UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV15-7985 PSG (MRWx)	Date	August 23, 2016
Title	Felicia Vidrio, *et al.* v. United Airlines, Inc., *et al.*		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING Plaintiff's Motion for Class Certification

Before the Court is Plaintiff Felicia Vidrio's ("Vidrio") motion for class certification. Dkt. # 28. After considering the arguments in the moving, opposing, and reply papers, as well as those presented at a hearing on August 22, 2016, Court GRANTS Vidrio's motion.

I. Background

Vidrio and Plaintiff Paul Bradley ("Bradley") both reside in Los Angeles, California and are employed by Defendant United Airlines, Inc. ("United") as flight attendants. Dkt. # 24, *Amended Consolidated Complaint* ("Compl.") ¶¶ 7, 20. On August 6, 2015, Vidrio and Bradley filed separate actions against United in Los Angeles Superior Court. Dkt. # 1, *Notice of Removal* ("NOR") Ex. A; *see also* CV15-7986 PSG (AFMx), Dkt. # 1, Ex. A. United removed both actions to this Court pursuant to the Class Action Fairness Act of 2005. *See id.* This Court then consolidated the actions on February 22, 2016. *See* Dkt. # 20. Plaintiffs filed their Amended Consolidated Complaint on March 22, 2016. *See Compl.*

In their Complaint, Plaintiffs assert one claim for illegal wage statement penalties under the Private Attorney General Act ("PAGA"), as well as a class action claim for illegal wage statements under California Labor Code Section 226 ("Section 226"). *See id.* Vidrio now moves to certify a class of approximately 5,000 current and former flight attendants to whom United issued wage statements from July 6, 2014 until the present. Dkt. # 28 ("Mot.") 2.

II. Legal Standard

A plaintiff seeking class certification must affirmatively demonstrate that it meets the four requirements of Federal Rule of Civil Procedure 23(a), and at least one of the requirements of Rule 23(b). *Amchen Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997). To satisfy Rule

23(a), the plaintiff must show that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). To certify a class under Rule 23(b)(3), the plaintiff must also show that "questions of law or fact common to class members predominate over any questions affecting only individual class members," and "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are often referred to respectively as numerosity, commonality, typicality, adequacy, predominance, and superiority.

The Court must conduct a "rigorous analysis" to confirm that the Rule 23 standard has been met. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982); *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). As the Supreme Court has explained: "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013).

III. Discussion

Vidrio only seeks certification for the second claim of Plaintiffs' Consolidated Amended Complaint. That claim is for violations of Section 226(a), which states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicably hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .

Cal. Lab. Code § 226(a)(8)-(9). Section 226(e)(1) provides that an employee who suffers injury as a result of an employer's knowing and intentional failure to comply with Section 226(a) is entitled to recover statutory damages for each pay period in which a violation occurs, as well as costs and attorneys' fees. *Id.* § 226(e)(1). The aggregate penalty per employee is capped at $4,000. *Id.* Employees are deemed to have suffered an injury where the employer fails to

provide accurate and complete information required by Section 226(a) and the employee "cannot promptly and easily determine [that information] from the wage statement alone." *Id.* §226(e)(2)(B). "'Promptly and easily determine' means that a reasonable person would be able to readily ascertain the information without reference to other documents or information." *Id.* § 226(e)(2)(C). "Knowing and intentional" requires only that an employer be aware of or intend the format of the wage statements it provides to its employees. *Willner v. Manpower, Inc.*, 35 F.Supp.3d 1116 at 1131 (N.D. Cal. 2014).

In sum, to prevail on a Section 226(e) claim, a plaintiff must show: (1) that the wage statements did not comply with the requirements of Section 226(a); (2) that the employer knew and intended the format of the wage statements; and (3) a resulting injury. *Id.* at 1118.

In her second claim, Vidrio alleges that the wage statements provided by United failed to list United's physical address, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours flight attendants worked at each hourly rate. *Compl.* ¶ 23; *Mot.* 4. Vidrio seeks certification on behalf of "[a]ll persons who were or are employed by United Airlines Inc. in California as flight attendants at any time from July 6, 2014 up to the present." *Id.* at 1. For the following reasons, the Court finds that Vidrio has satisfied the requirements of Rule 23(a)-(b), and that certification is therefore appropriate.

A. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no fixed number which satisfies the numerosity requirement; it "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc. v.* EEOC, 446 U.S. 318, 330 (1980). In general, however, "courts find the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 Fed.Appx. 646, 651 (9th Cir. 2010) (citing *EEOC v. Kovacevich "5" Farms*, No. CV-F-06-165, 2007 WL 1174444, at *21 (E.D. Cal. Apr. 19, 2007)). Here, approximately 5,000 flight attendants were employed by United in California during the relevant period. Dkt. # 1-1 ¶ 4. The Court finds, and the parties do not dispute, that it would be impracticable to join all 5,000 flight attendants to this action. The numerosity requirement is therefore satisfied.

B. Commonality

Under Rule 23(a)(2), Vidrio must show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This means that the class members' claims must "depend upon a common contention." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "What matters to class certification . . . is not the raising of common 'questions'—even in droves—but, rather, the capacity of a class-wide proceeding to generate 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)). Thus, Rule 23(a)(2) requires not just a common question, but one that is "capable of class-wide *resolution*." *Alcantar v. Hobart Service*, 800 F.3d 1047, 1053 (9th Cir. 2015) (quoting *Wal-Mart*, 564 U.S. at 350).

Here, there are class-wide questions of fact as to each element of the class members' Section 226 claim. First, there is a class-wide question of fact as to whether the wage statements United provided to its flight attendants during the class period contained the information required by Section 226(a). To answer that question, Vidrio presents a collection of wage statements provided to different members of the putative class during the class period. *Mot.* Ex. 5, *Compendium of Flight Attendant Declarations*, ¶¶ 1-3 and Exs. 1. The wage statements all follow the same format, and can therefore serve as a common form of proof. Second, because Section 226(e)(2) uses an objective standard to define "injury," injury can also be determined on a class-wide basis by reference to the wage statements in question. *See* Cal. Lab. Code § 226(e)(2)(C). Third, United's knowledge and intent can be determined on a class-wide basis, as well, through evidence that United's leadership was aware of and intended the format of the wage statements it provided to its employees. *See Willner*, 35 F.Supp.3d at 1131. The presence of class-wide proof as to each element of the Section 226 claim makes these questions of fact ideal for class-wide resolution. *See Torres v. Air to Ground Services, Inc.*, 300 F.R.D. 386, 403 (C.D. Cal. 2014) (holding that Section 226 inaccurate wage statement cases are ideally suited for class certification because "the facts necessary to prove this inaccuracy can be satisfied with common proof, namely Defendants' uniform payroll procedures and records of the wage statements themselves.").

United argues that the commonality requirement is not satisfied because there is no common answer to "whether United is liable for inaccurate wage statements provided to the putative class." *Opp.* 12. United explains that the "job situs" test—that is, where the work is actually performed—determines whether Section 226 applies at all. *Id.* Accordingly, United argues that it was only obligated to provide Section 226-compliant wage statements if the flight attendant performed a significant amount of his or her work within California during the pay period in question. *See id.* United points out that although it employs many flight attendants who reside in or who are domiciled in California, most of those flight attendants actually spend "very little time working in California." *Id.*; *Opp.* Ex. 2, *Declaration of Mark Kilayko* ["Kilayko

Decl."] ¶¶ 8, 11. Accordingly, United argues that there is no class-wide method of calculating which class members spent enough time working in California, such that United was required to provide them with Section 226-compliant wage statements. *Opp.* 12.

The Court finds United's argument unpersuasive, for several reasons. First, United artificially limits the potential questions capable of common resolution to "whether United is liable for inaccurate wage statements provided to the putative class." *Opp.* 12. The commonality requirement "does not . . . mean that *every* question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a 'single *significant* question of law or fact.'" *Abdullah v. U.S. Sec. Ass's, Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (emphasis in original) (quoting *Mazza v. American Honda Motor Co., Inc.*, 666 F.3d 581, 589 (9th Cir. 2012)). As already stated, there are significant factual questions capable of class-wide resolution as to: whether United's wage statements contained the information required by Section 226(a); whether United knew and intended to omit that information; and whether a reasonable person would have been able to ascertain the omitted information without reference to other documents or information. Those facts are significant because they track the three elements a plaintiff must establish to prevail on a Section 226(a) claim. *See Willner*, 35 F.Supp.3d at 1118. Even if the issue of whether United is liable for its inaccurate wage statements would itself require individual inquiries (based on whether an employee worked enough time in California for Section 226 to apply), commonality is satisfied by the significant factual questions capable of class-wide resolution.

