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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ELISA ARROYO,
Plaintiff,
v.
INTERNATIONAL PAPER COMPANY,
Defendant.

Case No. 17-cv-06211-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR CLASS
CERTIFICATION**

[Re: ECF 40]

In this putative class action, Plaintiff Elisa Arroyo (“Arroyo”) claims that Defendant International Paper Company (“IPC”) violates California laws governing wage statements and reimbursement of necessary business expenses. Specifically, she asserts that when employees work overtime, IPC’s wage statements do not accurately reflect the overtime rate of pay or the total hours worked. She also contends that IPC requires its employees to wear uniforms, but improperly charges employees for uniform expenses by deducting \$7.50 from each paycheck.

Arroyo moves for class certification, which is opposed by IPC. The motion is **GRANTED IN PART AND DENIED IN PART** for the reasons discussed below.

I. BACKGROUND

Arroyo was employed by IPC from November 22, 1998 through February 22, 2017. IPC manufactures paper, boxes, bags, and other paper-based materials in twenty-six facilities across California. Arroyo worked at the IPC facility located in Salinas, California, for the entirety of her employment. She performed manual labor, working primarily on a “cascader” machine that coated boxes with hot melted wax.

1 Arroyo filed this action in the Monterey County Superior Court on September 27, 2017,
2 asserting multiple wage and hour violations against IPC on behalf of a putative class of California
3 employees. *See* Notice of Removal, Exh. A, ECF 1. IPC removed the action to federal district
4 court under the Class Action Fairness Act of 2005 (“CAFA”). *See* Notice of Removal, ECF 1.
5 Arroyo immediately filed a first amended complaint as of right. *See* FAC, ECF 9. After two
6 rounds of motion practice, Arroyo filed the operative third amended complaint (“TAC”),
7 containing four claims for relief. *See* TAC, ECF 38.

8 Claim 1 of the TAC asserts violations of California Labor Code § 2802, which requires an
9 employer to indemnify employees for all necessary expenditures incurred in the employees’
10 discharge of employment duties. Arroyo alleges that:

11 As with all other non-exempt manufacturing employees, Plaintiff purchased
12 uniforms from Defendants consisting of a navy blue coverall. Defendant would
13 deduct monies from the wages of Plaintiff and the Class for these uniforms. This
14 item would appear as a deduction for “Uniform Local” on the wage statement and
15 for Plaintiff, she was charged \$7.50 on her wage statements for this item. Plaintiff
is informed and believes and based thereon alleges that Defendants would continue
to deduct \$7.50 from Plaintiff’s wages even though the uniforms were paid in full
by Plaintiff.

16 TAC ¶ 29, ECF 38. Arroyo claims that IPC is liable under § 2802 “for imposing business
17 expenses upon Plaintiff and Class Members by continuing to charge for uniforms when said
18 uniforms were fully paid off by Plaintiff and Class Members.” *Id.*

19 Claim 2 is for violations of California Labor Code § 226, which governs the contents of
20 wage statements. Arroyo asserts that IPC’s wage statements did not accurately reflect the number
21 of hours worked and the applicable hourly rates as required under § 226. Specifically, Arroyo
22 alleges that “when Defendant paid Plaintiff and other employees overtime, Defendant listed the
23 incorrect overtime rate of 1/2 of the regular rate of pay,” when “[i]nstead, the overtime rate should
24 have been listed at the correct overtime rate of 1.5x the regular rate.” TAC ¶ 34. Arroyo also
25 alleges that IPC violated § 226 “by double-counting the overtime and regular hours worked,
26 resulting in an incorrect listing of total hours worked.” *Id.* The record reflects that IPC used
27 several timekeeping systems to create wage statements in California during the proposed class
28 period, including Workbrain, Kronos, Harry Rhodes, and SAP CATS. *See* Scharff Dep. 24:6-11,

1 Lee Decl. Exh. C, ECF 40-1. Only the Workbrain system was used at IPC’s Salinas facility,
2 where Arroyo worked. *Id.* 56:6-14.

3 Claims 3 and 4, brought under California’s Private Attorney General Act (“PAGA”), Cal.
4 Lab. Code § 2698, and California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §
5 17200, respectively, are based on the alleged wage and hour violations set forth in Claims 1 and 2.

