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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GALENA GOINS, et al.,
Plaintiffs,
v.
UNITED PARCEL SERVICE INC,
Defendant.

Case No. 21-cv-08722-PJH

**ORDER RE DEFENDANT'S MOTION
TO DISMISS AND/OR STRIKE
SECOND AMENDED COMPLAINT**

Re: Dkt. No. 41

Before the court is defendant's motion to dismiss and/or strike the second amended complaint ("SAC"). The matter is fully briefed and suitable for decision without oral argument. Accordingly, the hearing was vacated. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

BACKGROUND

This is a putative class action alleging employment discrimination. Plaintiffs and putative class representatives include a mix of women in union and non-union roles employed at the defendant company, including supervisors, sorters, drivers, loaders, and associates located in California, Arkansas, Washington, and Nevada. SAC ¶ 8. Defendant United Parcel Service, Inc. ("UPS"), is a global transportation and logistics company.

The 18 named plaintiffs seek to bring a nationwide class action on behalf of all female employees of UPS for purported gender, age, and disability discrimination against UPS. The allegations of each individual plaintiff are briefly summarized below.

1 The first proposed class representative is Unity Beddingfield, a former on-road
2 supervisor for UPS in San Ramon, California. SAC ¶¶ 10–11. Beddingfield was picked
3 on for her sexual orientation, subjected to racial name-calling, moved six times to
4 different work sites, forced to do more work than her male counterparts, and physically
5 attacked. SAC ¶ 11.

6 The second proposed class representative is Danette Brown, who started as a
7 sorter at UPS in California and was promoted to supervisor and then to coordinator. SAC
8 ¶¶ 12–50. Brown was asked to dig in the garbage to check for packages thrown away,
9 and she was subjected to racial name-calling. SAC ¶¶ 21–22, 24. Further, Brown was
10 transferred to a different work site, required to deliver packages after reporting a
11 bludgeoned man on her route, and not considered for certain promotions. SAC ¶¶ 28–
12 50.

13 The third proposed class representative is Rebecca Daniels, a driver in Arkansas.
14 SAC ¶¶ 51–54. Daniels was given more difficult work assignments than her male peers,
15 and she suffered retaliation from supervisor Kent Hardy after she filed grievances. SAC
16 ¶¶ 51–54.

17 The fourth proposed class representative is Galena Goins, a sorter in Oakland,
18 California. SAC ¶¶ 55–64. Goins alleges that she was subjected to a hostile work
19 environment and micromanagement, and she alleges that UPS failed to address her
20 grievances. SAC ¶¶ 55–64.

21 The fifth proposed class representative is Esmeralda Gomez, a combo-loader and
22 irregular sweeper in Oakland, California. SAC ¶¶ 65–79. Gomez was subjected to
23 harassment and intimidation, she was given more difficult work assignments than male
24 peers without regard to her seniority, and she received phone calls from management
25 during her personal time. Id.

26 The sixth proposed class representative is Amy Holland, a driver in Washington.
27 SAC ¶¶ 80–89. Holland faced relocation following an on-the-job accident in 1997, she
28 later suffered an on-the-job injury, she was forced to take an involuntary leave of absence

1 between 2003 and 2004, her supervisors failed to accommodate her work restriction in
2 2011, she was denied time off in 2012, and she faced sexual harassment from
3 supervisors of both genders. Id.

4 The seventh proposed class representative is Terry Jones-Jackson, a sorter and
5 loader in Oakland, California. SAC ¶¶ 90–99. In December 2018, Jones-Jackson
6 learned that her salary was less than some unspecified male colleagues with the same
7 seniority, and while the discrepancy was eventually corrected, Jones-Jackson did not
8 receive back pay to cover the time the discrepancy existed. SAC ¶ 92. Jones-Jackson
9 was denied the opportunity to work full time in 2005, and she has consistently been
10 denied the opportunity to work overtime while male colleagues are so permitted. SAC
11 ¶¶ 95–97. Jones-Jackson also complains of the preferential treatment given to younger
12 women as well as the unsatisfactory results of multiple grievances. SAC ¶¶ 90–99.

13 The eighth proposed class representative is Katherine Kelly, a driver in Arkansas.
14 SAC ¶ 8. Kelly alleges that she was given less desirable work assignments after
15 witnessing sexual harassment of a union steward by manager Kent Hardy, who also
16 failed to submit worker’s compensation paperwork for her following an on-the-job injury.
17 SAC ¶¶ 101–02. Kelly alleges that she was delayed by several months in being
18 promoted to driver, then Hardy harassed her further by yelling at her and assigning her
19 more difficult work assignments after she became a driver. SAC ¶¶ 103–06. Hardy fired
20 Kelly in 2022, but after filing grievances with UPS and the EEOC, she was reinstated.
21 SAC ¶ 106.

22 The ninth proposed class representative is Sonia Lopez, a bagger for UPS in
23 Oakland, California. SAC ¶ 109. Lopez was harassed by her supervisor, Ricardo
24 Moreno, and she was given more difficult work assignments than her male colleagues
25 despite her history of shoulder injury. SAC ¶¶ 111–14, ¶¶ 120–21. Lopez alleges that
26 she and other women were harassed to clock in and out while men were not harassed by
27 supervisors in the same way. SAC ¶ 116.

28 The tenth proposed class representative is Lesley Matthews, a package center

1 supervisor in Arkansas. SAC ¶ 8. Matthews describes harassment by Kent Hardy during
2 her pregnancy and being compelled to go through personnel files of her co-workers.
3 SAC ¶¶ 122–23.

4 The 11th proposed class representative is Brooke McGary, a part-time hub
5 supervisor in Nevada. SAC ¶ 124. McGary alleges she was not given training for her
6 position, and her subordinates were disrespectful toward her. SAC ¶ 125. McGary
7 alleges that she faced a hostile work environment following her change from night shift to
8 day shift, and she was denied the opportunity to work additional hours to earn more.
9 SAC ¶¶ 126–29.

10 The 12th proposed class representative is Melissa McKay, a driver in Arkansas.
11 SAC ¶ 8. Kent Hardy harassed McKay by calling her daily while she was on family leave
12 and threatening her in front of other drivers. SAC ¶¶ 133–34. She additionally alleges
13 that Hardy changed her stats, impacting her pay. SAC ¶ 135.

14 The 13th proposed class representative is Kes Nacole, a part-time pre-loader in
15 Nevada. SAC ¶ 137. Nacole's supervisor, Corey Patterson, harassed her by leering for
16 prolonged periods and intimidating her, even physically cornering her in a truck in
17 November 2021. SAC ¶¶ 138–46. Nacole alleges that UPS did not act to address her
18 several complaints about Patterson. SAC ¶ 152.

19 The 14th proposed class representative is Saysamone Nanthavong, an on-road
20 supervisor in Oakland, California. SAC ¶ 153. Nanthavong complains of a range of
21 conduct by various managers during her employment, such as improperly accusing her of
22 improprieties related to expenses, reassigning her to different worksites, denying her
23 vacation time, intimidating her by kicking a trash can, and accusing her of misplacing her
24 uniform. SAC ¶¶ 153–57. Nanthavong alleges that UPS repeatedly urged her to end her
25 medical leave early following an incident in which she was attacked by a man with a knife
26 while driving her route. SAC ¶ 158. Nanthavong separately alleges that a man with
27 similar seniority but additional work duties was paid more than her. SAC ¶ 164.