Moreover, the Court disagrees with United's position that the issue of whether United is liable to the class for its inaccurate wage statements is necessarily incapable of class-wide resolution. United undermines its own argument by pointing out an overarching legal question whose answer will govern every class member's claim: whether the "job situs" test applies to Section 226 claims. If the test does not apply and wage statements issued in California must comply with Section 226 regardless of where the work was performed, then United is likely liable to the entire class for Section 226 violations. Conversely, United admits of its own accord that most (if not all) of its California-domiciled flight attendants actually spend very little time working in California. Accordingly, a determination that United must only provide accurate wage statements where flight attendants spend the majority of their time working in California would be fatal to most, if not all, of the putative class member's claims.[1] In sum, commonality is

[1] This was the outcome in the only other case to have directly addressed the issue at hand. In *Ward v. United Airlines, Inc.*, C15-02309 WHA, 2016 WL 1161504, at *5 (N.D. Cal. Mar. 23, 2016), the court considered whether to certify a class consisting of United's pilots. That case involved the same illegal wage statement claim that Vidrio brings here. The court certified the

satisfied because a class-wide proceeding would generate a "common answer[] apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc.*, 564 U.S. at 350.

United also argues that commonality does not exist due to the complicated structure which United uses to pay its flight attendants. United pays flight attendants twice monthly. *Opp.* Ex. 1, *Declaration of Anna Mikuta* ["Mikuta Decl."] ¶ 6. The first of the two monthly payments flight attendants receive is a "Flight Advance," which is based on the flight attendant's expected volume of work for the bid period, rather than on hours actually worked. *Id.* The second monthly payment is calculated differently based on whether the flight attendant was hired as part of United's acquisition of Continental in 2010.[2] *Id.* ¶ 7. For United flight attendants, the second monthly payment is essentially the higher of: (1) the flight attendant's time spent flying, multiplied by his or her hourly rate; or (2) a minimum pay guarantee ("MPG"). *Id.* For Continental flight attendants, the second monthly payment is 25 hours at the flight attendant's applicable base pay rate, plus hourly pay for hours where the flight attendant worked above 65 hours per month. *Id.* United argues that "Section 226 does not apply to flight attendants receiving the fixed amount or the MPG in any given month because these flight attendants are paid by salary for the entire month—not by hours worked." *Opp*. 16. United concludes that because Vidrio "fails to articulate any method by which this court could reach a common, class-wide answer as to whether United violated Section 226 with respect to the entire putative class," commonality is lacking.

Again, United's reasoning is seriously flawed. First, that a class action presents some factual issues requiring individualized attention does not defeat commonality, which asks only whether there are some significant issues of fact or law capable of class-wide resolution. Fed. R. Civ. P. 23(a)(2). The Court has already addressed the numerous common questions of fact and law raised by the class claim. Second, Vidrio does not allege that United failed to provide the

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class, finding that the issue of whether California's wage statement laws should still apply when a pilot works principally outside of California was capable of class-wide resolution. At the summary judgment stage, however, the court found that Section 226 "must be subject to the same jurisdictional limits as the wage-and-hour regulations to which it relates." *See Ward v. United Airlines, Inc.*, C15-02309, 2016 WL 3908077, at *4 (N.D. Cal. July 19, 2016). The Court therefore granted summary judgment because "for class members who worked primarily outside of California, Section 226—like the rest of California's labor laws—does not apply." *Id.* at *5. That decision has been appealed.

[2] Although all flight attendants are now employed by United, the flight attendants' terms and conditions of employment are governed by two separate CBAs.

applicable pay rate in some instances, which would require a case-by-case analysis of each wage statement for each class member. Rather, Vidrio alleges that United improperly failed to list this information at all. United may be correct that at least one—if not more—of each employees' bi-monthly wage statements was not required to list the applicable hourly rate, because the employee was not compensated for any hourly work during that pay period. However, that fact would not preclude a finding that United is liable for all instances where there *was* an applicable hourly rate which United failed to list. The individualized inquiry concerning how many pay periods each employee was compensated at an hourly rate of pay merely speaks to damages, because statutory damages are calculated on a per-violation basis. Because "the amount of damages is invariably an individual question," the Ninth Circuit has held that "the need for individualized findings as to the amount of damages does not defeat class certification." *Vaquero v. Ashley Furniture Industries, Inc.*, --F.3d.--, 2016 WL 3190862, at *3 (9th Cir. 2016) (quoting *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010)).

