

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF CALIFORNIA  
3

4 SIMON V. GARCIA, an individual

1:10-CV-00324-OWW-SKO

5 Plaintiff,

MEMORANDUM DECISION AND ORDER  
RE MOTION FOR STAY AND  
APPOINTMENT OF INTERIM CLASS  
COUNSEL

6 v.

(DOC. 52)

7 GORDON TRUCKING, INC., a  
8 California Corporation, which will  
9 transact business in California as  
10 L GORDON; STEVE GORDON, an  
11 individual; BOB GOLDBERG, an  
individual; and Does 1 through 20,  
inclusive,

12 Defendants.

13 CHRISTOPHER YANEZ and EMMA YANEZ  
14 on behalf of themselves, all  
15 others similarly situated, and the  
general public,

1:11-CV-00272-OWW-SMS

16 Plaintiffs,

MEMORANDUM DECISION AND ORDER  
RE PLAINTIFFS' MOTION FOR  
CONSOLIDATION OF PENDING  
ACTIONS AND APPOINTMENT OF  
INTERIM CLASS COUNSEL

17 v.

(DOC. 37)

18 GORDON TRUCKING, INC., a  
19 Washington corporation, and DOES 1  
through 100, inclusive,

20 Defendants.  
21

22 I. INTRODUCTION

23 Before the court are two putative class actions filed  
24 against Gordon Trucking, Inc. ("Defendant"): (1) Simon Garcia  
25 ("Plaintiff Garcia") v. Defendant etal. (1:10-cv-324-OWW-SKO)  
26 ("*Garcia*"), and (2) Christopher Yanez and Emma Yanez ("Yanez  
27 Plaintiffs") v. Defendant etal. (1:11-cv-272-OWW-SMS) ("*Yanez*").  
28

1 Yanez Plaintiffs move (1) to consolidate the *Garcia* and  
2 *Yanez* lawsuits, and (2) for appointment of James R. Patterson and  
3 Allison H. Goddard ("*Yanez* Counsel") as interim class counsel.  
4 *Yanez* Doc. 37. Defendant and Plaintiff Garcia filed an opposition  
5 in the *Yanez* lawsuit (*Yanez* Docs. 41 and 42, respectively), to  
6 which Yanez Plaintiffs replied (*Yanez* Doc. 46).

8 Plaintiff Garcia moves (1) to stay the hearing on Yanez  
9 Plaintiffs' motion for consolidation and (2) alternatively, for  
10 appointment of S. Brett Sutton ("*Garcia* Counsel") as interim  
11 class counsel. *Garcia* Doc. 52. Yanez Plaintiffs filed a motion to  
12 intervene in the *Garcia* Lawsuit and opposition to the motion to  
13 stay (*Garcia* Doc. 58), to which Plaintiff Garcia replied (*Garcia*  
14 Doc. 59).

15  
16 The motions were heard July 11, 2011.

17  
18 II. BACKGROUND

19 A. *Garcia* Lawsuit

20 The *Garcia* lawsuit against Defendant and individual  
21 Defendants Steve Gordon, Bob Goldberg, and Does 1 to 20 was filed  
22 in this court on February 23, 2010. *Garcia* Doc. 1. Plaintiff  
23 Garcia filed a First Amended Complaint on July 7, 2010 (*Garcia*  
24 Doc. 28) and a Second Amended Complaint ("*SAC*") on July 22, 2010  
25 (*Garcia* Doc. 33).

26 The *Garcia* action seeks to represent the following putative  
27 classes:  
28

- 1 a. All similarly situated persons employed by GTI who were  
2 driving tractor-trailer combinations and performing  
3 services related thereto within the State of California  
4 at any time within the Relevant Time Period, and were  
5 compensated on a per-mile basis for at least part of  
6 their compensation. This putative class will be  
7 referred to herein collectively as the 'CALIFORNIA  
8 EMPLOYEES' .
- 9 b. All similarly situated persons employed by GTI who were  
10 driving tractor-trailer combinations and performing  
11 services related thereto within any State excepting the  
12 State of California at any time within the Relevant  
13 Time Period, and were compensated on a per-mile basis  
14 for at least part of their compensation. This putative  
15 class will be referred to herein collectively as the  
16 'NATIONWIDE EMPLOYEES' .