6 Arroyo now seeks an order certifying the following classes:

7 a. All non-exempt manufacturing employees who were employed by Defendants in
8 the State of California at any time from September 27, 2013, through the present,
and who paid for uniform expenses (the “Expense Reimbursement Class”);

9 b. All non-exempt employees who were employed by Defendants in the State of
10 California and who were paid overtime wages at any time from January 27, 2017,
through the present (the “Wage Statement Class”); and

11 c. All non-exempt employees who were employed by Defendants in the State of
12 California and who were provided wage statements containing payment for
13 overtime wages and were created from data from the Workbrain system at any time
from January 27, 2017, through the present (the “Workbrain Wage Statement Sub-
Class”).

14 Pl.’s Motion for Class Cert. at 3, ECF 40.

15 **II. LEGAL STANDARD**

16 A class action is maintainable only if it meets the four threshold requirements of Rule
17 23(a): (1) the class is so numerous that joinder of all members is impracticable; (2) there are
18 questions of law or fact common to the class; (3) the claims or defenses of the representative
19 parties are typical of the claims or defenses of the class; and (4) the representative parties will
20 fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Amchem Prod., Inc.*
21 *v. Windsor*, 521 U.S. 591, 613 (1997).

22 “In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must
23 show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem*, 521 U.S. at 614.

24 Kang seeks certification under Rule 23(b)(3), which requires that “questions of law or fact
25 common to class members predominate over any questions affecting only individual members,”
26 and that “a class action is superior to other available methods for fairly and efficiently adjudicating
27 the controversy.” Fed. R. Civ. P. 23(b)(3).

28 “A party seeking class certification must affirmatively demonstrate his compliance with

1 the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties,
2 common questions of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

3 **III. DISCUSSION**

4 **A. Rule 23(a)**

5 **1. Numerosity**

6 Rule 23(a)(1) requires that the size of the proposed class be “so numerous that joinder of
7 all the class members is impracticable.” Fed. R. Civ. P. 23(a)(1). “No exact numerical cut-off is
8 required; rather, the specific facts of each case must be considered.” *Litty v. Merrill Lynch & Co.*,
9 No. CV 14-0425 PA (PJWx), 2015 WL 4698475, at *3 (C.D. Cal. Apr. 27, 2015). “[N]umerosity
10 is presumed where the plaintiff class contains forty or more members.” *Id.* However, a class as
11 small as twenty properly may be certified when the other Rule 23 factors are satisfied. *See Rannis*
12 *v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010) (affirming district court’s certification of 20-
13 member class).

14 With respect to the Expense Reimbursement Class, Arroyo submits IPC’s response to
15 Interrogatory No. 5, stating that from September 27, 2013 through the present, approximately 500
16 non-exempt manufacturing employees in California had wage statements showing a deduction for
17 “Uniform Local.” *See* Lee Decl. Exh B, ECF 40-1.

18 With respect to the Wage Statement Class, Arroyo submits IPC’s response to Interrogatory
19 No. 4, in which IPC stated that approximately 2,475 non-exempt manufacturing employees in
20 California were paid overtime wages from September 27, 2016 through the present. *See* Lee Decl.
21 Exh B, ECF 40-1. That evidence is not precisely on point, as the proposed class period for the
22 wage statement claim is *January 27, 2017* through the present. However, the Court reasonably
23 may infer from IPC’s response that hundreds of non-exempt manufacturing employees in
24 California were paid overtime wages during the proposed class period.

25 Finally, with respect to the Workbrain Wage Statement Subclass, Arroyo submits that the
26 testimony of IPC’s Rule 30(b)(6) witness, Jan Scharff, that all hourly employees at IPC’s Salinas
27 facility were paid through the Workbrain system. *See* Scharff Dep. 56:6-14, Lee Decl. Exh. C,
28 ECF 40-1. Arroyo states in her declaration that at least twenty hourly employees who worked at

1 the Salinas facility also worked overtime. Arroyo Decl. ¶ 2, ECF 40-2. Accordingly, the
2 proposed Workbrain subclass would contain at least twenty employees, and likely more if
3 Workbrain was used at any of IPC’s other facilities.

4 The Court concludes that the numerosity requirement is satisfied for all three proposed
5 classes. IPC does not challenge Arroyo’s showing on numerosity.