Finally, as Vidrio points out, the class claim asserts that United's wage statements violated not only Section 226(a)(9), but Section 226(a)(8), as well. Regardless of the pay structure reflected on each employee's wage statement, the issue of whether each statement listed United's physical address is entirely capable of class-wide resolution, without the need for any individualized analysis, whatsoever. *See Reply* 3. Because Vidrio has demonstrated numerous common questions of fact and law, the commonality requirement of Rule 23 is satisfied.

C. Typicality

Rule 23(a)(3) requires a named plaintiff's claims to be typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members, [but] they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). The danger that this requirement is meant to guard against is whether "absent class members will suffer if their representative is preoccupied with [claims or defenses] unique to it." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal quotations and citations omitted). To meet the typicality requirement, plaintiffs must therefore establish that other class members have the same or similar injury as them; the action is based on conduct that is not unique to them as the named plaintiffs; and other class members have been injured by the same course of conduct. *See id.*; *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

Here, the parties do not dispute that typicality is satisfied. Both Vidrio and the putative class members are flight attendants for United who received wage statements from United in California. United used the same format for the wage statements it furnished to Vidrio as it did for the wage statements it provided to the rest of the class members. Moreover, Vidrio's "injury" is the same as that to the other class members because injury in this case is measured by an objective standard. *See* Cal. Lab. Code § 226(e)(2)(C). Although Vidrio asserts one more claim along with Bradley, the Court has no reason to think that Plaintiff would be "preoccupied" with her one other claim, such that other class members would suffer. *See Ellis*, 657 F.3d at 984. The Court therefore finds that Plaintiff's claims are co-extensive with those of the absent class members, and that the typicality requirement is therefore satisfied. *See Hanlon*, 150 F.3d at 1020.

D. Adequacy

Rule 23(a)(4) requires plaintiffs to show that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Representation is adequate when the class representative and counsel do not have any conflicts of interest with other class members, and the representative plaintiff and counsel will prosecute the action "vigorously on behalf of the class." *See, e.g.*, *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012).

Vidrio argues that the adequacy requirement is satisfied because she has no interest adverse to the other class members; to the contrary, their interests are identically aligned because "they have been injured by the same company-wide policies and practices" and "seek the same penalties." *Mot.* 13. Vidrio attests that she is committed to vigorously prosecuting the case on behalf of the class, and that she has demonstrated her ability to advocate for the interests of the class by initiating the lawsuit and monitoring the progress of the case. Dkt. # 28, Ex. 1, *Declaration of Felicia Vidrio*, ¶¶ 7, 8, 9. Similarly, Plaintiffs' counsel assert that they have no conflicts of interest with any class members, and that they will continue to advocate vigorously for Vidrio and the class. *Mot.* Ex. 2, *Declaration of Kirk D. Hanson* ["Hanson Decl."] ¶ 10. Plaintiffs' counsel are highly experienced in class action litigation, including Labor Code cases, and have been appointed as class counsel in other wage statement class actions, specifically. *Id.* ¶¶ 2-7. The Court notes in particular that plaintiffs' counsel have obtained favorable results for classes in several other Section 226 cases. *Id.* ¶ 6.

United does not challenge class counsel's adequacy, but attacks Vidrio's adequacy on the basis that Vidrio lacks standing to sue for violations of Section 226.[3] Mot. 17-19; *see* NEWBERG ON CLASS ACTIONS § 3:59 (5th ed.) ("If a court finds that standing is lacking, then adequacy will be as well, for a plaintiff cannot be an adequate representative for claims she does not have standing to pursue."). United argues that employees must work principally in California in order to sue under Section 226. *Opp.* 18. Because Vidrio performed only 14.38 percent of her work within California's borders in 2015, United argues that she lacks standing. *Kilayko Decl.* ¶ 14; *Opp.* 18.