17 *Garcia* Doc. 33, ¶ 21.

18 The *Garcia* SAC asserts the following causes of action:

- 19 (1) First Cause of Action: Failure to pay minimum wages for  
20 all hours worked in violation of the Fair Labor  
21 Standards Act ("FLSA") (29 U.S.C. § 206);
- 22 (2) Second Cause of Action: Failure to pay minimum wages  
23 for all hours worked in violation of California Labor  
24 Code §§ 221-223, 1194, 1194.2, and 1197 and Industrial  
25 Welfare Commission Wage Order 9, § 11;
- 26 (3) Third Cause of Action: Failure to provide mandated meal  
27 periods or to pay an additional hour of wages in  
28 violation of California Labor Code §§ 226.7 and 512 and  
Industrial Welfare Commission Wage Order 9;
- (4) Fourth Cause of Action: Failure to provide mandated  
rest periods or to pay an additional hour of wages in

1 violation of California Labor Code §§ 226.7 and 512 and  
2 Industrial Welfare Commission Wage Order 8, § 11;

3 (5) Fifth Cause of Action: Failure to issue mandated  
4 accurate itemized wage statements in violation of  
5 California Labor Code §§ 226, 226.6, 1174, 1174.5, and  
6 1175 and Industrial Welfare Commission Wage Order 9;

7  
8 (6) Sixth Cause of Action: Failure to reimburse business  
9 expenses in violation of California Labor Code § 2802  
10 and Industrial Welfare Commission Wage Order 9;

11 (7) Seventh Cause of Action: Failure to timely pay wages  
12 due at termination in violation of California Labor  
13 Code §§ 201, 202, and 203;

14 (8) Eighth Cause of Action: Violation of unfair competition  
15 law, California Business and Professions Code §§ 17200  
16 et seq.; and

17  
18 (9) Ninth Cause of Action: Recovery under the Labor Code  
19 Private Attorneys General Act of 2004.

20 *Garcia* Doc. 33. In *Garcia*, Plaintiff seeks to certify the First  
21 Cause of Action as a collective action under 29 U.S.C. § 216(b),  
22 for all acts within three years preceding the original Complaint  
23 and through the time of trial. *Id.* at ¶¶ 4-5. Plaintiff Garcia  
24 seeks to certify the Second through Eighth Causes of Action as a  
25 class action under Federal Rule of Civil Procedure 23, for all  
26 acts within four years preceding the original Complaint and  
27  
28

1 through the time of trial. *Id.* at ¶¶ 4,6.

2 B. Yanez Lawsuit

3 The *Yanez* action was filed in the Superior Court of  
4 California, County of San Diego on October 12, 2010. *Yanez* Doc.  
5 1, Ex. A. Defendant removed the case to the United States  
6 District Court for the Southern District of California on  
7 November 12, 2010. *Yanez* Doc. 1. Upon the parties' joint motion  
8 (*Yanez* Doc. 24), the Southern District transferred *Yanez* to this  
9 court on February 16, 2011 (*Yanez* Doc. 27).

11 The *Yanez* lawsuit is brought on behalf of the following  
12 putative class:

13 All persons who have been employed by Defendant as Over the  
14 Road Drivers in the State of California at any time during  
15 the Class Period.

16 *Yanez* Doc. 1, Ex. A, ¶ 1. The "Class Period" is the four-year  
17 period prior to filing, through disposition of the action. *Id.* at  
18 ¶ 3.