28 The 15th proposed class representative is Tami Rankins, an international auditor

1 and irregular pick off in Oakland, California. SAC ¶ 168. Rankins has suffered verbal
2 abuse and threats for nearly five years that have included gender-based comments and
3 comments regarding her weight. SAC ¶¶ 169–79.

4 The 16th proposed class representative is Crystal Ryan-Williams, a driver in
5 Arkansas. Ryan-Williams alleges that she was wrongfully disciplined for taking time off to
6 provide medical care to her son. SAC ¶ 184. Supervisor Kent Hardy additionally gave
7 Ryan-Williams more difficult work assignments following an altercation, impeding her
8 ability to earn bonuses. SAC ¶ 186. Finally, Hardy allegedly made calls to sabotage her
9 candidacy for a promotion. SAC ¶ 187.

10 The 17th proposed class representative is Samantha Williams, a sorter in
11 Sacramento, California. SAC ¶ 188. Williams was allegedly confronted by supervisor
12 Matty Ford when she slowed work to address a safety issue, and she was repeatedly
13 made to feel unsafe by Ford. SAC ¶ 190. Williams further alleges that she faced
14 intimidation and harassment, including being targeted with a sexual gesture, and that she
15 was overlooked for a promotion. SAC ¶¶ 191–92.

16 The 18th proposed class representative is Christina Yanez-Davison, a part-time
17 sort supervisor in Merced, California. SAC ¶ 193. Yanez-Davison alleges that she faced
18 harassing and intimidating treatment from managers and union stewards, including
19 having a supervisor visit her home without invitation and having a union steward
20 physically assault her. SAC ¶¶ 194–97.

21 After presenting the factual allegations for the individual plaintiffs summarized
22 above, the SAC asserts a range of class and collective allegations without reference to
23 the details of any particular plaintiff. Plaintiffs advance in this section that UPS
24 discriminates against women by failing to maintain working time clocks in violation of the
25 “Northern California Sort Rider Agreement Article 12-Section 6: Time Clocks,” as well as
26 the company’s own policies, including “Support the Use and Protection of Technology”
27 and “Accuracy of Records and Reporting.” SAC ¶¶ 198–206. Further, plaintiffs advance
28 that UPS systematically violates the ADA by telling women employees that they must be

1 100 percent healthy to return to work while granting men reasonable accommodations
2 that enable them to return to work before reaching 100 percent. SAC ¶¶ 207–27.
3 Plaintiffs allege that UPS additionally violates its “Professional Conduct and Anti-
4 Harassment Policy” on a systemic basis by failing to respond to race-based harassment
5 of women of color. SAC ¶¶ 228–33. Lastly, plaintiffs allege UPS managers assign work
6 in ways that favor male employees and penalize female employees by giving them more
7 physically demanding and time-consuming work assignments. SAC ¶¶ 234–240.

8 Based on these collective allegations, plaintiffs seek to represent the following
9 class:

- 10 (a) all female employees at UPS who were employed by UPS
11 in the United States from November 9, 2017 to the date of
12 judgment, as a sorter or part-time sort supervisor, on road
13 supervisor, or package car driver;
14 (b) all female employees who worked as a sorter or part-time
15 sort supervisor, on road supervisor, or package car driver at
16 UPS in the United States, who were over forty years old, and/or
17 disabled between November 9, 2017, and the date of judgment;
18 and
19 (c) any women who worked for UPS from 2015 to present as a
20 sorter or sort supervisor, on road supervisor, or package car
21 driver who has been the subject of an Equal Pay act violation
22 due to gender discrimination.

23 SAC ¶ 252.¹ Specific to Rule 23(b)(2), plaintiffs seek classwide injunctive relief that
24 would require improvements to defendant’s policies, practices, and procedures to
25 eliminate discriminatory treatment and pay. SAC ¶¶ 276–80. Specific to Rule 23(b)(3),
26 plaintiffs allege that the class mechanism is superior to address defendant’s systemic
27 discrimination because it would facilitate determination of class members’ eligibility for
28 monetary remedies, including back pay, front pay, and other compensatory damages.
SAC ¶¶ 281–84.

Plaintiffs advance the following causes of action in the SAC:

- (1) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq.,

¹ Although the text of the SAC includes other potential class definitions as well as references to potential subclasses, plaintiffs represent in their opposition brief that the definition at ¶ 252 is the correct one. See Dkt. 43 at 7 n.1.

1 for disparate treatment “on the basis of [plaintiffs] gender, including age and disability”
2 (SAC ¶¶ 285–314);

3 (2) violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq.,
4 for gender discrimination (SAC ¶¶ 315–27);

5 (3) violation of California Fair Employment and Housing Act, (“FEHA”), Cal. Gov.
6 Code § 12940 et seq., for gender discrimination (SAC ¶¶ 328–37);

7 (4) violation of the Equal Pay Act of 1963 (“EPA”), 29 U.S.C. § 216(b), denial of
8 equal pay for equal work (SAC ¶¶ 338–67);

9 (5) violation of the California Equal Pay Act (“CEPA”), Cal. Lab. Code § 1197.5,
10 denial of equal pay for equal and substantially similar work (SAC ¶¶ 368–76); and

11 (6) violation of California Business & Professions Code § 17200 et seq. (“UCL”),
12 for unfair competition (SAC ¶¶ 377–81).

13 Plaintiffs attach to the SAC copies of administrative charges submitted to either
14 the California Department of Fair Employment and Housing (“DFEH”) and/or Equal
15 Employment Opportunity Commission (“EEOC”) on behalf of Goins, Lopez, and Jones-
16 Jackson, along with right-to-sue letters from the respective agencies. Dkt. 38 at 82–134.
17 In the batch of documents, there are also right-to-sue letters from the EEOC to Ryan-
18 Williams and McKay, but no administrative charges are submitted for either of them. Dkt.
19 38 at 108–09.

20 Procedural History

21 This case was initiated by complaint in this court in November 2021. Dkt. 1.
22 Following a stay requested by the parties and before defendants filed a responsive
23 pleading, plaintiffs filed their first amended complaint (“FAC”). Dkt. 26. Defendants
24 moved to dismiss the FAC. Dkt. 27. The court held a thorough hearing before granting
25 the motion, discussing the deficiencies in the FAC and clarifying the necessary elements
26 plaintiffs must include in a subsequent pleading to survive a motion to dismiss. Dkt. 33,
27 Dkt. 35; see also Dkt. 40 (hearing transcript). Plaintiffs timely filed the SAC. Dkt. 38.
28 The instant motion followed. Dkt. 41. Defendant moves to dismiss the employment

1 discrimination claims for failure to exhaust administrative remedies, and defendant moves
2 to dismiss all claims for failure to state a claim. Id. If dismissal is not granted with
3 prejudice, defendant asks the court to strike all class allegations. Id.