6 **2. Commonality**

7 “The requirement of ‘commonality’ means that the class members’ claims ‘must depend
8 upon a common contention’ and that the ‘common contention, moreover, must be of such a nature
9 that it is capable of classwide resolution – which means that determination of its truth or falsity
10 will resolve an issue that is central to the validity of each one of the claims in one stroke.’”
11 *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1153 (9th Cir. 2016) (quoting *Dukes*,
12 564 U.S. at 350).

13 **a. Claim 1 – Business Expenses**

14 Claim 1 is asserted under California Labor Code § 2802, which provides in relevant part
15 that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses
16 incurred by the employee in direct consequence of the discharge of his or her duties” Cal. Lab.
17 Code § 2802(a). In her briefing on the class certification motion, Arroyo also cites to Wage Order
18 1-2001(9)(A), providing that “[w]hen uniforms are required by the employer to be worn by the
19 employee as a condition of employment, such uniforms shall be provided and maintained by the
20 employer.” 8 Cal. Code Regs. § 11010(9)(A).

21 As set forth above, in Claim 1 of the operative TAC Arroyo alleges that IPC violated
22 California Labor Code § 2802 by selling uniforms to employees via a wage deduction of \$7.50 per
23 paycheck, and continuing to deduct the \$7.50 even once the purchase price of the uniform had
24 been paid in full. *See* TAC ¶ 29, ECF 38. Arroyo alleges that “Defendant had a uniform
25 corporate pattern and practice and procedure regarding the above practices in violation of Labor
26 Code § 2802.” *Id.* ¶ 30. She requests certification of “[a]ll non-exempt manufacturing employees
27 who were employed by Defendants in the State of California at any time from September 27,
28 2013, through the present, and who paid for uniform expenses (the “Expense Reimbursement

1 Class”).

2 Based on the above, the Court understands Arroyo to be asserting that IPC: requires
3 employees to wear a uniform; requires employees to pay for the uniform by means of a \$7.50
4 paycheck deduction in violation of California Labor Code § 2802(a) and Wage Order 1-
5 2001(9)(A); and continues deducting \$7.50 from employees’ paychecks even after the cost of the
6 uniform has been paid in full.

7 It appears from the record before the Court that Arroyo’s allegations regarding IPC’s
8 uniform requirements and the purpose of the \$7.50 deduction are entirely inaccurate. IPC offers
9 the declaration of Derrick Bates, its Regional Human Resources Manager for the Northern Region
10 of California. *See* Bates Decl. ¶ 2, Def.’s Compendium Exh. 9, ECF 42-2. Bates explains that
11 IPC does *not* sell uniforms to its employees as alleged in the TAC, but rather it pays a third-party
12 rental service to provide, launder, and maintain uniforms for workplace use. *See* Bates Decl. ¶¶
13 13-14. Moreover, not all employees are required to wear uniforms, as suggested by Arroyo. *Id.* ¶
14 6. The policies as to which employees must wear uniforms differ from facility to facility, and
15 depend in part on the employee’s job position. *Id.* ¶¶ 6-7, 12-13. Bates states that when IPC does
16 require an employee to wear a uniform, IPC pays for the cost of the uniform and maintenance. *Id.*
17 ¶ 13. Employees who are not required to wear a uniform may work in their street clothes, or may
18 voluntarily rent a uniform from the third-party vendor and have that cost deducted from their
19 paychecks. *Id.* ¶¶ 6, 13-14. Voluntary rental, and the corresponding deduction of the rental cost
20 from the employee’s paycheck, may be canceled at any time. *Id.* ¶ 14. Bates’ declaration is
21 bolstered by the declarations of numerous IPC employees, some stating that they are required to
22 wear uniforms and IPC pays for them, some stating that they are not required to wear uniforms but
23 voluntarily rent uniforms from the third-party vendor via paycheck deduction, and some stating
24 that they wear their street clothes. *See* Def.’s Compendium Exhs. 11-64.

25 If IPC’s version of events is accurate, then Arroyo’s § 2802 claim simply makes no sense.
26 Arroyo does not suggest that § 2802 is violated when an employee voluntarily decides to rent a
27 uniform which is not required as a condition of employment. Nor does she address in any
28 meaningful way IPC’s substantial evidence that IPC pays for uniforms when they are required,

1 and that the \$7.50 deduction reflects only voluntary uniform rental costs.

