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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL VELASQUEZ, FAVIOLA ALVAREZ,	)	Case No. 08-4592 SC
MARCELO ALTAMIRANO, JACKEY WILSON	)	
II, CARLOS MARTINEZ AND DIONICIO	)	ORDER GRANTING
MARTINEZ, on behalf of themselves	)	DEFENDANTS' MOTION
and all others similarly situated,	)	FOR LEAVE TO FILE
	)	<u>SUPPLEMENTAL ANSWER</u>
Plaintiffs,	)	
	)	
v.	)	
	)	
HSBC FINANCE CORPORATION; HOUSEHOLD	)	
FINANCE CORPORATION; BENEFICIAL	)	
COMPANY, LLC,	)	
	)	
Defendants.	)	
_____	)	

**I. INTRODUCTION**

This matter comes before the Court on the Motion for Leave to File Supplemental Answer ("Motion") filed by Defendants HSBC Finance Corporation, Household Finance Corporation, and Beneficial Company, LLC ("Defendants"). Docket No. 65. Defendants submitted a copy of the Proposed Supplemental Answer. Musolino Decl. Ex. A ("First Supplemental Answer to First Am. Compl.").<sup>1</sup> Plaintiffs filed an Opposition, and Defendants submitted a Reply. Docket Nos. 73, 77. For the reasons stated herein, the Defendants' Motion is GRANTED.

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<sup>1</sup> Regina A. Musolino, a partner with the law firm Seyfarth Shaw, attorneys for Defendants, filed a Declaration in Support of the Motion. Docket No. 67.

1     **II.    BACKGROUND**

2           Plaintiffs filed their initial Complaint on October 2, 2008,  
3 and an Amended Complaint on November 18, 2008.  See Docket Nos. 1  
4 ("Compl."), 22 ("Am. Compl.").  The Amended Complaint contains ten  
5 counts, including (1) failure to pay overtime compensation in  
6 violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §  
7 201 et seq.; (2) failure to pay the federal minimum wage in  
8 violation of the FLSA; (3) failure to pay the California minimum  
9 wage in violation of Cal. Code Regs. tit. 8, § 11000; and (4)  
10 failure to pay overtime compensation in violation of Cal. Code  
11 Regs. tit. 8, § 11040, and Cal. Labor Code § 510(a).  Id. ¶¶ 58-  
12 82.

13           On January 16, 2009, the Court denied Defendants' Motion for  
14 a More Definite Statement.  Docket No. 35 ("Order").  Defendants  
15 filed their Answer to the Amended Complaint on February 2, 2009.  
16 Docket No. 37 ("Answer").  Defendants now move for leave to file a  
17 Supplemental Answer.

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19     **III.   LEGAL STANDARD**

20           "On motion and reasonable notice, the court may, on just  
21 terms, permit a party to serve a supplemental pleading setting out  
22 any transaction, occurrence, or event that happened after the date  
23 of the pleading to be supplemented."  Fed. R. Civ. P. 15(d).  
24 Motions for leave to file supplemental pleadings should be granted  
25 unless undue prejudice to the opposing party will result.  
26 LaSalvia v. United Dairymen of Arizona, 804 F.2d 1113, 1119 (9th  
27 Cir. 1986).  Defendants may raise new defenses by way of a

1 supplemental answer. Arizona v. California, 530 U.S. 392, 409 n.4  
2 (2000).

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4 **IV. DISCUSSION**

5 Defendants move to file a supplemental answer that adds the  
6 affirmative defenses of set-off and release related to severance  
7 agreements purportedly executed by putative class members after  
8 Defendants filed their Answer. Mot. at 4; Musolino Decl. ¶ 5.  
9 The Court finds that Plaintiffs will not be prejudiced by the  
10 proposed Supplemental Answer. No discovery cutoff or trial date  
11 has been set in this case, and Plaintiffs' pending Motion for  
12 Conditional Collective Certification will not be heard until  
13 February 5, 2010. Defendants' Supplemental Initial Disclosures,  
14 which were mailed to Plaintiffs' counsel on July 30, 2009, states  
15 that Defendants may rely on a "Severance and Release Agreement" to  
16 support its defenses to Plaintiffs' claims. Tabacopoulos Decl.  
17 Ex. 1 ("Defs.' Supplemental Initial Disclosures").<sup>2</sup>

18 Plaintiffs contend that granting Defendants leave to file a  
19 Supplemental Answer would be futile. Opp'n at 3. Plaintiffs  
20 contend that claims under the FLSA cannot be waived. Id. at 4-5.  
21 Without reaching the merits of Plaintiffs' contention, the Court  
22 notes that Plaintiffs' causes of action go well beyond the FLSA,  
23 and include alleged violations of California labor laws. See Am.  
24 Compl. ¶¶ 58-106. Plaintiffs make no effort to argue that the

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27 <sup>2</sup> Diana Tabacopoulos, a partner with the law firm Seyfarth  
28 Shaw, attorneys for Defendants, filed a Declaration in Support of  
Defendants' Reply. Docket No. 77-1.

1 affirmative defenses of set-off and release would be futile with  
2 respect to these other causes of action. Plaintiffs have failed  
3 to show that permitting Defendants to file their proposed  
4 Supplemental Answer would be futile or unduly prejudicial.

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6 **V. CONCLUSION**

7 For the reasons stated above, Defendants' Motion for Leave to  
8 File a Supplemental Answer is GRANTED. Defendants must file their  
9 Supplemental Answer to Plaintiffs' Amended Complaint no later than  
10 ten (10) calendar days from the date of this Order. The parties  
11 shall appear for a Case Management Conference on April 16, 2010,  
12 at 10:00 a.m. in Courtroom 1, on the 17th floor, U.S. Courthouse,  
13 450 Golden Gate Avenue, San Francisco, CA 94102.

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15 IT IS SO ORDERED.

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17 Dated: December 4, 2009

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UNITED STATES DISTRICT JUDGE

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