4 DISCUSSION

5 A. Legal Standards

6 1. Motion to Dismiss

7 A complaint must contain “a short and plain statement of the claim showing that
8 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual
9 allegations are not required,” a complaint must include sufficient facts to “state a claim to
10 relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal
11 quotation marks omitted). A claim is facially plausible “when the pleaded factual content
12 allows the court to draw the reasonable inference that the defendant is liable for the
13 misconduct alleged.” Id.

14 A motion to dismiss a complaint under Rule 12(b)(6) tests the legal sufficiency of
15 the claims alleged in a complaint. See Fed. R. Civ. P. 12(b)(6). Dismissal under Rule
16 12(b)(6) may be based either on the “lack of a cognizable legal theory” or on “the
17 absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica
18 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

19 When evaluating such a motion, the court must accept all material allegations in
20 the complaint as true, even if doubtful, and construe them in the light most favorable to
21 the non-movant. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).
22 “[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a
23 motion to dismiss for failure to state a claim.” Epstein v. Wash. Energy Co., 83 F.3d
24 1136, 1140 (9th Cir. 1996).

25 A court’s review is generally limited to the contents of the complaint, although the
26 court may also consider documents “whose contents are alleged in a complaint and
27 whose authenticity no party questions, but which are not physically attached to the
28 plaintiff’s pleading.” Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005) (internal

1 quotation marks and alteration omitted). The court may also consider matters that are
2 properly the subject of judicial notice, Lee v. City of Los Angeles, 250 F.3d 668, 688–89
3 (9th Cir. 2001), and documents referenced extensively in the complaint and documents
4 that form the basis of plaintiffs’ claims, No. 84 Emp’r-Teamster Jt. Council Pension Tr.
5 Fund v. Am. W. Holding Corp., 320 F.3d 920, 925 n.2 (9th Cir. 2003).

6 **2. Motion to Strike**

7 Rule 12(f) provides that the “court may strike from a pleading an insufficient
8 defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ.
9 P. 12. The function of a motion to strike is to “avoid the expenditure of time and money
10 that must arise from litigating spurious issues by dispensing with those issues prior to
11 trial.” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (citation
12 and internal quotation marks omitted). To determine whether to grant a motion to strike
13 under Rule 12(f), the court considers whether the matter the moving party seeks to have
14 stricken is (1) an insufficient defense; (2) redundant; (3) immaterial; (4) impertinent; or
15 (5) scandalous. Id. at 973–74.

16 **B. Employment Discrimination Claims**

17 Plaintiffs’ first three causes of action allege employment discrimination under
18 federal and state law. Defendant moves to dismiss these claims (1) for failure to exhaust
19 administrative remedies and (2) for failure to state a claim, which are discussed in turn.

20 **1. Administrative Exhaustion**

21 Defendant first argues that plaintiffs failed to properly exhaust their administrative
22 remedies before bringing these discrimination claims. To bring a civil action alleging
23 violations of Title VII of the Civil Rights Act of 1964 (“Title VII”) or the California Fair
24 Employment and Housing Act (“FEHA”), a plaintiff must first exhaust administrative
25 remedies by filing a timely complaint with the appropriate government agency and
26 receiving a right-to-sue letter. See 42 U.S.C. § 2000e-5(e), (f)(1) (Title VII); Cal. Gov’t
27 Code § 12965(b) (FEHA). Where federal and state law overlap, there is a work-sharing
28 agreement under which employment discrimination charges may be filed either with the

1 federal EEOC or the state anti-discrimination agency, which in California is the DFEH.
2 See 42 U.S.C. § 2000e-8(b). Charges filed with either the EEOC or the DFEH are
3 deemed filed with both agencies. See Laquaglia v. Rio Hotel & Casino, Inc., 186 F.3d
4 1172, 1175–76 (9th Cir. 1999). A plaintiff “must allege compliance with the [mandatory
5 processing rule] . . . in order to state a claim on which relief may be granted.” Cloud v.
6 Brennan, 436 F.Supp.3d 1290, 1302 (N.D. Cal. 2020) (citation omitted).

7 To meet the requirement of substantial compliance with administrative exhaustion,
8 a plaintiff’s district court complaint must be “like or reasonably related to the allegations”
9 in an administrative complaint submitted to the EEOC, such that they would fall within
10 “the scope of an EEOC investigation which [could] reasonably be expected to grow out of
11 the [administrative] charge of discrimination.” Cloud, 436 F.Supp.3d at 1302 (quoting
12 Sosa v. Hiraoka, 920 F.2d 1451, 1456 (9th Cir. 1990)); see also Vasquez v. Cnty. of Los
13 Angeles, 349 F.3d 634, 644 (9th Cir. 2003), as amended (Jan. 2, 2004) (a court may
14 consider “all claims of discrimination that fall within the scope of the EEOC’s actual
15 investigation or an EEOC investigation that could reasonably be expected to grow out of
16 the charge”).

17 **a. January 2023 Administrative Charge**

18 Based in part on the court’s stated concern that the discrimination claims had not
19 been properly exhausted for the named plaintiffs or a national class during the hearing on
20 the first motion to dismiss, counsel for Goins submitted an additional administrative
21 charge to DFEH on January 23, 2023. Dkt. 38 at 82–87. Goins generally alleges
22 harassment, discrimination, and retaliation based on nearly every possible
23 characterization, including gender identity, mental disability, hairstyle and hair texture,
24 suspension, demotion, and many others. The new administrative charge is ineffective to
25 exhaust the claims in this case for three reasons.

26 **i. Procedural Deficiency**

27 First, the January 2023 administrative charge is procedurally deficient. Plaintiffs
28 intend for this new administrative charge to exhaust the discrimination claims presented

1 in this case, but typically, exhaustion must occur before initiation of the lawsuit. See Fort
2 Bend Cnty., Texas v. Davis, 139 S. Ct. 1843, 1846 (2019) (“As a precondition to the
3 commencement of a Title VII action in court, a complainant must first file a charge with
4 the [EEOC]” (emphasis added)). The January 2023 administrative charge comes well
5 after the November 9, 2021, commencement of this lawsuit and thus cannot serve as an
6 independent basis for administrative exhaustion.

7 If the January 2023 charge is intended to amend Goins’ original 2020 charges to
8 serve as administrative exhaustion, it is still procedurally deficient. A plaintiff can amend
9 an EEOC charge to add claims that “relate back to the date the charge was first received”
10 where the new claims are “related to or gr[ew] out of the subject matter of the original
11 charge.” 29 C.F.R. 1628.8(c). In the recent charge, however, Goins complains that she
12 was discriminated against because of

13 national origin (includes language restrictions), color,
14 sex/gender, gender identity or expression, medical condition
15 (cancer or genetic characteristic), age (40 and over), sexual
16 harassment- hostile environment, disability (physical,
17 intellectual/developmental, mental health/psychiatric), race
18 (includes hairstyle and hair texture) and as a result of the
discrimination was denied hire or promotion, reprimanded,
denied equal pay, suspended, demoted, asked impermissible
nonjob-related questions, denied work opportunities or
assignments, denied or forced to transfer, denied
accommodation for a disability.