2 Arroyo argues in her reply brief that “[t]his Court can easily adjudicate whether
3 Defendant’s uniform deduction is mandatory.” Pl.’s Reply at 17, ECF 43. The Court is not quite
4 sure what Arroyo means by this statement. The issue raised by Arroyo’s § 2802 claim is whether
5 IPC violated its obligation to indemnify employees for costs of required uniforms. Arroyo has not
6 presented any evidence suggesting that issue can be adjudicated on a classwide basis. To the
7 contrary, for *each* individual who falls within the proposed class definition – “[a]ll non-exempt
8 manufacturing employees who were employed by Defendants in the State of California at any time
9 from September 27, 2013, through the present, and who paid for uniform expenses” – the trier of
10 fact would have to determine (a) whether a uniform was required and (b) whether IPC improperly
11 charged the employee for uniform expenses via the \$7.50 deduction. Those determinations would
12 require an individualized factual inquiry, because the policies regarding uniforms varied by
13 facility and by the employee’s particular job duties. It is not even clear whether Arroyo herself
14 was required to wear a uniform. She did not state as much in her declaration, and at her deposition
15 she testified that she understood that she could wear street clothes to work if she wanted to, and
16 that she saw other manufacturing employees work in street clothes. Arroyo Decl., ECF 40-2;
17 Arroyo Dep. 23:5-10, Def.’s Compendium Exh. 7, ECF 42-2.

18 Accordingly, the Court concludes that Arroyo has not satisfied the commonality
19 requirement as to Claim 1.

20 **b. Claim 2 – Wage Statements**

21 Claim 2 is asserted under California Labor Code § 226, which provides in relevant part
22 that: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or
23 her employee, either as a detachable part of the check, draft, or voucher paying the employee’s
24 wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in
25 writing showing . . . (2) total hours worked by the employee, . . . and (9) all applicable hourly rates
26 in effect during the pay period and the corresponding number of hours worked at each hourly rate
27 by the employee.” Cal. Lab. Code § 226(a). “An employee suffering injury as a result of a
28 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to

1 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
 2 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
 3 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
 4 an award of costs and reasonable attorney’s fees.” Cal. Lab. Code § 226(e).

5 In Claim 2, Arroyo asserts that IPC’s wage statements listed the overtime rate as .5, rather
 6 than 1.5, times the regular rate of pay. See TAC ¶ 34. She also asserts that IPC’s wage statements
 7 double-counted the overtime hours worked, resulting in an incorrect listing of the total hours
 8 worked. *Id.* Arroyo relies on exemplars of wage statements generated by the Workbrain system,
 9 the system used at the Salinas facility where she worked. The relevant portion of such a statement
 10 reads as follows:

EARNINGS	RATE	HRS. CURR	CURR
Regular Hours	20.3700	48.41	986.16
Overtime Premium	10.1850	0.53	5.41
Holiday	20.3700	8.00	162.96
Paid Sick Hrs Taken-Hrly	0.0000	0.00	0.00
LumpSumPay-NonGrUpNonPen	0.0000	0.00	0.00
TOTAL			1,154.53

15
 16 Scharff Dep. Exh. 2, Lee Decl. Exh. C, ECF 40-1. The exemplar does list an “Overtime
 17 Premium” rate of .5 of the regular rate, and it does list overtime hours worked in both the Regular
 18 Hours row and the Overtime Premium row. Arguably, the inclusion of the overtime hours in both
 19 rows makes it unclear how many total hours the employee worked. It appears that all of the
 20 Workbrain wage statements list the overtime rate and hours worked in this manner.

21 IPC argues that its Workbrain wage statements comply with § 226(a), because it is clear
 22 that the “Overtime Premium” is .5 *above* the regular hourly rate. IPC argues that multiplying the
 23 total hours worked (including overtime) by the regular rate, then multiplying the overtime hours
 24 worked by the .5 rate, results in an accurate total for pay earned. IPC contends that Arroyo’s
 25 preference for the calculation to be done a different way – multiplying the regular hours worked
 26 by the regular rate, then multiplying the overtime hours worked by a 1.5 rate – does not establish a
 27 violation of § 226(a). Moreover, IPC argues, Arroyo cannot establish an injury flowing from the
 28 Workbrain wage statements as required under § 226(e), because simple arithmetic allows the

1 employee to ascertain all of the information required under § 226(a). *See Raines v. Coastal Pac.*
2 *Food Distributors, Inc.*, 23 Cal. App. 5th 667, 676 (2018) (“[W]here the deficiency in the wage
3 statement could be corrected by ‘simple math,’ there is no actual injury.”).

