages.com, LLC*, No. 10 CIV. 7318 PGG, 2012 U.S. Dist. LEXIS 46539, 2012 WL 1097350, at *12 (S.D.N.Y. Mar. 31, 2012) (*quoting Lucent Techs*., 211 F.R.D. at 231). In sum, the Court's task at the Rule 23 stage is not to resolve the liability question, but to decide "whether the constituent issues that bear on [Defendants'] ultimate liability are provable in common." *Myers v Hertz Corp.*, 624 F.3d 537, 549 (2d Cir. 1020) (emphasis added). "The Second Circuit has emphasized that Rule 23 should be given liberal rather than restrictive construction, and it seems beyond peradventure that the Second Circuit's general preference is for granting rather than denying class certification." *Espinoza v. 953 Associates LLC*, No. 10 CIV. 5517 SAS, 2011 U.S. Dist. LEXIS 132098, 2011 WL 5574895, *6 (S.D.N.Y. Nov. 16, 2011) (*quoting Gortat v. Capala Bros., Inc*., 257 F.R.D. 353, 361 (E.D.N.Y. 2009)).

Flores v. Anjost Corp., 284 F.R.D. 112, 122 (S.D.N.Y. 2012). "Rule 23 unambiguously authorizes any plaintiff, in any federal civil proceeding, to maintain a class action if the Rule's

prerequisites are met." *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.,* 559 U.S. at 406. The Requirements of Rule 23 are easily met here.

A. The Class is So Numerous that Joinder is Impracticable

Although it is unclear precisely how many employees are members of the class, discovery to date has shown that there are approximately 1312 potential Class Members who worked in California or New York. Of those, approximately 150 worked in California and over 1,000 worked in New York. Getman Dec. ¶ 7. Numerosity is clearly met as to each separate class.

Courts do not have a bright-line rule for numerosity, however, generally classes of more than forty individuals fulfill the numerosity requirement of Rule 23(a)(1). *Iglesias-Mendoza,* 239 F.R.D. at 370 (*citing Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993) holding that joinder can be impracticable where the prospective class consists of 40 members or more); *see Korn v. Franchard Corp*., 456 F.2d 1206, 1209 (2d Cir. 1972) ("Forty investors have been held to represent a sufficiently large group" for class action); *Consolidated Rail Corp v. Town of Hyde Park,* 47 F.3d 474 (2d Cir. 1995) ("[N]umerosity is presumed at a level of 40 members."). While the exact number of class members is only within the knowledge of Defendant,[7] Plaintiffs corroborate that the class is likely to exceed forty.

[7] In satisfying Rule 23's numerosity requirement, "plaintiff's failure to state the exact number of the class does not militate against the maintenance of a class action." *Shankroff v. Advest, Inc.*, 112 F.R.D. 190 (S.D.N.Y. 1986); *Somerville v. Major Exploration, Inc.*, 102 F.R.D. 500, 503 (S.D.N.Y. 1984) (citations omitted); *Dolgow v. Anderson*, 43 F.R.D. 472, 492-93 (E.D.N.Y. 1968), *rev'd on other grounds*, 438 F.2d 825 (2d Cir. 1970). "Impracticable" simply means difficult or inconvenient, not impossible. *See Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993); *Reynolds v. Giuliani,* 118 F. Supp. 2d 352, 388 (S.D.N.Y. 2000). Further, plaintiff does not need to provide a precise number for the class size. *See Robidoux*, 987 F.2d at 935; *In re Laser Arms Corp. Sec. Litig*., 794 F. Supp. 475, 494 (S.D.N.Y. 1989) ("Since the numerosity requirement speaks in terms of impracticability rather than impossibility, plaintiffs need not enumerate the precise number of potential plaintiffs in the class when reasonable estimates will suffice."). Nor does meeting the numerosity requirement rely on having forty or more plaintiffs.

Defendant has supplied classwide payroll in discovery, which shows that no Analytics Reps were paid overtime premium. Getman Dec. ¶6. Given the certainty of turnover over a six-year limitation period under N.Y. Labor Law §663(3), and a four-year limitation period under California's Business and Professions Code §§ 17203-17204, the class easily exceeds forty members.

B. The Class Representatives' Claims are Typical of the Class and There are Numerous Questions of Law and Fact Common to the Class

Rule 23(a)(2) requires that there be "questions of law or fact common to the class," whereas Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." "The commonality and typicality requirements, together, require Plaintiffs to show that they raise questions of fact or law, arising out of a single course of conduct or set of events, that are common to all putative class members and that their individual claims and circumstances are sufficiently similar to those of the absent class members so as to ensure that the named plaintiffs will press the claims of all class members." *Duling v. Gristede's Operating Corp*., 267 F.R.D. 86, 97 (S.D.N.Y. 2010). The requirement of typicality, Rule 23(a)(2), overlaps or merges with that of commonality, Rule 23(a)(3). *Iglesias-Mendoza*, 239 F.R.D. at 370-71; *In re Currency Conversion Fee Antitrust Litig.*, 230 F.R.D. 303, 307 (S.D.N.Y. 2004) (*citing Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)) ("The commonality and typicality requirements tend to merge into one another, so that similar considerations animate analysis of Rules 23(a)(2) and (3).").

See Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993) (impracticality of joinder depends on the circumstances of the case, not on mere numbers); *Toure v. Cent. Parking Sys.*, No. 05CIV.5237(WHP), 2007 WL 2872455 at *6 fn 2 (S.D.N.Y. 2007) (court would certify State law claims that parallel FLSA claims for class of 23-25 because "judicial economy would be served by hearing all overtime claims in one action.").

"Even a single common legal or factual question will suffice" to satisfy the commonality requirement as to a particular claim. *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55 (S.D.N.Y. 2009); *Duling*, 267 F.R.D. at 96. Here, there are numerous "questions of law or fact common to the class" such as:

1. Whether Defendant "suffered or permitted" Plaintiffs to work hours over forty in a workweek (such as by scheduling Plaintiffs for periodic weekend work in addition to five eight-hour shifts, by having them come in early to log in, or by having them work through lunch or past the end of their shift to handle ongoing calls, by assigning them homework, by having them work extra weekend and or holiday shifts, or by suffering or permitting work outside their shift hours);
2. Whether Defendant failed to record all the hours Plaintiffs worked by failing to record the work Plaintiffs did off-site outside of their shift hours;
3. Whether Defendant knew or should have known that Plaintiffs worked hours over forty in a workweek;
4. Whether Defendant gave Plaintiffs "comp time" in lieu of overtime pay pursuant to its comp time policy and whether that policy was unlawful;[8]
5. Whether Defendant failed to pay overtime to ADSK Reps;

[8] *See e.g.* 29 C.F.R. § 553.20 states, "Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility **to State and local government employers** and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in § 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7." (emphasis added).