19 Dkt. 38 at 84. These general, varied contentions are inconsistent with the substance of
20 her original administrative charge, where Goins complained of discrete instances of
21 alleged misconduct taking place between 2019 and 2020. See, e.g., Dkt. 38 at 95
22 (complaining of heavier work assignments and additional performance evaluations based
23 on gender and age). The allegations in the January 2023 charge do not “relate to” or
24 “grow out of” the subject matter of the original charges and thus do not amend them.
25 Rather, the recent administrative charge consists of broad allegations of discrimination
26 without factual support to connect them to the earlier charge. Therefore, the January
27 2023 charge is procedurally defective and does not exhaust claims in this case.

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ii. Timing Deficiency

Second, even if the January 2023 charge was accepted, it would only cover incidents occurring in the preceding 300 days, not the claims before the court. Pursuant to 42 U.S.C. § 2000e-5(e)(1), a Title VII plaintiff must file a charge with the EEOC within 300 days “after the alleged unlawful employment practice occurred” if it occurred in a state that has an entity with the authority to grant or seek relief with respect to the alleged unlawful practice and the employee initially filed a grievance with that agency. Nat’l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002). A claim is time-barred if it is not filed within this time limit. Id. Related to this timing, the Ninth Circuit has made clear that the “starting date of the class action [is] 300 days prior to the date [the charging party] filed his EEOC charge.” Arizona ex rel. Horne v. Geo Grp., Inc., 816 F.3d 1189, 1203 (9th Cir. 2016) (citation omitted).

Here, the January 2023 charge cannot reach back to cover the substantive allegations included within the SAC. Plaintiffs’ claims in the SAC center on discrete instances of discriminatory conduct that took place before March 29, 2022, the start of the 300-day period preceding January 23, 2023. For example, Goins complains of harassment from coworkers taking place in September 2020. SAC ¶ 57. Jones-Jackson complains of preferential treatment given to younger women taking place in March 2020. SAC ¶ 96. Lopez complains of harassment from her supervisor, Ricardo Moreno, and being given more difficult work assignments than her male colleagues starting in 2019. SAC ¶¶ 111–14, ¶¶ 120–21. These represent only some of the allegations in the SAC, but all of the varied events described in the pleading took place well prior to March 29, 2022. The January 2023 administrative charge thus does not exhaust the allegations in the SAC because it is also untimely.

iii. Factual Deficiency

Third and moreover, the post-lawsuit administrative charge does not contain any factual detail that would support a discrimination claim. In determining whether a plaintiff has exhausted Title VII claims in her administrative charge, a district court considers

1 “such factors as the alleged basis of the discrimination, dates of discriminatory acts
2 specified within the charge, perpetrators of discrimination named in the charge, and any
3 locations at which discrimination is alleged to have occurred.” B.K.B., 276 F.3d at 1100.
4 The January 2023 administrative charge does not plausibly address any of these factors.
5 It alleges company-wide and nation-wide discrimination occurring on or about a single
6 date, January 22, 2023, without naming any perpetrators of the discrimination, and
7 without listing any locations at which the alleged discrimination took place. Dkt. 38 at 84.
8 This most recent administrative charge thus fails to achieve one of its most important
9 purposes—it fails to give the charged party effective notice of the claim. Further, it fails to
10 effectively narrow the issues for adjudication, instead seeking to expand them to include
11 any form of discrimination. The January 2023 administrative charge is therefore
12 ineffective to amend the earlier charges, and it does not exhaust their claims.

13 **b. Original Administrative Charges**

14 Defendant additionally challenges plaintiffs’ pre-litigation administrative charges as
15 unrelated to the class and individual allegations in the SAC. As previously noted, courts
16 evaluating the similarity between an administrative charge and a Title VII claim “may
17 consider ‘such factors as the alleged basis of the discrimination, dates of discriminatory
18 acts specified within the charge, perpetrators of discrimination named in the charge, and
19 any locations at which discrimination is alleged to have occurred.’” Vasquez, 349 F.3d at
20 644 (quoting B.K.B. v. Maui Police Dep’t, 276 F.3d 1091, 1100 (9th Cir. 2002)). “In
21 addition, the court should consider plaintiff’s civil claims to be reasonably related to
22 allegations in the charge to the extent that those claims are consistent with the plaintiff’s
23 original theory of the case.” B.K.B., 276 F.3d at 1100.

24 However, “unnamed class members in a private class action need not exhaust
25 administrative remedies.” Geo Grp., Inc., 816 F.3d at 1204. “In addition, an aggrieved
26 employee who fails to file a timely charge . . . may still be able to pursue a claim under
27 the piggyback or single-filing rule, in which the employee ‘piggyback[s]’ onto the timely
28 charge filed by another plaintiff for purposes of exhausting administrative remedies.” Id.

1 (citing Harris v. Cnty. of Orange, 682 F.3d 1126, 1136 (9th Cir. 2012)).

2 Plaintiffs attach to the SAC the pre-litigation administrative charge materials for the
3 following three named plaintiffs: Goins, Lopez, and Jones-Jackson. Dkt. 38 at 88–90,
4 91–93, 94–97 (DFEH charges); Dkt. 38 at 120–121, 126 (EEOC charges). The DFEH
5 charges are the same administrative charges plaintiffs submitted in support of their
6 opposition to defendants’ motion to dismiss the FAC. Dkt. 30. Plaintiffs also attach to the
7 SAC right-to-sue letters corresponding with each of the administrative charges. Dkt. 38
8 at 110–111, 112–13, 115–16 (DFEH right-to-sue letters); Dkt. 38 at 118–119, 122, 123–
9 25 (EEOC right-to-sue letters). Commingled with these papers are right-to-sue letters for
10 plaintiffs McKay and Ryan-Williams, though the related administrative charge materials
11 for these two are not included. Dkt. 38 at 108, 109.

12 UPS avers that the three original DFEH charges presented with the SAC,
13 representing only a fraction of the 18 named plaintiffs, are too limited to support the
14 sweeping class allegations of discrimination in pay and promotions advanced in the
15 pleading. UPS argues that it could not have reasonably assumed that a nationwide Title
16 VII claim could arise from the allegations in those charges.

17 Plaintiffs counter that the piggyback or single-filing rule allows named and
18 unnamed members of the putative class to rely on the administrative charges of Goins,
19 Lopez, and Jones-Jackson to satisfy administrative exhaustion because those charges
20 advance similar facts and types of conduct as those experienced by the fifteen additional
21 plaintiffs.

22 The court addresses in turn the sufficiency of the three administrative charges to
23 exhaust both the class allegations and the individual allegations.