Vidrio does not address United's adequacy challenge in her reply brief, but the Court is unpersuaded nonetheless. The Court cannot find that Vidrio lacks standing without prematurely resolving the primary legal issue which controls this case: whether employers are bound by Section 226 when employees perform the majority of their work outside of California. Moreover, standing relates to adequacy of representation insofar as it has the potential to sever a plaintiff's interests from those of the class he seeks to represent. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979 (9th Cir. 2011) (holding that former employees who lacked standing to seek injunctive relief would not "adequately protect the interests" of the "class members whose primary goal is to obtain injunctive relief"). Here, a finding that employers are not bound by Section 226 where their employees perform the majority of their work outside of California would be fatal not only to Vidrio's standing, but to the claims of most—if not all—class members, who also perform the majority of their work outside of California's borders. That Vidrio's own standing depends on her prevailing on the substantive merits of the case makes her a more adequate class representative because she is more likely to "prosecute the action vigorously on behalf of the class." *Evon*, 688 F.3d at 1015.

E. Ascertainability

"In addition to more precisely articulated provisions of Rule 23(a) and (b), there is the implied prerequisite that the class be sufficiently definite and ascertainable." *Doyle v. Chrysler Grp. LLC*, No. SACV 13-00620 JVS, 2014 WL 7690155, at *5 (C.D. Cal. Oct. 9, 2014) (citing *Xavier v. Philip Morris USA, Inc.*, 787 F.Supp.2d 1075, 1089 (N.D. Cal. 2011)); *see McCrary v. Elations Co.*, LLC, No. EDCV 13-00242 JGB OP, 2014 WL 1779243, at *3 (C.D. Cal. Jan. 13, 2014) ("Although not mentioned in Rule 23(a), the moving party must also demonstrate that the

[3] United challenges Bradley's adequacy on the same grounds, but only Vidrio moves to certify the class. *See Notice of Mot.* The Court therefore addresses Vidrio's adequacy, only. It is worth noting, however, that the same reasons the Court finds Vidrio to be an adequate representative would apply to Bradley, as well.

class is ascertainable.") (citing *Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504, 521 (C.D. Cal. 2012)). "In order for a proposed class to satisfy the ascertainability requirement, membership must be determinable from objective, rather than subjective, criteria." *Xavier*, 787 F.Supp.2d at 1089.

Here, Vidrio's proposed class definition includes "[a]ll persons who were or are employed by United Airlines Inc. in California as flight attendants at any time from July 6, 2014 up to the present." *Mot.* 1. The parties do not address the ascertainability of the class in their briefs. At oral argument, however, counsel for United requested that should the Court certify the class, it also modify the class definition to specify whether an employee's "employment . . . in California" is based on residence, domicile, or both. The Court agrees that the proposed class definition is not sufficiently ascertainable because there are multiple ways to interpret "employed . . . in California." *See Xavier*, 787 F.Supp.2d at 1089.

Federal law governs how to calculate the income tax for "an employee of an air carrier having regularly assigned duties on an aircraft in at least 2 states[.]" Section 40116(f)(2) of Title 49 of the United States Code provides that such employees are "subject to the income tax laws of only the following: (A) the State or political subdivision of the State that is the residence of the employee[; and] (B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier." 49 U.S.C. § 40116(f)(2). Because flight attendants generally do not spend fifty percent of their flight time in any particular state, United withholds based on a flight attendant's state of residence. *Opp.* Ex. 3, *Declaration of Kevin Spars* ¶¶ 5, 6. The Court finds that rather than leave open-ended the question of what it means for flight attendants to be "employed by United Airlines Inc. in California," the class definition should include only flight attendants for whom United applied California's income tax laws. This was the approach taken by the Northern District of California in *Ward v. United Airlines*, and the Court agrees that it is the best way to ensure that the class is ascertainable from United's payroll records. *See Ward*, 2016 WL 1161504, at *8.

F. Predominance and Superiority

Finally, Vidrio argues that certification is appropriate under either Rule 23(b)(2) or 23(b)(3). *Mot.* Because the Court finds that certification is proper under the latter, it need not address the parties' arguments concerning the former.