6. Whether Defendant's failure to pay additional compensation for overtime work was lawful;
7. Whether Defendant's failure to pay additional compensation for overtime work was "willful;"
8. Whether all Analytics Reps have a primary duty that is non-exempt or exempt from the state overtime law.

With these common questions, Plaintiffs have established commonality. *Id.*

"The crux of [the typicality] requirement[ ] is to ensure that 'maintenance of a class action is economical and [that] the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Marisol*, 126 F.3d at 376 (internal citation omitted); *accord Hirschfeld v. Stone*, 193 F.R.D. 175, 182-83 (S.D.N.Y. 2000). Specifically, the "typicality requirement is satisfied when each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability . . . irrespective of minor variations in the fact patterns underlying the individual claims." *Robidoux*, 987 F.2d at 936-37; *accord Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 155 (2d Cir. 2001). However "there is no requirement that the precise factual circumstances of each class plaintiff's claim be shared by the named plaintiff." *Gortat v. Capala Broths., Inc.*, No. 07-CV-3629 (ILG), 2010 WL 1423018, at *4 (E.D.N.Y. Apr. 9, 2010). The factual background of the named plaintiff's claim need not be identical to that of the putative class members as long as "the disputed issue of law or fact occup[ies] essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class." *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 293 (2d Cir. N.Y. 1999) (*citing Krueger*, 163 F.R.D. at 442) "Under this court's jurisprudence, a

single common question of law or fact may suffice." *Iglesias-Mendoza,* 239 F.R.D. at 372; *see also Marisol v. Giuliana,* 126 F.3d 372 (2d Cir. 1997).

Here, the Class Representatives' claims are typical of the claims of the class because all class members had the same primary job duty of customer support; all were paid on the same salaried basis; all were subject to Defendant's practice to require hours over forty and to not record off-site work hours, and to refuse any additional pay for hours over forty. All have the same legal claims.

"In assessing the typicality of the plaintiff's claims, the court must pay special attention to unique defenses that are not shared by the class representatives and members of the class." *Spann v. AOL Time Warner, Inc*., 219 F.R.D. 307, 316 (S.D.N.Y. 2003). Although "the mere existence of individualized factual questions with respect to the class representative's claims will not bar class certification, class certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation." *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 59 (2d Cir. 2000) (*citation omitted*); *see also*, *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 180 (2d Cir. 1990). Typicality is absent where the named plaintiffs are "'subject to unique defenses which threaten to become the focus of the litigation.'" *Duling*, 267 F.R.D. at 97. Defendant pleads no such individual defenses here. *See* Answer, Doc. 106.

The great bulk of the issues in this case apply to all Plaintiffs identically. Defendant's overtime violations were identical for the Class Representatives and the entire class. Defendant had a policy of paying all ADSK Representatives a salary and not paying additional premium pay for overtime hours as well as requiring class members to work "off the clock" from home, before and after their regular shifts, during meal periods, and on weekends and holidays in addition to their regular shift. Defendant had a policy to not pay Plaintiffs overtime for hours

worked over 40 in a workweek as required by federal and state law. *See* Wheatley Deposition at 42:5 to 43:11; Held Deposition at 300:21 to 301:3; Saven Declaration, Doc. No. 25 at ¶ 7. Thus, Plaintiffs' claims, which resulted from Defendant's uniform pay policies and practices, are well within Fed. R. Civ. P. 23's notion of commonality and typicality. *Robidoux*, 987 F.2d at 936-37. Commonality and typicality exist here.

The U.S. Supreme Court recently issued a significant commonality decision in the discrimination context in *Wal-Mart Stores, Inc. v. Dukes*, a Title VII discrimination case. 131 S. Ct. 2541 (2011). The Supreme Court held that the named plaintiffs and passive Rule 23 class there did not meet the commonality requirements under Rule 23(a)(2) because there was not a common policy or practice to "glue" the discrimination claims together. *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2554. In *Wal-Mart* there were over 3,400 stores, and they employed over one million workers throughout the country. *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2546. Significantly, Wal-Mart had an anti-discrimination policy and Plaintiffs had not identified a common practice or policy leading to the claimed discrimination. The Court explained that:

> Here respondents wish to sue about literally millions of employment decisions at once. Without some glue holding the alleged reason for all those decision together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored*.

Dukes v. Wal-Mart Stores, Inc., 131 S. Ct. at 2552.

Since *Dukes v. Wal-Mart Stores*, courts in this District have repeatedly reiterated that Rule 23 class and FLSA collective actions are appropriate when uniform pay practices cause a common wrong. *See Espinoza v. 953 Associates LLC*, 280 F.R.D. 113, 127-28 (S.D.N.Y. 2011) ("With regard to commonality, the Named Plaintiffs' claims and those of the members of the putative class arise from a common wrong: Defendants' failure to pay proper minimum wage and overtime . . . The typicality requirement is also satisfied . . . [T]he minimum wage and

overtime claims alleged by Plaintiffs are similar to those of the class members and arise from the same allegedly unlawful practices and policies."); *see also Pippins v. KPMG LLP*, No. 11 Civ. 0377(CM)(JLC), 2012 WL 19379 (S.D.N.Y. Jan. 3, 2012) (holding that the FLSA claims before the court did not require the analysis of millions of individual employment decisions but rather that "the crux of this [FLSA] case is whether the company-wide policies, as implemented, violated Plaintiffs' statutory rights."). Plaintiffs' claims might present individualized questions regarding the number of hours worked and how much each employee is entitled to be paid but these differences go simply to the question of damages, not the commonality and typicality of their claims. Here, the common injury Plaintiffs allege is that Defendant used common pay practices for all employees, specifically requiring Plaintiff and other class members to work hours in excess of their 40-hour scheduled workweek and by having a policy not to pay them any overtime premium for any hours they worked over 40 in a workweek.