19 The *Yanez* Complaint asserts the following causes of action:

- 20 (1) First Cause of Action: Failure to pay wages due in  
21 violation of California Labor Code §§ 201, 202, 203,  
22 226, 1194, 1194.2 and 1197 and Industrial Welfare  
23 Commission Wage Order 9;  
24 (2) Second Cause of Action: Failure to provide or authorize  
25 meal periods in violation of California Labor Code §  
26 226.7 and Industrial Welfare Commission Wage Order 9, §  
27  
28

1 11;

2 (3) Third Cause of Action: Failure to provide or authorize  
3 rest periods in violation of California Labor Code §§  
4 200, 500, 512, and 226.7(b) and Industrial Welfare  
5 Commission Wage Order 9, § 12;

6  
7 (4) Fourth Cause of Action: Failure to provide itemized  
8 wage statements in violation of California Labor Code §  
9 226;

10 (5) Fifth Cause of Action: Failure to pay with proper  
11 instruments in violation of California Labor Code §§  
12 212 and 213.

13 (6) Sixth Cause of Action: Failure to timely pay wages due  
14 at termination in violation of California Labor Code §§  
15 201, 202, and 203; and

16  
17 (7) Seventh Cause of Action: Violation of California  
18 Business and Professions Code §§ 17200 et seq.

19 *Yanez* Doc. 1, Ex. A.

20  
21 III. MOTION TO STAY

22 A. Yanez Plaintiffs' Motion to Intervene in *Garcia* Lawsuit

23 Yanez Plaintiffs move to intervene in *Garcia* for the limited  
24 purpose of opposing Plaintiff *Garcia*'s motion to stay the *Yanez*  
25 action. Plaintiff *Garcia* does not address Yanez Plaintiffs'  
26 motion to intervene.

1                   1.    Intervention as of Right

2                   Rule 24(a) governs intervention as of right:

3                   On timely motion, the court must permit anyone to intervene  
4                   who . . . claims an interest relating to the property or  
5                   transaction that is the subject of the action, and is so  
6                   situated that disposing of the action may as a practical  
7                   matter impair or impede the movant's ability to protect its  
8                   interest, unless existing parties adequately represent that  
9                   interest.

10                  Fed. R. Civ. P. 24(a)(2). An applicant for intervention as of  
11                  right must satisfy four requirements:

12                  (1) it has a significant protectable interest relating to  
13                  the property or transaction that is the subject of the  
14                  action; (2) the disposition of the action may, as a  
15                  practical matter, impair or impede the applicant's ability  
16                  to protect its interest; (3) the application is timely; and  
17                  (4) the existing parties may not adequately represent the  
18                  applicant's interest.

19                  *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 802 (9<sup>th</sup> Cir. 2002).

20                  Rule 24(a) is construed liberally in favor of potential  
21                  intervenors. *State ex rel. Lockyer v. United States*, 450 F.3d  
22                  436, 440 (9<sup>th</sup> Cir. 2006).

23                  Yanez Plaintiffs satisfy the requirements for intervention  
24                  as of right. Plaintiff Garcia seeks to delay the *Yanez* hearing on  
25                  the motion for consolidation until after (1) *Garcia's* July 22,  
26                  2011 mediation and (2) *Garcia's* motion for class certification is  
27                  filed July 15, 2011. The *Garcia* and *Yanez* lawsuits assert the  
28                  same claims on behalf of the same putative class of California  
                  employees against the same employer for the same wage and hour  
                  violations. Yanez Plaintiffs have a significant protectable  
                  interest, and the disposition of the motion to stay will impair

1 or impede Yanez Plaintiffs' ability to protect their interests  
2 and to proceed with their lawsuit. Yanez Plaintiffs' motion to  
3 intervene for the sole purpose of opposing Plaintiff Garcia's  
4 motion to stay the *Yanez* lawsuit was timely filed on June 13,  
5 2011, fourteen days before the original hearing date on the  
6 motion to stay. No party in the *Garcia* lawsuit adequately  
7 represents the Yanez Plaintiffs' interests with respect to the  
8 motion to stay, as they oppose it.

9  
10 Yanez Plaintiffs' motion for intervention as of right in the  
11 *Garcia* lawsuit for the limited purpose of opposing the motion for  
12 stay is GRANTED.

13  
14 2. Permissive Intervention

15 Rule 24(b) governs permissive intervention:

16 On timely motion, the court may permit anyone to intervene  
17 who . . . has a claim or defense that shares with the main  
18 action a common question of law or fact. . . . In exercising  
19 its discretion, the court must consider whether the  
20 intervention will unduly delay or prejudice the adjudication  
21 of the original parties' rights.