24 **i. Class Allegations**

25 Here, plaintiffs’ administrative charges are highly individualized and fail to exhaust
26 the classwide allegations. The section of the SAC devoted to “class and collective”
27 allegations does not connect the facts in the preceding 190 paragraphs. Nor does it
28 correlate with the claims themselves. Instead, the class and collective allegations section

1 of the SAC:

- 2 • Quotes from a portion of the Northern California Sort Rider regarding installation of
3 time clocks without specifying what collective bargaining agreement the rider
4 supplements, to whom it applies or how it can be deemed to state a nationwide
5 policy. SAC ¶ 198.
- 6 • Quotes portions of UPS's Code of Business Conduct, which announce general
7 principles of UPS's support for "use and protection of technology." SAC ¶ 199.
- 8 • References UPS's purported policies called "Support the Use and Protection of
9 Technology" and "Accuracy of Records and Reporting" while claiming that UPS
10 "does not maintain its clocks in working order." SAC ¶ 202. Plaintiffs further
11 speculate that UPS does not maintain time clocks in some unknown facilities and
12 that, as a result of this technology lapse, women must jump through more hoops
13 than men to record their hours worked, conceding that both genders can and do
14 accurately record their hours. SAC ¶¶ 200–01, ¶¶204–06.
- 15 • References the "UPS and the ADA" policy while arguing that Goins was denied an
16 interactive process after a workplace injury and that Matthews was told by a
17 manager that she must work while pregnant. SAC ¶¶ 207–10, ¶¶ 212–13.
18 Plaintiffs generally claim that at some unknown facilities "women must lift the
19 heaviest load" and that they must "work faster." SAC ¶¶ 218–27.
- 20 • Purports to inject race discrimination and harassment claims despite stating no
21 such claims in the SAC. SAC ¶¶ 228–33, 234–37.
- 22 • Includes a lengthy and conclusory recitation of Federal Rules of Civil Procedure
23 Rule 23 requirements devoid of any specifics or ties to the plaintiffs, yet rife with
24 such generalizations as "UPS' policies and procedures have an ongoing disparate
25 impact on female employees," "UPS' employment policies, practices and
26 procedures are not unique or limited to any location," "UPS' management does not
27 provide sufficient oversight or safety measures" and "the common issues include
28 whether UPS has engaged in gender, age, and disability discrimination against

1 female employees.” SAC ¶¶ 241–84.

- 2 • Provides two conflicting class definitions. Compare SAC ¶ 238 with ¶ 252.
- 3 • And finally, provides such “common” questions of fact and law as “a determination
- 4 of the proper standard for proving a pattern or practice of discrimination by UPS
- 5 against its female employees and under the disparate treatment theory of liability
- 6 for employees” and whether UPS “otherwise discriminated against female
- 7 employees.” SAC ¶¶ 263–64.

8 In sum, review of the sections devoted to purported class allegations makes clear that

9 plaintiffs have not exhausted any classwide allegations. The generalized contentions are

10 factually distinct from the limited administrative charges presented by plaintiffs. And as

11 discussed further below, the generalized class contentions do not lend themselves to

12 classwide treatment—the allegations do not amount to a coherent, unifying legal theory

13 that will be resolved in a single stroke. See Wal-Mart Stores, Inc. v. Dukes, 564 U.S.

14 338, 350 (2011).

15 Plaintiffs’ counsel represented during the previous hearing that there exist

16 administrative charges for additional plaintiffs beyond the original three. Dkt. 40 at 20–

17 21. The court instructed counsel to include those with the amended pleading. Id. The

18 only administrative charge documents attached to the SAC, however, are those for

19 Goins, Lopez, and Jones-Jackson. This slim record is insufficient to demonstrate

20 administrative exhaustion of discrimination claims for a nationwide putative class.

21 Overall, the allegations of class-wide discrimination emphasized by plaintiffs in the

22 SAC are simply not like or reasonably related to the allegations in the three, limited

23 administrative charges. Plaintiffs allege in their first cause of action for violation of Title

24 VII that UPS discriminated against Lopez by providing differential access to time clocks in

25 the Oakland hub. SAC ¶¶ 285–314. This form of discriminatory conduct is plainly

26 unrelated to any of the allegations presented in the administrative charge documents,

27 including Lopez’ own administrative charge. Neither UPS nor DFEH could have

28 reasonably discovered such treatment in the course of investigations into, for example,

1 inappropriate leering, assignment of more physically demanding work to women, or
2 denial of reasonable accommodations. Plaintiffs have simply not exhausted their
3 classwide disparate treatment claims. Similarly, plaintiffs fail to identify in their original
4 administrative charges any facially neutral policy that leads to differential outcomes
5 based on their gender. Plaintiffs have thus not exhausted their classwide disparate
6 impact claims either.

7 Based on the disconnect between the allegations in the SAC and the original
8 administrative charges of Goins, Lopez, and Jones-Jackson, plaintiffs have not
9 administratively exhausted their class claims of discrimination. Plaintiffs' failure to
10 administratively exhaust their classwide discrimination claims requires their dismissal.

11 **ii. Individual Allegations**

12 In Goins' initial DFEH charge, dated November 19, 2020, she alleges
13 discrimination on the basis of age, sex/gender, and disability and provides the following
14 particulars: (1) denial of reasonable accommodation for her disability; (2) assigned extra
15 duties and heavier work than younger male employees; (3) evaluated for work
16 performance three times in one month while others are not evaluated so often; and
17 (4) work shifts reduced by 1-2 hours while male co-workers did not have their hours
18 reduced. Dkt. 38 at 94–96.

19 Goins deviates from those allegations and generally complains in the SAC that
20 she was subjected to a hostile work environment and micromanagement, and she alleges
21 that UPS failed to address her grievances. SAC ¶¶ 55–64. The single contention in the
22 SAC that could plausibly relate to the allegations in the DFEH charge is that she was
23 forced to stand for long hours and assigned to heavy duty areas despite management's
24 knowledge of her history of knee injury. SAC ¶ 58. This allegation plausibly carries over
25 from her contention in the administrative charge that she was denied a reasonable
26 accommodation for her disability. Dkt. 38 at 94. Therefore, the only allegation that has
27 been administratively exhausted by Goins is denial of reasonable accommodation.

28 In Lopez' initial DFEH charge, dated September 8, 2020, she alleges sexual

1 harassment, discrimination based on sex/gender, age, disability, and retaliation and
2 provides the following particulars: (1) sexual harassment by supervisor Connor O'Reilly in
3 the form of leering and inappropriate sexual comments; (2) assigned heavier work and
4 made to clean areas outside of her responsibility while younger female co-workers and all
5 male workers were not similarly assigned work; (3) denial of reasonable accommodation
6 for her disability; and (4) denied the bonus longevity vacation time she had earned as
7 retaliation for her several reports of discrimination and harassment since 2018. Dkt. 38 at
8 88–90.

9 In contrast, Lopez alleges in the SAC that she was harassed by a different
10 supervisor, Ricardo Moreno, and she was given more difficult work assignments than her
11 male colleagues despite her history of shoulder injury. SAC ¶¶ 111–14. Lopez also
12 alleges that she and other women were harassed to clock in and out while men were not
13 harassed by supervisors in the same way. SAC ¶ 116. The contention in the SAC that
14 she was assigned to heavy duty areas despite management's knowledge of her history of
15 shoulder injury could plausibly relate to the allegations in the DFEH charge. SAC ¶ 114.
16 As with Goins, this allegation plausibly carries over from her contention in the
17 administrative charge that she was denied a reasonable accommodation for her
18 disability. Dkt. 38 at 89. Similarly, the allegation that Lopez was given more difficult work
19 assignments than her male colleagues could reasonably grow out of her contention in the
20 administrative charge that she was assigned heavier work. SAC ¶¶ 120–21. Therefore,
21 the only two allegations that have been administratively exhausted by Lopez are
22 (1) denial of reasonable accommodation and (2) that she was given heavier work than
23 similarly situated men.