"Plaintiffs have alleged a common injury that is capable of class-wide resolution without inquiry into multiple employment decisions applicable to individual class members. Accordingly, *Wal-Mart* is distinguishable and does not preclude class certification." *Espinoza*, 280 F.R.D. at 130.

> "The weight of authority rejects the argument that *Dukes* bars certification in wage and hour cases." *Morris v. Affinity Health Plan, Inc.*, No. 09 CIV. 1932 ALC, 2012 U.S. Dist. LEXIS 64650, 2012 WL 1608644, at *2 (S.D.N.Y. May 8, 2012) (collecting cases). Courts in this district have instead focused on whether the employer had company-wide wage policies that injured the proposed class.

Flores, 284 F.R.D. at 125.[9] Here, there can be no doubt that the employer had company-wide wage policies to refuse additional compensation to ADSK Representatives for their overtime work. As Judge Daniels wrote in certifying a class of Technical Support workers at Bloomberg:

[9] Other district courts continue to find commonality in wage hour cases despite the *Dukes* decision. *Bond v. Ferguson Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL

> All putative Class members are similarly situated GTSR employees at Bloomberg that allegedly worked over 40 hours per week, and therefore the answers to the common issues considered at trial will be the same for all.[2] Contrary to Defendant's assertions (Bloomberg Opp'n at 7–12), all material commonality considerations in this case pertain to whether Defendant knew, should have known, or in fact required that GTSRs worked overtime and were thus performing uncompensated work. *See Kuebel v. Black & Decker Inc.*, 643 F.3d 352, 365 (2d Cir.2011). Defendant claims that one of the core issues in this case is the extent to which each GTSR worked compensable overtime. However, Plaintiffs must first show that Bloomberg "suffered or permitted" Plaintiffs to work hours over forty or knew that plaintiffs worked hours over forty; and whether Bloomberg's failure to pay additional compensation for overtime work was unlawful. *Duling v. Gristede's Operating Corp.*, 267 F.R.D. 86, 96 (S.D.N.Y.2010).
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> Plaintiffs have alleged that Defendant had several policies in place during the Class Period that required Plaintiffs to perform uncompensated work: Bloomberg required GTSRs to come in early to log on to their computers; Bloomberg required GTSRs to work mandatory weekend shifts (for which it awarded them only "comp" time); Bloomberg required GTSRs to continue working past the end of their shift when they could not finish a call during their shift, and Bloomberg required GTSRs to study from home in preparation for required exams and certifications. See Pls. Mem. at 10. Plaintiffs have provided timesheet3 and testimonial data to demonstrate that Bloomberg required GTSRs to perform such work. See Enea Decl. ¶¶ 11–18; Mclean Decl. ¶¶ 11–19; Dingle–El Decl. ¶¶ 20–25; Altidor Decl. 20–25; Pls. Renewed Mem. at 5; Hearing Tr. at 13:13–18. This is sufficient to satisfy the commonality requirement.

Enea v. Bloomberg, L.P., No. 12 CIV. 4656 GBD FM, 2014 WL 1044027, at *3-4 (S.D.N.Y. Mar. 17, 2014). Similarly, Judge Daniels found that Bloomberg's assertion of the identical defenses as to the entire class itself established commonality and typicality. *Id.* at p.4.

2648879, *5 (E.D. Cal. June 30, 2011) (certifying settlement class); *Collins v. Cargill Meat Solutions Corp.*, No. 1:10–cv–00500, 2011 WL 2580321, *5 (E.D. Cal. June 28, 2011) (noting that "[e]very Class Member was paid under the same pay practices as every other class members. The commonality requirement is satisfied."). Since Plaintiff alleges and demonstrates that Defendant used common pay practices for all class members, Plaintiff has demonstrated both commonality and typicality. *See also Ramos v. SimplexGrinnell LP*, 796 F. Supp. 2d 346, 355-57 (E.D.N.Y. 2011) (plaintiffs satisfied the commonality and typicality requirements requirement by showing the employer's common pay practices: *"*plaintiffs have come forward with significant proof that defendant routinely failed to account for labor performed on public works projects and pay prevailing wages for covered work.") In *Hernandez v. Starbucks Coffee Company*, a district court in the Southern District of Florida refused to decertify a FLSA opt-in class because "the common evidence and testimony of Defendant's own corporate representatives" "suggest(s) the same class treatment". No. 09-60073-CIV, *5-6, 2011 WL 2712586, *3 (S.D. Fla. June 29, 2011).

Judge Oetken reached the same conclusion with respect to Global Customer Support Reps:

> "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes,* 131 S.Ct. at 2551 (citation and quotations omitted). It asks not simply whether there are questions of law or fact common to the class, but whether a class action is capable of "generat[ing] common *answers* apt to drive the resolution of the litigation." *Id.* (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof,* 84 N.Y.U. L.Rev. 97, 131–32 (2009)). In other words, there must be "a common contention . . . of such a nature . . . 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.* "Even a single common legal or factual question will suffice." *Freeland v. AT & T Corp.,* 238 F.R.D. 130, 140 (S.D.N.Y.2006) (citation omitted).
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> Plaintiff identifies several factual questions, common among all putative class *163 members, including whether Bloomberg suffered or permitted GCSRs to work over 40 hours per week; knew that they did; failed to pay them overtime; failed to record all hours that they worked; and gave them comp time instead of overtime pay for work on holidays and weekends. Plaintiff also identifies two common legal questions: whether Bloomberg's failure to pay overtime was lawful, and whether it was done in good faith. Questions such as these are generally ideal for class resolution. *See, e.g., Poplawski,* 2012 WL 1107711, at *7 ("In wage cases, the commonality requirement is usually satisfied where the plaintiffs allege that defendants had a common policy or practice of unlawful labor practices.") (citation omitted). Bloomberg, however, contests commonality on two grounds.
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> First, it reiterates the argument—made in opposition to conditional certification—that the possible existence of administrative exemptions renders GCSRs too dissimilar for class treatment. Yet Bloomberg does not dispute the allegations from Plaintiff and two additional GCSRs that the "primary job" of GCSRs was to answer phone calls and determine where to route them within the company, and that they personally resolved only minor issues such as resetting passwords and checking account balances. (Jackson Decl. ¶¶ 7, 8, 10; Mrozewski Decl. ¶¶ 7, 9, 11; Tembe Decl. ¶¶ 6, 8, 10.) On the contrary, Bloomberg similarly attests that GCSRs are "primarily responsible" for receiving and routing phone calls; spend an average of five hours a day doing so; and personally handle rote tasks such as "resetting passwords or providing login information to a customer." (Elmy Decl. ¶¶ 2–3; Shannon Decl. ¶ 6.) Thus, the parties agree that GCSRs are similar in most material respects. Bloomberg's contention that individualized proof will be necessary to determine whether GCSRs are exempt does not defeat commonality, and is "better suited to the predominance inquiry." *Jacob v. Duane Reade, Inc.,* 289 F.R.D. 408, 415 (S.D.N.Y.2013), *reconsidered on other grounds,* 293 F.R.D. 578 (S.D.N.Y.2013); *see also Damassia,* 250 F.R.D. at 156–57 (same).
>
> Second, Bloomberg contends that it did not have a common policy requiring GCSRs to work overtime or "off the clock."[3] Again, Bloomberg's objection is belied by its own admissions. Bloomberg concedes that GCSRs were required to be logged in and ready to