22 Fed. R. Civ. P. 24(b). An applicant seeking permissive  
23 intervention must show: "(1) it shares a common question of law  
24 or fact with the main action; (2) its motion is timely; and (3)  
25 the court has an independent basis for jurisdiction over the  
26 applicant's claims." *Donnelly v. Glickman*, 159 F.3d 405, 411 (9<sup>th</sup>  
27 Cir. 1998). "Even if the applicant satisfies those threshold  
28 requirements, the district court has discretion to deny  
permissive intervention . . . In exercising its discretion, the



1 district court must consider whether intervention will unduly  
2 delay the main action or will unfairly prejudice the existing  
3 parties." *Id.*

4 The requirements for permissive intervention are met: (1)  
5 *Garcia* and *Yanez* share common claims and the common question of  
6 whether the proposed stay is proper, and the underlying claim is  
7 predominately identical with the exception of the claimants; (2)  
8 *Yanez* Plaintiffs' motion is timely; and (3) the court already has  
9 jurisdiction over the *Yanez* lawsuit and *Yanez* Plaintiffs.  
10

11 Allowing *Yanez* Plaintiffs to intervene for purposes of opposing  
12 the motion to stay *Yanez* will not unduly delay the motion or  
13 unfairly prejudice Plaintiff *Garcia*; rather, denying *Yanez*  
14 Plaintiffs' motion to intervene may prejudice *Yanez* Plaintiffs.  
15

16 *Yanez* Plaintiffs' motion for permissive intervention in the  
17 *Garcia* lawsuit for the limited purpose of opposing the motion for  
18 stay is GRANTED.

19  
20 B. Plaintiff *Garcia*'s Motion to Stay *Yanez* Lawsuit

21 1. Legal Standard

22 "[T]he power to stay proceedings is incidental to the power  
23 inherent in every court to control the disposition of the causes  
24 on its docket with economy of time and effort for itself, for  
25 counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248,  
26 254, 57 S.Ct. 163 (1936). When considering a motion to stay, the  
27 court weighs the competing interests which will be affected by  
28

1 the grant or refusal of stay, including: (1) the possible damage  
2 which may result from granting the stay; (2) the hardship or  
3 inequity which a party may suffer in being required to go  
4 forward; and (3) the orderly course of justice measured in terms  
5 of the simplifying or complicating of issues, proof, and  
6 questions of law which could be expected to result from a stay.  
7  
8 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9<sup>th</sup> Cir. 1962).

9 "[A] trial court may, with propriety, find it efficient for  
10 its own docket and the fairest course for the parties to enter a  
11 stay of an action before it, pending resolution of independent  
12 proceedings which may bear upon the case." *Mediterranean Enters.,*  
13 *Inc. v. Sangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983)  
14 (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857,  
15 863-864 (9<sup>th</sup> Cir. 1979). For a stay to be appropriate it is not  
16 required that the issues of such proceedings are necessarily  
17 controlling of the action before the court. *Id.*

18  
19 The party moving for a stay bears the burden of establishing  
20 the need for a stay. *Clinton v. Jones*, 520 U.S. 681, 708 (1997);  
21 see also *Landis*, 299 U.S. at 255 ("the justice and wisdom" of a  
22 stay lays "heavily on the petitioners").

## 23 24 2. Discussion

25 Plaintiff Garcia moves for a 45-day stay of the hearing on  
26 Yanez Plaintiffs' motion to consolidate filed in the *Yanez* case.  
27 Plaintiff Garcia contends that the stay will allow the *Garcia*  
28

1 lawsuit to maintain its current briefing schedule with respect to  
2 the motion for class certification, which is due July 15, 2011,  
3 and to proceed with a scheduled mediation on July 22, 2011.

