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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LUPE SUBEGA,

CASE NO. 5:10-cv-05025 EJD

Plaintiff(s),

**ORDER GRANTING MOTION TO  
CONSOLIDATE**

v.

INTEL CORPORATION,

[Docket Item No. 12]

Defendant(s).

\_\_\_\_\_  
LUPE SUBEGA,

CASE NO. 5:11-cv-00722 EJD

Plaintiff(s),

v.

INTEL CORPORATION,

Defendant(s).  
\_\_\_\_\_

Through this motion,<sup>1</sup> Plaintiff Lupe Subega (“Plaintiff”) seeks to consolidate the above-entitled case against her former employer, Defendant Intel Corporation (“Defendant”), with another case she subsequently filed against Defendant, namely case number 5:11-cv-00722 EJD.<sup>2</sup> Since the court finds this matter appropriate for determination without oral argument pursuant to Civil Local

<sup>1</sup> This disposition is not intended for publication in the official reports.

<sup>2</sup> In line with the references attributed by the parties, the court will herein refer to case number 5:10-cv-05025 EJD as Subega I and case number 5:11-cv-00722 EJD as Subega II.

1 Rule 7-1(b), the hearing previously scheduled for October 7, 2011, is vacated. For the reasons  
2 explained below, Plaintiff’s motion to consolidate will be granted.

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiff is a former employee of Defendant. On November 5, 2010, Plaintiff filed a class  
5 action complaint against Defendant on behalf of herself and other similar employees for violations  
6 of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et. seq., and related California Labor  
7 Codes based on allegations that Defendant failed to pay overtime wages (Subega I). See Complaint,  
8 Docket Item No. 1, in Subega I. She thereafter amended the Complaint to remove the class-action  
9 allegations, leaving only Plaintiff’s personal claims against Defendant. See Amended Complaint,  
10 Docket Item No. 8, in Subega I.

11 On February 16, 2011, Plaintiff filed another lawsuit against Defendant, this time raising  
12 state law claims for wrongful termination and retaliation (Subega II). See Complaint, Docket Item  
13 No. 1, in Subega II. Plaintiff alleged in that Complaint that federal subject matter jurisdiction  
14 existed over the subsequent case based on diversity of the parties. See id. Approximately one  
15 month later, Defendant filed a motion to dismiss Subega II pursuant to Federal Rule of Civil  
16 Procedure 12(b)(1) since the parties were, in fact, not diverse. See Docket Item No. 9 in Subega II.

17 For her part, Plaintiff filed the instant consolidation motion on March 28, 2011. See Docket  
18 Item No. 12 in Subega I. Defendant filed written opposition. See Docket Item No. 16 in Subega I.  
19 Plaintiff then amended the Complaint in Subega II to add a claim for retaliation under the FLSA,  
20 rendering moot Defendant’s motion to dismiss. See Docket Item No. 12 in Subega II. That motion  
21 was subsequently withdrawn.

22 On August 17, 2011, the parties submitted a stipulation and proposed order to consolidate  
23 Subega I and Subega II. See Docket Item No. 28 in Subega I, Docket Item No. 21 in Subega II. The  
24 court declined to issue an order pursuant to the stipulation on August 19, 2011, due to the pendency  
25 of the motion to dismiss. As that motion is no longer before the court, however, it is now  
26 appropriate to address the issue of consolidation.

27 **II. DISCUSSION**

28 The district court may consolidate actions involving common questions of law and fact. Fed.

1 R. Civ. P. 42(a)(2). The court exercises “broad discretion to decide how cases on its docket are to be  
2 tried so that the business of the court may be dispatched with expedition and economy while  
3 providing justice to the parties.” Morin v. Turpin, 778 F. Supp. 711, 733 (S.D.N.Y 1991) (citing 6  
4 C. Wright & A. Miller, Federal Practice and Procedure § 1471, at 359 (1971)). In exercising this  
5 discretion, the court “weighs the saving of time and effort consolidation would produce against any  
6 inconvenience, delay, or expense that it would cause.” Huene v. United States, 743 F.2d 703, 704  
7 (9th Cir. 1984). “Even where cases involve some common issues of law or fact, consolidation may  
8 be inappropriate where individual issues predominate.” See In re Consol. Parlodel Litig., 182  
9 F.R.D. 441, 447 (D.N.J.1998). The moving party bears the burden of showing consolidation is  
10 appropriate. Id.

11 To meet her burden, Plaintiff argues consolidation is appropriate based on certain  
12 characteristics she finds common to Subega I and Subega II. First, Plaintiff points out that both  
13 lawsuits involve identical parties. Second, Plaintiff contends that the “foundational issues,”  
14 identified as “whether [Plaintiff] worked uncompensated overtime” and “whether [Defendant] knew  
15 that she was working overtime,” are equally identical in both cases. Third, Plaintiff contends the  
16 defenses raised in each case would be based on the same legal principles and would require the same  
17 legal inquiry. Based on this, she concludes that consolidation would prevent the need for  
18 duplicative litigation and avoid the possibility of inconsistent determinations.

19 Defendant initially objected to consolidation, although its position may have been altered in  
20 light of the parties’ stipulation. The court nonetheless describes Defendant’s objection to the extent  
21 they are still viable. In contrast to Plaintiff’s claim of similar “foundational issues,” Defendant  
22 makes clear that Subega I and Subega II raise distinct legal claims. To be sure, Subega I alleges a  
23 violation of the FLSA as well as violations of state labor laws relating to failure to pay overtime  
24 wages, while Subega II invokes state laws whose purpose is to prevent retaliation and wrongful  
25 termination. Similarly, Defendant argues there are no common issues of fact between the two  
26 lawsuits. Subega I will require an examination of Defendant’s off-the-clock and overtime policies;  
27 Subega II will require inquiry into the events surrounding Plaintiff’s ultimate termination. As such,  
28 Defendant believes each case will require different discovery efforts and will result in confusion and



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4. A copy of this order shall be filed in Subega I and Subega II.

**IT IS SO ORDERED.**

Dated: October 5, 2011

  
EDWARD J. DAVILA  
United States District Judge