> work when their shift began. (Shannon Decl. ¶ 15.) It also concedes that they were expected to work after the end of their shift to complete calls, and to enter notes to tickets for each call and log out at the end of their shift. (Elmy Decl. ¶ 16.) Bloomberg describes these activities as minimal, asserting that the act of logging in or logging out takes less than a minute and that there is "very little 'after call' work." (Elmy Decl. ¶ 16; Shannon Decl. ¶ 15.) That such work may be minimal does not change the fact that it was required. Moreover, the import of these admissions is compounded by Bloomberg's badge data for Plaintiff, which shows that she was physically in the office for more than 40 hours during 58 out of 132 weeks of employment, or 44% of the time. (Golden Decl., Ex. C ("Badge Data").) The Court also finds relevant DOL's conclusion—and Bloomberg's concession for purposes of the DOL Settlement—that GCSRs worked more than 40 hours per week and were therefore entitled to overtime compensation. Although Bloomberg disputes that GCSRs were required to work from home, the Court finds that the allegations from Plaintiff and two additional GCSRs, considered in light of the rest of the evidence, are sufficient to establish an "off the clock" policy. In sum, Plaintiff has demonstrated, by a preponderance of the evidence, that Bloomberg had a common policy or plan requiring or knowingly permitting GCSRs to work overtime in the ways alleged.

Jackson v. Bloomberg, L.P., 298 F.R.D. 152, 162–63 (S.D.N.Y. 2014).

C. The Class Representatives Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a)(4) provides that, in order to certify a class, its proponents must show that "the representative parties will fairly and adequately protect the interests of the class" Fed. R. Civ. P. 23(a)(4). The Second Circuit Court of Appeals has held that the threshold for meeting "adequacy of representation" is "[first,] class counsel must be 'qualified, experienced and generally able' to conduct the litigation. Second, the class members must not have interests that are 'antagonistic' to one another." *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992) (internal citations omitted); *Jankowski v. Castaldi*, No. 01CV0164(SJF)(KAM), 2006 WL 118973 at *3-4 (E.D.N.Y. Jan. 13, 2007).

1. Class Counsel is Adequate

Based on the declaration of class counsel, adequacy of counsel is also assured. Plaintiffs' counsel Getman & Sweeney, PLLC has significant experience handling class actions, having successfully litigated numerous class actions during his more than 30 years of legal practice.

Getman Decl. ¶¶ 24-26. Further, Plaintiffs' counsel is experienced in handling employee wage and hour cases, having handled FLSA litigation since 1989. *Id*. Currently, he is handling numerous wage and hour cases and has handled many such cases in the past. ¶¶ 24-27. Plaintiffs' counsel has also handled class actions of state wage claims brought with FLSA collective actions before Judges Daniels, Oetken, Cote, Robinson, Brieant, Marrero, Koeltl and others in the Southern District of New York. Indeed, Getman & Sweeney has successfully concluded three other FLSA actions against Bloomberg—*Jackson v. Bloomberg*, 13-cv-2001, (S.D.N.Y.), Order Granting Final Approval of Class Settlement, Doc. No. 120; *Enea v Bloomberg L.P.*, No. 12CV4656-GBD-FM, (S.D.N.Y.), Order Granting Preliminary Approval of Class Settlement, Doc. No. 135., and settled a collective action against Bloomberg—*Siegel v. Bloomberg L.P.*, No. 13CV1351-DLC-DCF (S.D.N.Y.)—for three Plaintiffs. *See*, Endorsed Letter Regarding Settlement, Doc. No. 104. Plaintiffs' counsel has successfully handled numerous other class actions as fully detailed in the declaration of Counsel**.** Getman Dec.¶24-26. Getman & Sweeney is a seven-attorney firm with seven paralegals and two data scientists, all of whom are engaged exclusively in handling wage and hour cases on behalf of individuals and classes around the country. Getman Dec. ¶37-41. The firm keeps a low caseload so that each case is adequately staffed according to its needs. The bios of all staff are stated on the firm's website. The firm litigates wage and hour class actions around the country. *See*, *Morangelli v. Chemed Corp.*, 275 F.R.D. 99 (E.D.N.Y. 2011), in which the Court noted:

> Defendants do not challenge the adequacy of the class counsel. They would be hard-pressed to; as another court recently noted, counsel's qualifications are "stellar" and this element is "easily met." *Bredbenner v. Liberty Travel, Inc.*, No. 09–905, 2011 U.S. Dist. LEXIS 38663, at *22 (D.N.J. Apr. 8, 2011).

Id. at 119. Adequacy of class counsel is established.

2. The Representatives Are Adequate

The class members do not have interests that are antagonistic to one another. Named Plaintiff Alexander Lee raises New York state claims that are applicable to him and all other members of the New York class. Named Plaintiff William VanVleet raises California state claims applicable to him and to all members of the California class. The interests of the Named Plaintiffs—to collect unpaid wages—do not differ from those of the classes they represent. It is sufficient, as is the case here, that the representative plaintiffs have adequate personal knowledge of the essential facts of the case. *See Iglesias-Mendoza,* 239 F.R.D. at 372. Such knowledge is demonstrated by the named Plaintiffs' declarations attached as exhibits herein.