24 In Jones-Jackson's initial DFEH charge, dated November 14, 2020, she alleges
25 discrimination based on sex/gender, sexual harassment, and denial of equal pay, and
26 she provides the following particulars: (1) she was paid \$1.00 less per hour than another
27 male sorter; (2) she was assigned for four weeks to manual sorting while male workers
28 remained in automotive sorting; (3) she was denied the opportunity to work overtime

1 while a male sorter with the same seniority was allowed to work overtime; (4) she was
2 subjected to sexual harassment in the form of leering and inappropriate touching; and
3 (5) she was denied work assignments and moved to small sort to be replaced by women
4 who wear see-through clothes and tight pants. Dkt. 38 at 91–93.

5 In the SAC, Jones-Jackson complains that she received lower pay than a similarly
6 situated male employee, and while the discrepancy was eventually corrected, Jones-
7 Jackson did not receive back pay to cover the time the discrepancy existed. SAC ¶ 92.
8 Jones-Jackson was denied the opportunity to work full time in 2005, and she has
9 consistently been denied the opportunity to work overtime while male colleagues are so
10 permitted. SAC ¶¶ 95–97. Jones-Jackson also complains of the preferential treatment
11 given to younger women as well as the unsatisfactory results of multiple grievances.
12 SAC ¶¶ 90–99. The following three contentions could reasonably grow out of the DFEH
13 charge are (1) that Jones-Jackson was denied backpay to cover the period of a gender-
14 based pay discrepancy, (2) that Jones-Jackson was denied the opportunity to work
15 overtime while men with the same or less seniority were given such opportunity, and
16 (3) that Jones-Jackson was denied the preferential treatment given to younger women.
17 These three contentions are the only ones that have been administratively exhausted.

18 As to the fifteen named plaintiffs for whom no administrative charges were
19 provided, at the previous hearing, in addition to directing plaintiffs to provide the
20 additional administrative charges, the court instructed plaintiffs to “connect the dots”
21 between the specifics in plaintiffs’ administrative charges and the generalized contentions
22 in the complaint. Dkt. 40 at 33. Plaintiffs still have not done so. The SAC itself does not
23 provide the necessary clarity to tie the allegations in the administrative charges to the
24 allegations in the SAC, and plaintiffs’ opposition brief provides no assistance for the task.
25 Plaintiffs instead aver that the allegations in the SAC are “‘like or reasonably related’ to
26 allegations included in their EEOC charges: they concerned the same types of women,
27 sorters, location, and numerosity of wrongdoing.” Dkt. 43 at 14. These factors are not
28 only too general to show factual relation between the administrative charges and the

1 SAC, but they are also inconsistent with the factors that courts must rely upon in making
2 the assessment of relation for administrative exhaustion. See Vasquez, 349 F.3d at 644.
3 Further, the similarities plaintiffs draw between the three original claimants and the
4 additional 15 named plaintiffs are not accurate. For example, though plaintiffs argue that
5 the allegations involve sorters, only four named plaintiffs hold that position. Further,
6 though plaintiffs argue that the allegations involve the same location, the complaint
7 makes clear that the named plaintiffs work in different facilities across four different
8 states. Plaintiffs again do not show that the allegations of the other 15 named plaintiffs
9 could “reasonably be expected to grow out of” the charges filed by Goins, Lopez, and
10 Jones-Jackson. Vasquez, 349 F.3d at 644. The inconsistencies preclude a finding that
11 the remaining 15 named plaintiffs may piggyback on the administrative complaints of
12 Goins, Lopez, and Jones-Jackson.

13 Accordingly, the court finds that only three named plaintiffs have administratively
14 exhausted portions of their employment discrimination allegations in the SAC. For the
15 same reason that the disparate impact claims have not been exhausted on a classwide
16 basis, they have not been exhausted for these three named plaintiffs either. The
17 remaining issue related to the employment discrimination causes of action is whether the
18 disparate treatment allegations plaintiffs have administratively exhausted sufficiently state
19 a claim to survive defendant’s motion to dismiss, discussed next.

20 **2. Pleading of Disparate Treatment Claims**

21 “Disparate treatment occurs ‘where an employer has treated a particular person
22 less favorably than others because of a protected trait.’” Wood v. City of San Diego, 678
23 F.3d 1075, 1081 (9th Cir. 2012) (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009)).
24 To state a prima facie claim of disparate treatment, a plaintiff must show that “(1) she
25 belongs to a protected class; (2) she was qualified for her position; (3) she was subject to
26 an adverse employment action; and (4) similarly situated individuals outside her
27 protected class were treated more favorably.” Davis v. Team Elec. Co., 520 F.3d 1080,
28 1089 (9th Cir. 2008). For Title VII discrimination claims, an adverse action is one that

1 “materially affect[s] the compensation, terms, conditions, or privileges of the [plaintiffs’]
2 employment.” Chuang v. Univ. of Cal. Davis, Bd. of Trustees, 225 F.3d 1115, 1126 (9th
3 Cir. 2000). The Ninth Circuit has “held that assigning more, or more burdensome, work
4 responsibilities, is an adverse employment action.” Davis, 520 F.3d at 1089. Similarly,
5 the appellate court found “being excluded from meetings, seminars, and positions that
6 would have made the employee eligible for salary increases, and being given a more
7 burdensome work schedule, if proven, were sufficient to establish adverse employment
8 actions.” Strother v. S. California Permanente Med. Grp., 79 F.3d 859, 869 (9th Cir.
9 1996). The elements of a prima facie case for discrimination under FEHA are closely
10 related to the Title VII prima facie requirements. Guz v. Bechtel Nat’l, Inc., 24 Cal.4th
11 317, 354 (2000) (“Because of the similarity between state and federal employment
12 discrimination laws, California courts look to pertinent federal precedent when applying
13 our own statutes.”).

14 Here, defendant does not contest the first two elements, whether plaintiffs fit within
15 a protected class, and whether they were qualified for their respective positions. Instead,
16 defendant argues that plaintiffs fail to provide any factual allegations of differential
17 treatment. The court finds, however, that for the claims that have been administratively
18 exhausted, plaintiffs sufficiently allege that they individually suffered an adverse
19 employment action and that similarly situated persons were treated more favorably.

20 Goins alleges that that she was forced to stand for long hours and assigned to
21 heavy duty areas despite management’s knowledge of her history of knee injury. SAC
22 ¶ 58. Goins does not specifically allege that similarly situated men are denied
23 reasonable accommodations; however, based on the totality of the SAC and the
24 particulars of her administrative charges, she contends her denial of reasonable
25 accommodation is based on her gender. Thus, Goins plausibly alleges a claim for
26 disparate treatment.