4 While IPC may well be correct that the Workbrain wage statements comply with § 226(a),
5 that is a merits question. The Court’s task at the class certification stage is to determine whether
6 Arroyo has presented a claim which is dependent on a common contention which is capable of
7 classwide resolution *See Dukes*, 564 U.S. at 350. Arroyo has done so, at least with respect to her
8 § 226 claim based on the Workbrain wage statements. Because all wage statements generated by
9 the Workbrain system listed the “Overtime Premium” as .5, and included overtime hours in both
10 the “Regular Hours” and “Overtime Premium” hours, it may be determined on a classwide basis
11 whether those practices did or did not comply with § 226(a). If IPC is correct that the Workbrain
12 wage statements are compliant with § 226(a) as a matter of law, IPC may bring an appropriate
13 summary judgment motion. *See McKenzie v. Fed. Exp. Corp.*, 765 F. Supp. 2d 1222, 1229 (C.D.
14 Cal. 2011) (adjudicating § 226(a) claim on cross-motions for summary judgment). If IPC were to
15 prevail on such a motion, it would obtain final adjudication of the § 226 claim on a classwide
16 basis. Accordingly, the Court concludes that Arroyo has satisfied the commonality requirement
17 with respect to her § 226 claim based on the Workbrain wage statements.

18 However, it appears that the alleged inaccuracies Arroyo describes in her § 226 claim are
19 limited to the Workbrain wage statements. IPC has submitted exemplars of wage statements
20 generated by the Kronos and Harry Rhodes systems, which list the overtime rate as 1.5 of the
21 regular rate, and list how many hours were worked at each rate. *See Def.’s Compendium Exh. 64.*
22 The SAP CATS system is a manual entry system, and Arroyo does not assert any common
23 practice of misstating the overtime rate or total hours worked with respect to the SAP CATS
24 system. *See Sharff Dep. 24:25-25:2; 54:8-15, Def.’s Compendium Exh. 8, ECF 42-2.*
25 Consequently, the issues presented by the Workbrain wage statements are not common to any
26 issues presented by the wage statements generated by the other systems.

27 Arroyo objects to IPC’s submission of evidence regarding wage statements generated by
28 the Kronos, Harry Rhodes, and SAP CATS systems. Arroyo’s objections to IPC’s evidence

1 regarding the other systems were presented both in the body of her reply brief and in a separate
2 document titled “Objections to Defendant’s Evidence.” *See* ECF 43. The Court STRIKES
3 Arroyo’s separate Objections, as non-compliant with the Court’s Civil Local Rules. *See* Civ. L.R.
4 7-3(c)(“Any evidentiary and procedural objections to the opposition must be contained within the
5 reply brief or memorandum.”). The Court has considered Arroyo’s objections set forth in the
6 reply brief, and OVERRULES them. Arroyo submits the supplemental declaration of her counsel,
7 who states that IPC never produced wage statements generated by the Kronos or Harry Rhodes
8 systems prior to filing its opposition to the class certification motion. Suppl. Lee Decl. ¶ 4, ECF
9 43-1. However, counsel’s declaration does not establish that the wage statements were responsive
10 to discovery requests propounded by Arroyo. Counsel asserts that Arroyo sought “Defendant’s
11 wage statement policies and practices,” but he does not indicate that Arroyo sought exemplars of
12 the wage statements themselves. *Id.* ¶ 3. IPC’s Rule 30(b)(6) witness, Jan Scharff, testified
13 regarding all of the systems used by IPC at her deposition on January 7, 2019. *See* Scharff Dep.
14 24:6-11, Lee Decl. Exh. C, ECF 40-1. If Arroyo felt that IPC was hiding the ball, she could have
15 sought recourse from the magistrate judge assigned to the case and/or requested a continuance of
16 the class certification motion. Moreover, Arroyo had an obligation to investigate the contents of
17 wage statements generated by the Kronos, Harry Rhodes, and SAP CATS systems *before* seeking
18 class certification of claims based on those wages statements’ alleged violation of § 226.