D. Present Counsel Should Be Appointed Class Counsel

If certification is granted, Rule 23(g) provides that the court must appoint class counsel. To that end, the court must consider the following: "[(1)] the work counsel has done in identifying or investigating potential claims in the action, [(2)] counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, [(3)] counsel's knowledge of the applicable law, and [(4)] the resources counsel will commit to representing the class." The court may consider any "other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." *Noble,* 224 F.R.D. at 339-40.

Present counsel has handled this matter from the outset, performing all the investigation and identification of claims. Counsel handles wage and hour cases and has in excess of 30 years of law practice. *See* Getman Decl., ¶¶ 1, 8-26. No other attorneys have handled three other successful cases against Bloomberg for overtime violations. Class counsel will commit, and has already committed, the necessary resources to representing the class, as he has in previous class representations.

E. The Requirements of Rule 23(b)(3) Are Met.

Under Rule 23(b)(3), a class may be certified only where "questions of law or fact common to the members of the class predominate over any questions affecting only 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). In this case, common questions of law and fact predominate and a class action is a superior method of adjudication.

1. Common Questions of Law and Fact Predominate

The predominance requirement evaluates whether a proposed class is cohesive enough to merit adjudication by representation. *See Moore v. PaineWebber, Inc.* 306 F.3d 1247, 1252 (2d Cir. 2002). Predominance will be established if "resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Id.* Consequently, to determine whether common questions of law or fact predominate, a court must focus "on the legal or factual questions that qualify each class member's case as a genuine controversy . . . [and] test[ ] whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 623 (1997); *see also, In re Visa Check/MasterMoney*, 280 F.3d 124, 135 (2d Cir. 2001); *In re WorldCom, Inc. Securities Litigation,* 219 F.R.D. 267, 287-288 (S.D.N.Y. 2003).

The predominant legal and factual issues in this case are issues that apply across the class. The predominant legal issues for the class involve whether Defendant violated the law by not paying class members any overtime pay (at time and one-half their regular rate) when they worked over 40 hours in a week as they were regularly required to do (such as by being scheduled to work six or seven eight-hour days, by being encouraged to come in early to log on to the various

computerized systems, by being required to work through their lunch or after their shift ended handling calls), and whether defendant's policy of giving comp time in later pay weeks, in lieu of overtime hours worked violated federal and state law.

Even Bloomberg's affirmative defense claiming that ADSK Reps were exempt from overtime under the administrative or computer exemption applies to all class members.[10] In class action litigation against Bloomberg on behalf of an identical group of customer service employees the Court certified the Rule 23 class finding commonality and typicality because "Bloomberg's purported affirmative defense, which relies on the administrative and computer exemptions, applies against all Plaintiffs for all claims." *Enea v. Bloomberg, L.P.*, 12 CIV. 4656 GBD FM, 2014 WL 1044027, at *4 (S.D.N.Y. Mar. 17, 2014).

Of course there are subsidiary related legal issues that are also common to the entire class as well. These include whether the Defendant employed plaintiffs, whether Plaintiffs worked over 40 hours in a week, whether the Defendant acted willfully, negligently, or in good faith in failing to pay overtime, and whether any of Defendant's affirmative defenses are applicable. Further, as the answer clearly claims, Bloomberg's defenses apply to the class as a whole. Bloomberg's universal defense is that these call center employees were exempt from overtime under the administrative or computer exemption. Answer, Doc. No. 106.[11]

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[10] Plaintiffs expect to address this predominant legal issue through a motion for summary judgment demonstrating that Defendant waived the defense by refusing to state during the course of discovery what it believed Plaintiffs' primary job duty to be—which is its burden to demonstrate. *Fernandez v. Zoni Lang. Centers, Inc.*, 15-CV-6066 (PKC), 2016 WL 2903274, at *2 (S.D.N.Y. May 18, 2016) (defendant bears the burden of proving that Plaintiffs' primary job duty is "plainly and unmistakeably" within the terms of an exemption); *Magnoni v. Smith & Laquercia, LLP*, 661 F. Supp. 2d 412, 416 (S.D.N.Y. 2009) (same).

[11] In its answer Bloomberg also claims that Reps are exempt under the Highly Compensated Worker exemption. Employees that earn over $100,000 in any calendar year (or in any designated rolling 52 week period) would be considered exempt under the Highly Compensated Worker exemption. 29 C.F.R. §541.601. Plaintiffs make no claim that such individuals would be

By collectively litigating these claims in one case, the Court benefits from judicial efficiency and plaintiffs benefit from pooling their resources and the litigation fees and costs remain low. *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 171 (1989). And, finally, litigating the claims on a class basis furthers the FLSA's remedial goals.

All of these issues are subject to generalized proof. Once those class-wide issues are resolved, the remaining factual questions are minor, *e.g.*, how many overtime hours did a particular class member work. The Supreme Court has repeatedly stated that when a defendant fails to record all the work its non-exempt employees perform (as required by regulation, 29 C.F.R. § 516.2) generalized proof of the amount such work is permitted through "inexact" representative testimony. *Anderson v. Mt. Clemens Pottery Co., Inc.* 328 U.S. 680, 687-688 (1946).

The U.S. Supreme Court has declared that when employers fail to keep records as to daily work hours as required, employees may prove their hours of work by generalized representative testimony. *Anderson v. Mt. Clemens Pottery Co., Inc.* 328 U.S. 680, 688 (1946); 29 C.F.R. §516.2 (requiring employers to keep track of daily start and stop times and total hours as well as weekly total work hours, among other recordkeeping obligations):

> The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of s 11(c) of the Act. And even where the lack of accurate records grows out of a bona fide mistake as to whether certain activities or non-activities constitute work, the employer, having received the benefits of such work, cannot object to the payment for the work on the most accurate basis possible under the circumstances. Nor is such a result to be condemned by the rule that precludes the recovery of uncertain and speculative damages. That rule applies only to situations where the fact of damage is itself uncertain. But here we are assuming that the employee has proved that he has performed work and has not been paid in accordance with the statute. The

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class members here for any year in which the Highly Compensated Worker exemption might be applied. A review of the payroll data reveals that none of the Named Plaintiffs or the 32 individuals that opted-into the case earned over $100,000 in any calendar year. Getman Dec. ¶ 6.