27 Similarly, Lopez plausibly alleges that she was treated differently based on gender
28 where she alleges that she was denied reasonable accommodations for shoulder injuries

1 while men were granted easier workloads. SAC ¶ 114. Lopez also plausibly alleges that
2 she faced adverse treatment in the form of more difficult work assignments than her male
3 colleagues. SAC ¶¶ 120–21. Jones-Jackson plausibly alleges that she was treated
4 differently based on gender where she alleges that she was (1) denied backpay to cover
5 the period of a gender-based pay discrepancy, (2) denied the opportunity to work
6 overtime while men with the same or less seniority were given such opportunity, and
7 (3) denied the preferential treatment given to younger women. SAC ¶¶ 90–99. These
8 contentions all show both adverse treatment and that persons similarly situated do not
9 receive the same treatment, and they are thus sufficient to state a plausible claim for
10 disparate treatment based on gender and possibly age. Therefore, only plaintiffs Goins,
11 Lopez, and Jones-Jackson may proceed with their disparate treatment claims.

12 **C. Equal Pay Act and California Equal Pay Act Claims**

13 Plaintiffs allege violations of the state and federal Equal Pay Acts, which prohibit
14 sex-based wage discrimination. 29 U.S.C. § 206; Cal. Labor Code § 1197.5(h). The
15 federal Equal Pay Act provides that no employer shall discriminate by paying different
16 wages to employees of opposite sexes within an establishment for jobs that require
17 substantially equal skill, effort, and responsibility, and which are performed under similar
18 working conditions. 29 U.S.C. § 206(d)(1); E.E.O.C. v. Maricopa Cty. Cmty. Coll. Dist.,
19 736 F.2d 510, 513 (9th Cir. 1984). “To make out a case under the Equal Pay Act, a
20 plaintiff must prove that an employer is paying different wages to employees of the
21 opposite sex for equal work. The jobs held by employees of opposite sexes need not be
22 identical, but they must be ‘substantially equal.’” Hein v. Oregon Coll. of Educ., 718 F.2d
23 910, 913 (9th Cir. 1983) (citation omitted). The plaintiff must present a comparison of
24 “the jobs in question,” not “the individuals who hold the jobs.” Stanley v. Univ. of S. Cal.,
25 178 F.3d 1069, 1074 (9th Cir. 1999). The California Equal Pay Act is nearly identical to
26 the federal statute and subject to the same analysis. Green v. Par Pools Inc., 111
27 Cal.App.4th 620, 623 (2003) (citing Cal. Lab. Code § 1197.5).

28 The Equal Pay Act provides, in relevant part, that “No employer . . . shall

1 discriminate, within any establishment in which such employees are employed, between
2 employees on the basis of sex by paying wages to employees in such establishment at a
3 rate less than the rate which he pays wages to employees of the opposite sex in such
4 establishment for equal work.” 29 U.S.C. § 206(d)(1) (emphasis added). The federal
5 regulations define “establishment” as follows: “a distinct physical place of business rather
6 than . . . an entire business or ‘enterprise’ which may include several separate places of
7 business. . . [E]ach physically separate place of business is ordinarily considered a
8 separate establishment.” 29 C.F.R. § 1620.9(a). In another subsection, the regulation
9 continues, “unusual circumstances may call for two or more distinct physical portions of a
10 business enterprise being treated as a single establishment. For example, a central
11 administrative unit may hire all employees, set wages, and assign the location of
12 employment; employees may frequently interchange work locations; and daily duties may
13 be virtually identical and performed under similar working conditions.” 29 C.F.R.
14 § 1620.9(b).

15 Defendant highlights that plaintiffs’ own pleading acknowledges that they did not
16 all work in a single state, let alone a single location. Plaintiffs counter that the EPA does
17 not require employees to work in a single establishment; rather, an alleged violation of
18 the EPA applies to require equal pay for employees across an entire enterprise.

19 Here, plaintiffs fail to allege sufficient facts showing that the “unusual
20 circumstances” necessary to consider multiple sites part of the same “enterprise” are
21 present. Plaintiffs do not allege facts showing that the thousands of UPS facilities
22 nationwide, where employees are governed by several collective bargaining agreements
23 and supervised by hundreds of thousands of managers, embody the “unusual
24 circumstance” that is the exception to the rule of EPA claims being limited to a single
25 establishment. Because plaintiffs do not allege violations within a single establishment,
26 their fourth and fifth causes of action for violation of the EPA and CEPA must be
27 dismissed as to the class.

28 Only two of the 18 named plaintiffs allege differential pay on an individual basis.

1 The first, Nanthavong, falls short of stating a claim because she held different job duties
2 than the man she identifies for comparison. The SAC acknowledges that the man paid
3 more than her, Alfonso Ramirez, held additional responsibility. SAC ¶¶ 164 (“Ramirez was
4 given control over a driver group after another On Road Supervisor had left. Nanthavong
5 still had no driver group to oversee despite being in the position first with more
6 experience in that position and was being paid less than Ramirez at \$7300.”). Such
7 differential responsibility and differential pay do not violate equal pay principles.

8 The allegations of differential pay of the second plaintiff, Jones-Jackson, center
9 firmly on whether she was paid less than a man for their same work as sorters. SAC
10 ¶¶ 349–51. Plaintiffs acknowledge that UPS remedied an earlier instance of differential
11 pay by raising Jones-Jackson’s hourly wage by \$1.00 to match a male comparator, but
12 UPS did not reimburse Jones-Jackson for the six-month period over which the disparity
13 existed. Id. Jones-Jackson thus plausibly states a claim that she is entitled to back pay
14 for this six-month period in which she was paid different wages than a man for equal
15 work. Accordingly, the EPA and CEPA causes of action are dismissed as to all plaintiffs
16 except for Jones-Jackson.

17 **D. California Unfair Competition Law (“UCL”)**

18 Under Section 17200, unfair competition is defined as “any unlawful, unfair or
19 fraudulent business act or practice” and “unfair, deceptive, untrue or misleading
20 advertising.” See Cal. Bus. & Prof. Code § 17200. A business practice is “unlawful”
21 under section 17200 if it violates an underlying state or federal statute or common law.
22 See Cal-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal.4th 163, 180
23 (1999).

24 Plaintiffs’ UCL claim challenging unlawful business practices is based on “UPS’
25 willful failure to pay women equally, to promote women equally, and otherwise to offer
26 women equal employment opportunities as alleged above.” SAC ¶¶ 379. As discussed
27 above, plaintiffs state plausible violations of employment discrimination and equal pay
28 laws. Therefore, plaintiffs also state a plausible UCL claim based on those surviving

1 claims.

2 **E. Class Allegations**

3 As stated above, the function of a motion to strike is to “avoid the expenditure of
4 time and money that must arise from litigating spurious issues by dispensing with those
5 issues prior to trial.” Whittlestone, 618 F.3d at 973. A court may “strike class allegations
6 prior to discovery if the complaint demonstrates that a class action cannot be
7 maintained.” Tietzworth v. Sears, 720 F. Supp. 2d 1123, 1146 (N.D. Cal. 2010); Sanders
8 v. Apple Inc., 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009); see Fed. R. Civ. P. 23(d)(1)(D)
9 (a court may “require that the pleadings be amended to eliminate allegations about
10 representation of absent persons and that the action proceed accordingly.”). However,
11 motions to strike class allegations are disfavored because a motion for class certification
12 is a more appropriate vehicle for arguments pertaining to the class allegations. See
13 Thorpe v. Abbott Laboratories, Inc., 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008); Azad
14 v. Tokio Marine HCC-Med. Ins. Servs. LLC, No. 17-CV-00618-PJH, 2017 WL 3007040,
15 at *8 (N.D. Cal. July 14, 2017); see also In re Wal-Mart Stores, Inc. Wage & Hour Litig.,
16 505 F. Supp. 2d 609, 614–15 (N.D. Cal. 2007) (“Generally, courts review class
17 allegations through a motion for class certification.”). The decision whether to strike
18 allegations is a matter within the court’s discretion. Biggins v. Wells Fargo & Co., 266
19 F.R.D. 399, 406 (N.D. Cal. 2009).