4 *Garcia* Counsel declares that he has diligently and aggressively  
5 pursued the *Garcia* lawsuit for over two years, dedicating over  
6 1,000 hours to evaluate and litigate the case, while the *Yanez*  
7 lawsuit is still in its infancy and *Yanez* Counsel has not  
8 conducted any discovery. Having agreed to a mediator and  
9 mediation date and in light of the upcoming deadline to file the  
10 motion for class certification, Plaintiff *Garcia* contends that  
11 consolidating the lawsuits prejudices the *Garcia* putative class.  
12

13         *Yanez* Plaintiffs contend that a stay would severely  
14 prejudice them and the putative *Yanez* class. *Yanez* Plaintiffs  
15 argue that the *Yanez* and *Garcia* actions allege the same  
16 California Labor Code Violations, and both actions seek to  
17 certify the same class of California workers. *Yanez* Plaintiffs  
18 contend that they have a significant, protectable interest  
19 related to the *Garcia* lawsuit, and that granting the stay would  
20 block them from participating in the July 22, 2011 mediation.  
21

22         The *Yanez* and *Garcia* lawsuits assert the same California  
23 Labor Code and Wage Order violations on behalf of the same  
24 putative class of California employees. Granting Plaintiff  
25 *Garcia*'s motion to stay would unfairly favor the *Garcia* lawsuit  
26 over the *Yanez* lawsuit. As both cases encompass the same claims  
27  
28

1 and same putative class members, hearing on consolidation of the  
2 *Yanez* and *Garcia* lawsuits cannot be stayed while the *Garcia*  
3 lawsuit proceeds to mediation and class certification. The  
4 Supreme Court has explained:

5  
6 [A party seeking] a stay must make out a clear case of  
7 hardship or inequity in being required to go forward, if  
8 there is even a fair possibility that the stay for which he  
9 prays will work damage to someone else. Only in rare  
circumstances will a litigant in one cause be compelled to  
stand aside while a litigant in another settles the rule of  
law that will define the rights of both.

10 *Landis*, 299 U.S. at 255. Moreover, as two prospective class  
11 actions have been filed against the same Defendant, the interests  
12 of all are best protected under Federal Rule of Civil Procedure  
13 23 and related Rule 16 case management procedures.

14  
15 Plaintiff *Garcia*'s motion for stay of *Yanez*'s hearing on the  
16 motion to consolidate is DENIED.

#### 17 18 IV. MOTION TO CONSOLIDATE

##### 19 A. Legal Standard

20 Federal Rule of Civil Procedure 42(a) provides:

21 When actions involving a common question of law or fact are  
22 pending before the court, it may order a joint hearing or  
23 trial of any or all the matters in issue in the actions; it  
may order all the actions consolidated; and it may make such  
orders concerning proceedings therein as may tend to avoid  
unnecessary costs or delay.

24 Fed. R. Civ. P. 42(a). A district court has broad discretion to  
25 consolidate actions. *Pierce v. Cnty. of Orange*, 519 F.3d 985, 996  
26 (9<sup>th</sup> Cir. 2008). "The district court, in exercising its broad  
27 discretion to order consolidation of actions presenting a common  
28

1 issue of law or fact under Rule 42(a), weighs the saving of time  
2 and effort consolidation would produce against any inconvenience,  
3 delay, or expense that it would cause." *Heune v. United States*,  
4 743 F.2d 703, 704 (9<sup>th</sup> Cir. 1984). Considerations of convenience  
5 and judicial economy "must yield to a paramount concern for a  
6 fair and impartial trial." *Johnson v. Celotex Corp.*, 899 F.2d  
7 1281, 1285 (2<sup>nd</sup> Cir. 1990). The party seeking consolidation bears  
8 the burden of establishing that judicial economy and convenience  
9 outweigh prejudice. *Single Chip Sys. Corp. v. Intermec IP Corp.*,  
10 495 F.Supp.2d 1052, 1057 (S.D. Cal. 2007).