> damage is therefore certain. The uncertainty lies only in the amount of damages arising from the statutory violation by the employer. In such a case 'it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts.' *Story Parchment Co. v. Paterson Parchment Co.*, 282 U.S. 555, 563, 51 S. Ct. 248, 250, 75 L.Ed. 544. It is enough under these circumstances if there is a basis for a reasonable inference as to the extent of the damages.

Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 688 (1946).

It is an employer's duty to keep track of an employee's work hours and that duty is not delegable:

> The obligation [to record hours worked correctly] is the employer's and it is absolute. He cannot discharge it by attempting to transfer his statutory burdens of accurate record keeping, 29 U.S.C.A. 211(c), and of appropriate payment, to the employee. The employer 'at its peril, * * * had to keep track of the amount of overtime worked by those of its employees in fact within the Act.'

Caserta v. Home Lines Agency, Inc., 273 F.2d 943, 946 (2d Cir. 1959). Indeed, this is the only rule that could rationally be applied, because if an employer were allowed to evade the FLSA simply by failing to keep records, then the FLSA and state wage laws would be rendered completely ineffective *ab initio*. When an employer fails to abide by its legal duty to keep track of employee work hours, it cannot be heard to argue that its own failure should insulate it from making recompense to employees for the hours they worked and for which they legally should have been paid. These same principles apply to state law claims in New York. *A. Uliano & Son. Ltd. v. New York State Dep't of Labor*, 97 A.D.3d 664, 666-67, 949 N.Y.S.2d 84, 88 (2012) (permitting DOL resolution of back pay based on investigatory interviews).

As the court found in *Iglesias-Mendoza*, "[t]he issues to be litigated are whether the class members (1) were supposed to be paid the minimum wage as a matter of law and were not, and (2) were supposed to be paid overtime for working more than 40 hours a week and were not. These are perfect questions for class treatment. Some factual variation among the circumstances of the various class members is inevitable and does not defeat the predominance requirement."

239 F.R.D. at 373 (emphasis added). Even if some testimony were required to prove the extent of damages, where common questions of law and fact predominate with respect to liability, as they do here, the existence of individual questions as to damages is generally unimportant and does not defeat certification. *See, In re Visa Check Antitrust Litig.*, 280 F.3d 124, 136 (2d Cir. 2001) (if common issues predominate as to liability, court should ordinarily find predominance even if some "individualized damage issues" exist); *Shabazz v. Morgan Funding Corp.*, 269 F.R.D. 245, 250-51 (S.D.N.Y. 2010) ("Any class action based on unpaid wages will necessarily involve calculations for determining individual class member damages, and the need for such calculations do not preclude class certification."); *Steinberg v. Nationwide Mut. Ins. Co.*, 224 F.R.D. 67, 80 (E.D.N.Y. 2004).

Plaintiffs expect that most of the damages in this case will be proven through representative testimony supplemented by corroboration through Bloomberg's electronic data. These data show regular overtime work by plaintiffs and they will also show the weekend and holiday overtime shifts worked by employees without the payment of time and one half overtime. Electronic time stamps for on-site work hours establish an average of 4 overtime hours per week. Getman Dec. ¶¶ 1-5. Additionally, there are electronic time stamps showing when employees perform certain work outside their badge hours – e.g. logging into their computers remotely, logging into the Bloomberg system, handling chats from home, sending emails, etc. Getman Dec. ¶¶ 7a. Thus electronic data will show most of the overtime liability due for employees working before and after their shift at the worksite, and when employees worked an extra day in a week. Representative testimony may be used to show what work employees did at home, but that testimony should be easily handled on a representative basis, and in many instances, Bloomberg has time stamps even for this work.

Defendant may contend that many mini-trials will be required to prove damages, but that simply is not true—there will be no need for any mini-trials in this case. Electronic data will show most if not all overtime work and representative Plaintiffs will testify in general form about any completely unrecorded work, as permitted by the Supreme Court in *Anderson v. Mt. Clemens Pottery Co., Inc.*[12] and the great many other cases that have permitted wage hour representative testimony. "Courts have frequently granted back wages under the FLSA to non-testifying employees based upon the representative testimony of a small percentage of the employees." *Donovan v. Bel-Loc Diner, Inc.*, 780 F.2d 1113, 1116 (4th Cir. 1985). *See also Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233 (11th Cir. 2008) (7 workers testimony on behalf of class of 1,424 not unfair); *Adams v. U.S.*, 44 Fed. Cl. 772 (Ct. Fed. Cl. 1999) (31 plaintiffs testified for class of 300); *Schultz v. Capital Intern. Sec., Inc*., 466 F.3d 298, 310 (4th Cir. 2006); *Hipp v. Liberty Nat. Life Ins. Co*., 252 F.3d 1208, 1227 (11th Cir. 2001) (discussing pattern and practice evidence used to prove discrimination in the ADEA context); *Donovan v. Burger King*, 672 F.2d 221 (1st Cir. 1982) (allowing representative testimony to prevent cumulative evidence because of the "basic similarities between the individual restaurants"); *Dole v. Snell*, 875 F.2d 802 (10th Cir. 1989) (allowing representative testimony to address whether

[12] "The solution [to an employer's failure to record all work performed], however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-688 (1946).

plaintiffs were independent contractors when the parties stipulated that the testifying plaintiff was representative); *Falcon v. Starbucks Corp*., 580 F. Supp. 2d 528, 540 (S.D. Tex. 2008) (collecting cases); *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 88 (2d Cir. 2003) ("[N]ot all employees need testify in order to prove FLSA violations or recoup back-wages"); *Reich v. Gateway Press*, 13 F.3d 685, 701-02 (3d Cir. 1994) ("Courts commonly allow representative employees to prove violations with respect to all employees."); *Brennan v. General Motors Acceptance Corp.*, 482 F.2d 825, 829 (5th Cir. 1973) (allowing representative testimony in a case involving unpaid overtime); *Thiebes v. Wal-Mart Stores, Inc*., 2004 WL 1688544, at *1 (D. Or. July 26, 2004); *National Electro-Coatings, Inc. v. Brock*, No. C86-2188, 1988 WL 125784, at *8 (N.D. Ohio July 13, 1988) ("Courts have consistently allowed, or even required, a small number of employees to testify to establish a pattern of violations for a larger number of workers."); *see also The Fair Labor Standards Act, p.*1333 (Ellen C. Kearns et al., eds.1999) (noting that it is "well settled" that "not all affected employees must testify in order to prove violations or to recoup back wages. Rather, in most cases, employees and the Secretary may rely on representative testimony").