20 Here, it is clear from plaintiffs’ pleading and proposed class definition that a class
21 action cannot be sustained in this case. First, as stated above, the class allegations have
22 not been administratively exhausted. Plaintiffs acknowledge in the SAC that UPS is a
23 multi-national corporation that operates in all 50 states and employs some 440,000 staff.
24 SAC ¶ 9. The named plaintiffs alone include a wide range of female UPS employees,
25 including union members and supervisors, across four states. SAC ¶ 8. The different
26 experiences of even the three remaining named plaintiffs strongly suggest that such a
27 broad class action cannot be maintained. For instance, in the administrative charge
28 documents, there is little cross-over regarding allegations of discriminatory conduct or

1 differential pay. Goins’s charge alleges her supervisor gave her “extra duties and heavier
2 work,” that she was written up three times in one month, and had her hours reduced.
3 Dkt. 38 at 94–97. Lopez’s charge alleges that she was subject to sexual harassment
4 including leering by supervisor Connor O’Reilly, assigned heavier jobs, required to do
5 heavy lifting, and retaliated against by being deprived of vacation time. Dkt. 38 at 88–90.
6 Jones-Jackson’s charge alleges that she made \$1.00 less hourly than a male sorter, was
7 moved to manual sorting, deprived of overtime, observed sex harassment, and removed
8 from small sort because of her race. Dkt. 38 at 91–93. Plaintiffs present no facts
9 showing that plaintiffs have similar work experiences in either their administrative charges
10 or their claims within the SAC.

11 Further, these allegations do not overlap with the SAC’s designated class
12 allegations, such as the allegation that “UPS discriminates against female employees,
13 especially those who are over forty and/or disabled, in compensation and promotion and
14 subjects them to a work culture predominated by men.” SAC ¶¶ 268. Plaintiffs only offer
15 legal conclusions related to the class, including that their claims are typical of members of
16 the proposed class (SAC ¶¶ 266–72) and that the named plaintiffs and their counsel will
17 adequately represent the interests of the class (SAC ¶¶ 273–75). Plaintiffs provide no
18 coherent showing that UPS maintained nationwide policies or practices giving rise to their
19 causes of action such that classwide resolution would be appropriate. Plaintiffs do not
20 show a coherent theory of maltreatment that is applicable across each of the 18 named
21 plaintiffs, and they do not present a legal issue that is capable of resolution in a single
22 stroke. See Dukes, 564 U.S. at 350. It is thus difficult to reconcile how plaintiffs can
23 possibly, or even plausibly, sustain a class of women across 50 states.

24 Further still, plaintiffs fail to acknowledge the variety of problems with their class
25 definition that render maintenance of such class implausible. For example, plaintiffs’
26 clarification of their class definition eliminates five of their proposed class representatives
27 from the class. As defendant notes, “by limiting the putative class definition to only the
28 employees who worked as a ‘sorter or part-time sort supervisor, on road supervisors, or

1 package car drivers,' Plaintiffs eliminate Beddingfield, Gomez, Matthews, Nacole and
2 Rankins, who Plaintiffs allege do not hold these titles." Dkt. 44 at 16. Plaintiffs
3 additionally fail to address how they can bring class-wide claims under California's FEHA
4 and CEPA for out-of-state employees. Plus, plaintiffs again fail to address the issue of
5 structural conflicts within the class between union and non-union workers and between
6 front-line and supervisory workers. These structural issues weigh against permitting
7 class claims to proceed.

8 In sum, multiple rounds of pleading demonstrate that a class action cannot be
9 plausibly maintained. The class allegations are hereby stricken.

10 **F. Summary**

11 The preceding paragraphs resolve many of the issues in the SAC. Classwide
12 allegations are eliminated. Fifteen of the named plaintiffs are eliminated for failure to
13 exhaust their administrative remedies for employment discrimination. The claims of
14 disparate impact discrimination are eliminated. The EPA and CEPA causes of action
15 have been eliminated for all plaintiffs except for Jones-Jackson. However, the case will
16 proceed on the basis of the allegations that have been exhausted and for which plaintiffs
17 adequately state a claim. Therefore, defendant must respond to the surviving claims of
18 Goins, Lopez, and Jones-Jackson, as specified below:

- 19 • Defendant must respond to Goins' allegation of disparate treatment that she was
20 denied reasonable accommodation based on her gender in violation of both Title
21 VII and FEHA. Goins alleges that that she was forced to stand for long hours and
22 assigned to heavy duty areas despite management's knowledge of her history of
23 knee injury. SAC ¶ 58.
- 24 • Defendant must respond to Lopez' allegations of disparate treatment that she was
25 also denied reasonable accommodation based on her gender in violation of both
26 Title VII and FEHA. Lopez alleges she was denied reasonable accommodations
27 for shoulder injuries while men were granted easier workloads. SAC ¶ 114.
- 28 Defendant must also respond to Lopez' allegations of disparate treatment based

1 on work assignments. Lopez alleges that she faced adverse treatment in the form
2 of more difficult work assignments than her male colleagues. SAC ¶¶ 120–21.

3 • Defendant must respond to Jones-Jackson’s allegations of disparate treatment in
4 violation of both Title VII and FEHA. Jones-Jackson alleges that she was treated
5 differently based on gender where she alleges that she was denied backpay to
6 cover the period of a gender-based pay discrepancy. Defendant must also
7 respond to Jones-Jackson’s allegations of disparate treatment based on denial of
8 opportunities for greater earnings. Jones-Jackson alleges denial of the
9 opportunity to work overtime while men with the same or less seniority were given
10 such opportunity. Further, defendant must respond to Jones-Jackson’s allegations
11 of disparate treatment based on denial of the preferential treatment given to
12 younger women. SAC ¶¶ 90–99.

13 • Defendant must respond to Jones-Jackson’s allegations that she was paid less
14 than a man for the same work over a six-month period in violation of both the EPA
15 and CEPA. SAC ¶¶ 349–51.

16 • Finally, defendant must respond to plaintiffs’ UCL cause of action challenging
17 unlawful business practices based on the alleged violations of law described
18 above. See SAC ¶ 379.

19 **CONCLUSION**

20 For the reasons stated above, the court GRANTS in part and DENIES in part
21 defendant’s motion to dismiss. The court GRANTS defendant’s motion to strike class
22 allegations. Defendant must file an answer within 28 days from the date of this order
23 responding to the claims as specified above.

24 **IT IS SO ORDERED.**

25 Dated: April 20, 2023

26 /s/ Phyllis J. Hamilton
27 PHYLLIS J. HAMILTON
28 United States District Judge