11  
12 B. Discussion

13 Defendant contends that the *Yanez* and *Garcia* actions are not  
14 based on common issues of fact or law. The two lawsuits, however,  
15 share the following California claims: (1) failure to pay wages  
16 due and owing: Second Cause of Action in *Garcia* and First Cause  
17 of Action in *Yanez*; (2) failure to provide or compensate for meal  
18 periods: Third Cause of Action in *Garcia* and Second Cause of  
19 Action in *Yanez*; (3) failure to provide or compensate for rest  
20 periods: Fourth Cause of Action in *Garcia* and Third Cause of  
21 Action in *Yanez*; (4) failure to provide accurate/itemized wage  
22 statements: Fifth Cause of Action in *Garcia* and Fourth Cause of  
23 Action in *Yanez*; (5) failure to timely pay wages at termination:  
24 Seventh Cause of Action in *Garcia* and Sixth Cause of Action in  
25 *Yanez*; and (6) violation of California Business and Professions  
26  
27  
28

1 Code §§ 17200 et seq.: Eighth Cause of Action in *Garcia* and  
2 Seventh Cause of Action in *Yanez*. In addition to their common  
3 legal questions, the *Garcia* lawsuit alleges three additional  
4 causes of action: (1) First Cause of Action for failure to pay  
5 minimum wages in violation of federal law (FLSA); (2) Sixth Cause  
6 of Action for failure to reimburse business expenses; and (3)  
7 Ninth Cause of Action for recovery under the Labor Code Private  
8 Attorneys General Act of 2004. The *Yanez* lawsuit alleges an  
9 additional cause of action: Fifth Cause of Action for failure to  
10 pay with proper instruments.  
11

12 *Garcia* and *Yanez* share common truck driver class members.  
13 *Yanez* Plaintiffs contend that the California classes in *Garcia*  
14 and *Yanez* are identical. *Garcia* defines its California class as:  
15

16 All similarly situated persons employed by GTI who were  
17 driving tractor-trailer combinations and performing services  
18 related thereto within the State of California at any time  
19 within the Relevant Time Period, and were compensated on a  
per-mile basis for at least part of their compensation. This  
putative class will be referred to herein collectively as  
the 'CALIFORNIA EMPLOYEES' .

20 *Garcia* Doc. 33, ¶ 21(a). *Yanez* defines its putative class as:

21 All persons who have been employed by Defendant as Over the  
22 Road Drivers in the State of California at any time during  
23 the Class Period.

24 *Yanez* Doc. 1, Ex. A, ¶ 1. Defendant rejoins that *Garcia's*  
25 proposed class is broader than *Yanez* because *Garcia* presumably  
26 includes regional drivers in addition to *Yanez's* putative class  
27 of over the road drivers. Defendant also asserts that *Garcia*  
28

1 alleges an additional, separate federal class for its federal law  
2 claim. Despite Defendant's arguments, it is undisputed that  
3 Yanez's putative class is entirely encompassed within Garcia's  
4 putative California class.

5 Judicial economy weighs in favor of consolidation. The bulk  
6 of Garcia's claims are shared with Yanez, and Yanez's putative  
7 class falls within Garcia's putative California class. The two  
8 lawsuits share substantial overlapping discovery and proof.  
9 Consolidating the two lawsuits would save time, effort,  
10 duplication, and valuable judicial resources.

11 Defendant and Garcia Counsel contend that Garcia and Yanez  
12 should not be consolidated because the two lawsuits are in  
13 different procedural postures. Garcia was filed on February 23,  
14 2010; Yanez was filed approximately nine months later on October  
15 12, 2010. Garcia Counsel has taken and defended depositions, met  
16 and conferred with Defendant's counsel, and requested, received,  
17 and reviewed tens of thousands of pages of written discovery.  
18 Garcia's motion for class certification is due July 15, 2011 and  
19 the motion is scheduled to be heard November 21, 2011. Garcia  
20 Doc. 48, 2. Garcia is scheduled for mediation July 22, 2011.