19 In summary, the Court finds the commonality requirement to be met only with respect to
20 the Workbrain wage statements.

21 **C. Claims 3 and 4**

22 Arroyo’s remaining claims are asserted under PAGA (Claim 3) and the UCL (Claim 4).
23 The PAGA claim is not subject to Rule 23 requirements for class certification. *See Baumann v.*
24 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (“In a PAGA action, the court does
25 not inquire into the named plaintiff’s and class counsel’s ability to fairly and adequately represent
26 unnamed employees—critical requirements in federal class actions under Rules 23(a)(4) and
27 (g).”). The UCL claim is derivative of Claims 1 and 2 and thus, to the extent that Claim 2 satisfies
28 the commonality requirement, so too does Claim 4. *See DeLuca v. Farmers Ins. Exch.*, No. 17-

1 CV-00034-EDL, 2018 WL 1981393, at *11 (N.D. Cal. Feb. 27, 2018) (“Because the Court has
2 concluded that the overtime claims meet the commonality and predominance requirements of Rule
3 23, the derivative state law claims meet these requirements as well.”).

4 **3. Typicality**

5 Rule 23(a)(3) requires that “the [legal] claims or defenses of the representative parties [be]
6 typical of the claims or defenses of the class.” Typicality is satisfied “when each class member’s
7 claim arises from the same course of events, and each class member makes similar legal
8 arguments to prove the defendants’ liability.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir.
9 2010) (internal quotation marks and citation omitted). “The test of typicality is whether other
10 members have the same or similar injury, whether the action is based on conduct which is not
11 unique to the named plaintiffs, and whether other class members have been injured by the same
12 course of conduct.” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012)
13 (internal quotation marks and citation omitted). “Under the rule’s permissive standards,
14 representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class
15 members; they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
16 1020 (9th Cir. 1998). Class certification is inappropriate where a putative class representative is
17 subject to unique defenses which threaten to become the focus of the litigation. *See Hanon v.*
18 *Dataprods. Corp.*, 976 F.2d 497, 509 (9th Cir. 1992).

19 The Court concludes that Arroyo has satisfied the typicality requirement with respect to
20 Claims 2 and 4, to the extent based on wages statements generated through Workbrain. Arroyo’s
21 contention that those wage statements violate § 226(a) is typical of the claims of all potential class
22 members.

23 **4. Adequacy**

24 To determine Arroyo’s adequacy as a class representative, the Court “must resolve two
25 questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other
26 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously
27 on behalf of the class?” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)
28 (internal quotation marks and citation omitted). The record discloses no conflict of interest which

1 would preclude Arroyo from acting as class representative with respect to Claim 2, as limited to
2 Workbrain, and Class Counsel are able attorneys who have litigated this action vigorously on
3 behalf of the class.

4 Arroyo satisfies the adequacy requirement with respect to Claims 2 and 4, to the extent
5 based on wage statements generated through Workbrain.

6 **B. Rule 23(b)(3)**

7 Arroyo seeks certification under Rule 23(b)(3), which requires that “questions of law or
8 fact common to class members predominate over any questions affecting only individual
9 members,” and that “a class action is superior to other available methods for fairly and efficiently
10 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The “predominance inquiry tests whether
11 proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*,
12 521 U.S. at 623. For the same reasons discussed above under the Rule 23(a) commonality
13 requirement, Arroyo’s claims based on the wage statements generated by Workbrain satisfy this
14 requirement.

15 **IV. ORDER**

16 The motion for class certification is GRANTED IN PART AND DENIED IN PART, as set
17 forth herein. Class certification is GRANTED as to Claims 2 and 4, to the extent those claims are
18 based on wage statements generated by the Workbrain system, and otherwise is DENIED.

19 Accordingly, the following class is certified:

20 All non-exempt employees who were employed by International Paper Company, a
21 New York corporation, in the State of California and who were provided wage
22 statements containing payment for overtime wages which were created from data
23 from the Workbrain system at any time from January 27, 2017, through the present.

24
25 Dated: April 4, 2019



26
27 BETH LABSON FREEMAN
United States District Judge

28