Certification under Rule 23(b)(3) is appropriate when "questions of law and fact common to class members predominate over any questions affecting only individual members" and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

i. Predominance

"In contrast to Rule 23(a)(2), Rule 23(b)(3) focuses on the relationship between the common and individual issues." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (quoting *Amchem*, 521 U.S. at 623). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis." *Id.* "[P]redominance does not require plaintiffs to prove that every element of a claim is subject to class-wide proof; they need only show that common questions predominate over questions affecting only individual class members." *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944-SC, 2013 WL 5391159, at *2 (N.D. Cal. Sept. 24, 2013) (citing *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013)).

As the Court has made clear throughout this order, the common issues of law and fact in this case far outweigh the individual issues concerning damages. In particular, the central legal issue of this case is whether Section 226 applies to the challenged wage statements at all, based on whether California law can apply where employees work primarily outside of California's borders. The success of the class' claim rises or falls with that question. Because it is the central issue in this case and is capable of resolution as to the entire class, common questions—and specifically, one common question—predominates over any individual questions. In fact, some of the individual inquiries against which United cautions—such as the percentage of time an employee spent working within California's borders during a given pay period—will *only* arise if the Court finds that putative class members must have worked principally in California during a pay period in order for United to have been bound by the obligations of Section 226. Otherwise, United was uniformly obligated to provide Section 226-compliant wage statements to the entire putative class, regardless of their individual work schedules.

ii. Superiority

The Court also agrees that given the dominance of a single legal issue in this case, a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. In considering whether a class action is superior, the court must focus on whether

the interests of "efficiency and economy" would be advanced by class treatment. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). In the superiority context, courts consider the following non-exhaustive factors: "(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).

Here, United argues that a class action is not the superior method for handling the class members' claims because there are alternative methods—such as administrative complaints to the California Division of Labor Standards Enforcement— by which individual flight attendants may pursue their claims. *Opp.* 20-21. That individual class members have alternative means of pursuing their claims does nothing to address the fact that a class action is the superior method for adjudicating the class members' claims, since a class action alone has the potential to knock out the majority of the class members' claims in one fell swoop. Moreover, the class members' claims are based on United's uniform use of the same wage format and involve the same overarching legal question regarding the applicability of California law. It would therefore be undesirable and duplicative to have numerous individual actions filed, either administratively or in this court. *See McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 302 (C.D. Cal. 2011). Furthermore, Section 226(e) caps the amount of statutory damages available per individual at $4,000. That damages are both statutory per violation and capped mitigates the potential complexity of managing a class action of this magnitude. *See Ward*, 2016 WL 1161504, at *7. The relatively small amount of damages available to each class members also makes it less likely that individual class members will have an interest in litigating their own actions. *See Zinser*, 253 F.3d at 1190 ("Where damages suffered by each putative class members are not large, this factor weighs in favor of certifying a class action."). Lastly, as Vidrio points out, class members who do wish to litigate their own claims would likely encounter trouble retaining a lawyer on a contingency basis, given the small potential award. *Mot.* 18. For that reason, too, a class action is the superior method for litigating the class members' claims.

In sum, the Court agrees with Vidrio that a class action is the superior method for adjudicating the class claims.

G. Other Class Certification Issues

In light of the finding that class certification is the appropriate vehicle for adjudicating the class claims, the Court must address a number of additional issues.

First, Vidrio requests that she be appointed as class representative. *See* Dkt. # 28-6 ("Proposed Order"). Vidrio's counsel states that Vidrio is "actively involved in this case," and has aided in the investigation of the case by attending in-person meetings with counsel, as well as by participating in "numerous phone calls and emails which have provided [counsel] with valuable information necessary to prosecute this case." *Hanson Decl.* ¶ 11. Counsel also points out that Vidrio has agreed to be the named Plaintiff at risk to herself. *Id.* As previously noted, the Court is also persuaded that Vidrio is a sufficient class representative under Rule 23(a)(4). *See supra* Section III.D. The Court therefore appoints Vidrio as class representative. *See Maiman v. Talbott*, No. SACV0900012AGANX, 2011 WL 13065750, at *5 (C.D. Cal. Aug. 29, 2011).

Second, Vidrio requests that the Court appoint Jackson Hanson, LLP as class counsel. *Proposed Order*. Rule 23(g) requires the Court to appoint class counsel for any class that it certifies. The Rule identifies four factors that the Court should consider in appointing class counsel: (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 the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g).