21 In contrast, Yanez's scheduling conference has not yet taken  
22 place. Yanez Counsel declares that Defendant requested Yanez's  
23 transfer to the Eastern District of California to coordinate with  
24 Garcia. Yanez Counsel declares that while Yanez was being  
25

1 transferred, *Garcia* Counsel was conducting discovery and  
2 Defendant agreed to provide *Yanez* Counsel a copy of all discovery  
3 produced in *Garcia*, except for any discovery that related solely  
4 to Plaintiff *Garcia*. *Yanez* Counsel contends that they have copies  
5 of all discovery, and the two parties are on relatively equal  
6 footing in discovery.  
7

8 As the *Yanez* claims and class are subsumed within the *Garcia*  
9 California class, the *Garcia* lawsuit already includes the *Yanez*  
10 class and claims. Consolidation should not require additional  
11 discovery except as to *Yanez* Plaintiffs. The motion for class  
12 certification is not scheduled for hearing until November 21,  
13 2011. Although consolidation will affect *Garcia's* schedule, there  
14 is no indication that the delay will be excessive or prejudicial.  
15

16 *Garcia* Counsel contends that *Yanez* Counsel unnecessarily  
17 delayed filing a motion to consolidate until they were informed  
18 that *Garcia* had secured a mediation date. *Yanez* Counsel contends  
19 that *Garcia* Counsel and Defendant's counsel acted in concert to  
20 allow *Garcia* to gain a head start in the discovery process and  
21 freeze out *Yanez*. *Yanez* Counsel declares that they asked, but  
22 were denied permission to attend and participate in the July 22,  
23 2011 mediation, which *Yanez* Counsel characterizes as "back door  
24 mediation." All Counsel are reminded that they are officers of  
25 the court and are expected to act in the best interests of their  
26 clients and putative class members.  
27  
28



1 Plaintiff Garcia contends that consolidation would prejudice  
2 *Garcia* because the *Yanez* Complaint asserts that "the Class  
3 Members' claims as a whole do not exceed the jurisdictional limit  
4 of \$5,000,000." *Yanez* Doc. 1, Ex. A, ¶ 11. Plaintiff Garcia  
5 asserts that the potential class-wide recovery is far in excess  
6 of \$5,000,000, as Defendant points out that the potential  
7 exposure on two of *Yanez* Plaintiffs' claims exceeds \$7,000,000.  
8 *Yanez* Doc. 1, ¶¶ 9-11. *Yanez* Plaintiffs rejoin that Plaintiff  
9 Garcia's claim of prejudice is disingenuous, as *Garcia* Counsel  
10 proposed consolidating *Garcia* and *Yanez* on June 6, 2011. *Yanez*,  
11 Doc. 43-2.

12  
13 The *Garcia* and *Yanez* lawsuits share common issues of law and  
14 fact; the *Yanez* putative class and claims are included within the  
15 *Garcia* California putative class. Balancing the considerations of  
16 judicial economy and convenience against the potential risks of  
17 delay and prejudice, the two cases should be consolidated.

18  
19 Yanez Plaintiffs' motion for consolidation is GRANTED.

20  
21 V. MOTION TO APPOINT INTERIM CLASS COUNSEL

22 *Garcia* Counsel requests appointment as interim class counsel  
23 for the putative California and federal classes. *Yanez* Counsel  
24 moves for appointment as interim class counsel for the California  
25 class and appointment of *Garcia* Counsel as interim class counsel  
26 for the putative federal class.



1 VI. CONCLUSION

2 For the reasons stated:

- 3 1. Yanez Plaintiffs' motion to intervene in the *Garcia* lawsuit  
4 to oppose the motion for stay is GRANTED.  
5  
6 2. Plaintiff Garcia's motion for stay is DENIED and motion for  
7 appointment as interim counsel is DENIED.  
8  
9 3. Yanez Plaintiffs' motion for consolidation is GRANTED and  
10 motion for appointment of interim counsel is DENIED.  
11  
12 4. With respect to the July 22, 2011 mediation: (1) *Yanez*  
13 Counsel shall participate in the mediation; (2) *Garcia*  
14 Counsel shall serve as lead counsel at the mediation; and  
15 (3) *Yanez* Counsel shall pay twenty-five percent (25%) of the  
16 mediation fees.  
17  
18 5. Plaintiff Garcia shall submit a proposed form of order  
19 consistent with this memorandum decision within five (5)  
20 days following electronic service of this memorandum  
21 decision.

22 SO ORDERED.

23 DATED: July 14, 2011

24 /s/ Oliver W. Wanger  
25 Oliver W. Wanger  
26 United States District Judge  
27  
28