The recent decision in *Comcast v. Behrend*, 133 S. Ct. 1426 (2013) does not afford defendant any greater defense to class-wide remediation of its wage hour violations in this case. As the majority explicitly stated, *Comcast* "turns on the straightforward application of class-certification principles . . . ." *Comcast*, 133 S. Ct. at 1433. The *Comcast* decision does not infringe on the long-standing principle that individual class member damage calculations are permissible in a certified class under Rule 23(b)(3). *Munoz v. PHH Corp.*, 1:08-CV-0759-AWI-BAM, 2013 WL 2146925, *24 (E.D. Cal. May 15, 2013). As the *Comcast* dissent noted, the majority opinion "breaks no new ground on the standard of certifying a class action under Federal Rule of Civil Procedure 23(b)(3)." *Id.*, *citing Comcast*, 133 S. Ct. at 1436 (Ginsburg, J.

Dissenting) ("[r]ecognition that individual damages calculations do not preclude class certification under Rule 23(b)(3) is well nigh universal . . . In the mine run of cases, it remains the 'black letter rule' that a class may obtain certification under Rule 23(b) (3) when liability questions common to the class predominate over damages questions unique to class members").

Thus, district courts continue to certify class actions on representative testimony post-*Comcast* where damages are capable of determination on a class-wide basis, the damages are traceable to a plaintiff's "liability case," and the calculation of damages will not be complex or numerous. *See, e.g., Rosario v. Valentine Ave. Disc. Store, Co., Inc.*, 10 CV 5255 ERK LB, 2013 WL 2395288, *9 (E.D.N.Y. May 31, 2013) (finding predominance in FLSA and NYLL case where plaintiffs alleged that defendants had a uniform practice of paying employees below minimum wage and of not paying overtime wages; "The question of whether class members were properly paid can be addressed by class-wide proof regarding the accuracy of defendants' payroll records, defendants' financial records, and testimony."); *Parra v. Bashas', Inc.*, CIV-02-0591-PHX-RCB, 2013 WL 2407204, *32 (D. Ariz. May 31, 2013) ("If [defendant] is found liable, it strikes the court, as the plaintiffs urge, that the back pay determination 'is a purely mechanical process[.]' Furthermore, through a computer program, and relying upon 'objective factors' such as 'the individual employee payroll record (dates of employment job position, hours worked) and the wage scale,' which is part of the record, the plaintiffs will be able to calculate back pay losses for 'each eligible class member[.]'"); *Munoz*, 2013 WL 2146925 at *24 (certifying class because plaintiffs could ascertain class-wide damages directly attributable to their liability case); *Martins v. 3PD, Inc.*, CIV.A. 11-11313-DPW, 2013 WL 1320454, *8 fn 3 (D. Mass. Mar. 28, 2013) (*Comcast* does not "foreclose the possibility of class certification where some individual issues of the calculation of damages might remain, as in the current case,

but those determinations will neither be particularly complicated nor overwhelmingly numerous.").

In *Leyva v. Medline Indus. Inc.*, the Ninth Circuit reversed the district court's denial of class certification in a California labor law case where plaintiffs' damages stemmed from the defendant's actions that created the legal liability. 11-56849, 2013 WL 2306567, *3 (9th Cir. May 28, 2013). "Here, unlike in *Comcast*, if putative class members prove Medline's liability, damages will be calculated based on the wages each employee lost due to Medline's unlawful practices." *Id*. The Ninth Circuit noted that "damages determinations are individual in nearly all wage-and-hour class actions" and that "damage calculations alone cannot defeat certification." *Id.* In the instant case, there will undoubtedly be individual class member damage calculations. However, such individual damages are permissible in a certified class under Rule 23(b)(3) because liability questions common to the class of whether Bloomberg paid Plaintiffs properly predominate over damages questions unique to class members: damages are capable of determination on a class-wide basis through defendants' payroll records, defendants' badge records, and representative testimony; the damages are traceable to a plaintiff's "liability case," as damages will be calculated based on the wages each employee lost due to Bloomberg's unlawful practices; the calculation of damages will not be complex, as it is merely a mathematical computation of multiplying Plaintiffs' regular rate of pay by one and one-half by the number of unpaid overtime hours; and the calculation of damages will not be numerous, as the number of class members in this case is radically lower than the more than 2 million putative class members in *Comcast*, *see Comcast*, 133 S. Ct. at 1429.

Bloomberg itself conceded the classability of overtime damages through its settlement of class overtime claims by analogous classes in the *Enea* (Global Technical Support Call Center

workers) and *Jackson* (Global Customer Support Call Center workers) cases. Common questions predominate here and certification of a class is appropriate.

2. A Class Action Is a Superior Method of Adjudication

The superiority question under Rule 23(b)(3) requires a court to consider whether a class action is superior to other methods of adjudication. The court should consider, *inter alia*, "the interest of the members of the class in individually controlling the prosecution or defense of separate actions" and "the difficulties likely to be encountered in the management of a class action." *Noble*, 224 F.R.D. at 339.

The overwhelming precedent in the Second Circuit has made it clear that adjudicating FLSA collective actions and Rule 23 state law claims together is superior to other available methods. *See Damassia v. Duane Reade*, Inc., 250 F.R.D. 152, 164 (S.D.N.Y. 2008) (holding that defendant's argument "that class certification should be denied because it is preferable that potential class members proceed through an FLSA collective action is unpersuasive, particularly in light of the overwhelming precedent in the Second Circuit supporting certification of simultaneous NYLL class actions and FLSA collective actions. Hence, the superiority requirement of Rule 23 is satisfied."); *see also Lee v. ABC Carpet & Home*, 236 F.R.D. 193, 205 (S.D.N.Y. 2006). Indeed, the state Rule 23 claim for parallel state overtime claims complements the FLSA's goal to protect "all" covered workers. *Barrentine v. Arkansas Best Freight System, Inc.*, 450 U.S. 728, 739 (1981) ("The principal congressional purpose in enacting the FLSA was to protect all covered workers from substandard wages and oppressive working hours . . .".).