The Court will appoint Jackson Hanson, LLP as class counsel. It appears that thus far, counsel has been diligent in exhaustively investigating Plaintiffs' claims. *Hanson Decl.* ¶ 9. Counsel has reviewed all relevant documents and assures the Court that it filed this motion for class certification at the first practicable opportunity. *Id.* As previously noted, counsel has extensive experience litigating class action claims, including California labor claims. *See supra* Section III.D. More specifically, the Court notes that Jackson Hanson, LLP was also appointed as counsel for United pilots litigating the same claims against United in the Northern District of California. *See Ward*, 2016 WL 1161504, at *8. Lastly, counsel assures the Court that it will "continue to vigorously advocate for Plaintiffs and the class." *Hanson Decl.* ¶ 10.

Third, Vidrio asks for an order issuing class notice with the opportunity to opt out in the form of the notice attached to the Proposed Order. *Proposed Order*. Rule 23(c)(2)(B) provides:

> For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:
>
> (i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). "Notice provides an opportunity for class members to participate in the litigation, to opt-out of the litigation, to monitor the performance of class representatives and class counsel, and to ensure that predictions of adequate representation are fulfilled. In the Rule 23(b)(3) context, due process is satisfied where a fully descriptive notice is sent first-class mail to each class member, with an explanation of the right to opt out, within a reasonable time." *Makaeff v. Trump Univ., LLC*, No. 10-CV-0940-GPC-WVG, 2015 WL 5638192, at *2 (S.D. Cal. Sept. 21, 2015) (citations and internal quotation marks omitted).

The proposed notice complies with Rule 23(c)(2)(B). *See Proposed Order*, Ex. 1 ["Proposed Notice"]. The Proposed Notice sets forth in clear language: (1) that there is a class action against United concerning the wage statements provided to its flight attendants; (2) that the class consists of all persons who were or are employed by United in California as flight attendants at any point from July 6, 2014 until the present; (3) a description of the specific provisions of Section 226 United is alleged to have violated; (4) that any class member may represent him- or herself, or enter an appearance through an attorney; (5) that the court will exclude class members who so request; (6) that class members have 30 days from the time the notice was mailed to postmark a request for exclusion, including the specific language the exclusion request must contain; and (7) that class members who do not request exclusion will be bound by the court's judgments. *Id.*

Lastly, Vidrio requests that the Court approve procedures for mailing out the class notice. *See Proposed Order*. Vidrio proposes that United provide class counsel with a list of class members, as well as their phone numbers and mailing addresses, within ten days of this Order. *Id.* Vidrio's counsel represented at the hearing that it will hire a claims administrator who will be responsible for mailing notice to the putative class members. The administrator will send

notice by first class mail to certified class members within 30 days of the Court's order. *Id.* The parties will split the cost of mailing. *Id.*

At the hearing, the Court expressed its concern that Vidrio had not provided the Court with information concerning how the parties would locate putative class members who are no longer United employees and who may have moved, or whose notices are returned as undelivered. Vidrio's counsel expressed that due to the high-retention nature of the job, counsel does not expect many instances where employees cannot be located. However, counsel represented that the claims administrator will perform a "skip trace" or equivalent address search to locate the most accurate address information in the event that putative class members cannot be found or that their notices are returned. Counsel also agreed that because such class members might not be located immediately, it would be appropriate to extend the deadline to opt-out. The Court is therefore satisfied that the procedure for mailing notice is reasonable, but finds that the deadline for submitting an exclusion form should be extended to 45 days after notice is mailed. The Proposed Notice should be updated to reflect the extended deadline.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Vidrio's motion for class certification. The Court certifies the following class:

> All persons who were or are employed by United Airlines Inc. as flight attendants for whom United applied California income tax laws pursuant to 49 U.S.C. 40116(f)(2) at any time from July 6, 2014 up to the present.

The Court also APPOINTS Plaintiff Felicia Vidrio as class representative and Jackson Hanson, LLP as class counsel and APPROVES the Proposed Notice, provided that the deadline to submit an exclusion form is extended to 45 days after notice is mailed.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV15-7985 PSG (MRWx)	Date	August 23, 2016
Title	Felicia Vidrio, *et al.* v. United Airlines, Inc., *et al.*		