In light of the overwhelming precedent in the Second Circuit supporting certification of simultaneous New York Labor Law class actions and FLSA collective actions, Plaintiffs' claims for overtime compensation should be handled on a class wide basis. The management of a class action in this matter is not complex and all the legal and factual issues can be resolved in a single

proceeding. Resolving the predominant issues in a single action is more efficient than re-litigating them in many different individual actions. Adjudication of the common issues of law and fact is in the interest of all class members and they are well represented by lead Plaintiffs and counsel. It avoids competing decisions on the predominant issues and offers finality. There is no device that can resolve these matters as efficiently as a class action.

II. Defendant Should be Directed to Supply Names and Contact Information to Facilitate Prompt and Effective Notice to Putative Class Members.

Defendant should be directed to provide names, addresses, and any employee number or other unique identifier of the class members in an electronic format to facilitate mailing of the notice. Federal Rule of Civil Procedure 23(c)(2)(B) provides that "the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." As the defendant has the contact information of its current and former employees, the Court should order the defendant to provide the information for sending class notice. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978). The Supreme Court similarly has directed that defendants should provide names and addresses of class members in collective action cases. *Hoffman-LaRoche, Inc.*, 493 U.S. at 171. The names should be supplied promptly in an electronic format so that notice is most easily accomplished.

Plaintiffs request that the Court to order Defendant to provide Plaintiffs' counsel with putative class members' names, last known addresses, email addresses, and any employee number or other unique identifier Bloomberg uses to maintain the integrity of its payroll database.[13]

[13] Unique identifiers are critical tools used to maintain database integrity in producing payroll. Providing the company's unique identifiers will allow Plaintiffs to synch the resulting database of clients with the Defendant's databases for determining merits and damages issues. Without receiving unique identifiers, it will be unknown whether the Robert Doe in a given record refers to Robert Doe Jr, Robert Doe, Sr. Rob Doe, Rob Don (sic), etc. Unique identifiers remove many

III. Plaintiff's Proposed Notice Should be Mailed, Emailed, and Posted.

Plaintiff asks the court to authorize Plaintiff to disseminate the Notice by sending it by mail to class members last known addresses, with permission to re-mail if the notice is returned as undeliverable.

Mailing of notice is the best notice practicable, and that is the routine method for delivering notice. However, this means is not foolproof, particularly with a mobile class with a period extending over many years. The class members here work or worked in New York City and San Francisco, urban areas where most people rent their domiciles and move frequently. Thus, posting of the notice by Defendant where it can be seen by current workers who may also have worked in the department in prior years contributes to dissemination among class members. District courts around the country have also recognized posting (in addition to mailing) as an efficient, non-burdensome method of notice that courts regularly employ. *See Sherrill v. Sutherland Global Servs. Inc.,* 487 F. Supp. 2d 344, 351 (W.D.N.Y. 2007) (allowing notice to be posted at defendant's places of business for 90 days and mailed to all class members); *Castillo v. P & R Enterprises, Inc.,* 517 F. Supp. 2d 440, 449 (D.D.C. 2007) (ordering notice posted in '(1) Defendant's offices, or (2) office spaces designated for Defendant's use in third-party buildings"); *Romero v. Producers Dairy Foods, Inc.,* 235 F.R.D. 474, 492-93 (E.D. Cal. 2006) (finding that posting of notice in workplace and mailing is appropriate and not punitive); *Veliz v. Cintas,* No. C 03-1180 SBA, 2004 WL 2623909 at *2 (N.D. Cal. 2004) (citing court order to post notice in all workplaces where similarly situated persons are employed); *Garza v. Chicago Transit Authority,* No. 00 C 0438, 2001 WL 503036 *4 (N.D. Ill. May 8, 2001) (ordering

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complex database management issues that make handling a case of this type far more complex and time consuming than necessary.

defendant to post notice in all of its terminals); *Johnson v. American Airlines*, 531 F. Supp. 957, 961 (S.D. Tex. 1982) (finding that sending notice by mail, "posting on company bulletin boards at flight bases and publishing the notice without comment in American's The Flight Deck, are both reasonable and in accordance with prior authority"); *Frank v. Capital Cities Communications, Inc.*, 88 F.R.D. 674, 679 (S.D.N.Y. 1981) (requiring defendant to "permit the posting of copies of public bulletin boards at FP offices"); *Soler v. G&U, Inc.*, 86 F.R.D. 524, 532-532 (S.D.N.Y. 1980) (authorizing plaintiffs to "post and mail the proposed notice of pendency of action and consent to sue forms").

A copy of the notice Plaintiffs propose to mail and post to New York class members is attached to this motion as Exhibit T. A copy of the notice Plaintiffs propose to mail and post to California class members is attached to this motion as Exhibit U. The notice informs class members in neutral language of the nature of the action, of their right to assert state wage and hour claims by remaining in the class, and the consequences of their remaining in or opting out of the action. The form of this notice is consistent with other notices issued by this Court. *See*, *Enea v Bloomberg* ., No. 12 CIV. 4656 GBD FM, (S.D.N.Y.), Class Notice at Doc. No. 152-2.

CONCLUSION

For all of the foregoing reasons, this Court should enter an Order:

(1) Certifying this action as a Rule 23 Class Action consisting of all representatives in the Analytics Department in New York who were not paid time and one-half for hours over 40 worked in one or more weeks at any time within the six years preceding the filing of this Complaint and the date of final judgment in this matter ("New York Class").

(2) Certifying this action as a Rule 23 Class Action consisting of all representatives in the Analytics Department in California who were not paid time and one-half for hours over 40 worked in one or more weeks or hours over 8 worked in one or more days at any time

within the four years preceding the filing of this Complaint and the date of final judgment in this matter. ("California Class").

(3) Certifying this action as a Rule 23 Class Action consisting of all California Class Members who are no longer employed by Defendant and have not been employed by Defendant for more than 72 hours and who did not receive lawful overtime compensation and other premiums upon separation from employment. ("California Waiting Time Penalties Subclass").

(4) Appointing the undersigned as Class Counsel.

(5) Authorizing Plaintiffs to issue the notice forms attached as Exhibits T and U by mail, and e-mail, and requiring Defendant to post the notice in a conspicuous place in its offices where Plaintiffs are employed.

(6) Giving putative class members a period of 60 days from the date that notice is issued to opt-out of this action.

(7) Requiring Defendant to provide Plaintiffs, in electronically readable form, the names, addresses, email addresses, and any employee number or unique identifier of all class members.

Date: August 19, 2016

Respectfully Submitted,

/s/ Dan Getman

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