

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,¹ 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.² Since the court finds this matter appropriate for determination without oral argument pursuant to Civil Local

¹ This disposition is not intended for publication in the official reports.

² 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

1 prejudice to Defendant if they are consolidated.

2 Having reviewed both cases and arguments presented for and against consolidation, the court
3 finds Plaintiff's position persuasive. Subega I and Subega II involve the same parties, the same
4 counsel, and generally involve the same issues related to Plaintiff's employment with Defendant.
5 For this reason, there will be significant overlap in the witnesses that must be examined and the
6 documentary information that must be obtained for both cases. Moreover, there are similar legal
7 principles raised in each case. If combined, the resources of the parties and indeed the court can be
8 more efficiently utilized. And since Defendant's subsequent actions suggest it no longer opposes
9 consolidation, the economy which will come from consolidation outweighs any delay, confusion or
10 prejudice previously identified by Defendant.

11 Since the factors weight in favor of consolidation, Plaintiff's motion will be granted as stated
12 below. As a product of this result, Plaintiff's companion request for the exercise of supplemental
13 jurisdiction will also granted as to those state law claims presented by Subega II.

14 III. ORDER

15 Based on the foregoing:

16 1. The hearing scheduled for October 7, 2011, is VACATED.

17 2. Plaintiff's Motion to Consolidate and her request for the exercise of
18 supplemental jurisdiction are GRANTED. The Clerk of the Court shall consolidate case numbers
19 5:10-cv-05025 EJD and 5:11-cv-00722 EJD such that the earliest-filed action, 5:10-cv-05025 EJD,
20 is the lead case. Since the later action is subsumed by the earlier, the Clerk shall administratively
21 close 5:11-cv-00722.

22 3. On or before October 19, 2011, Plaintiff shall file a Third Amended Complaint in
23 light of the consolidation. Defendant shall file an answer or otherwise respond no later than 21 days
24 from the filing of the Third Amended Complaint. The court will imminently issue a separate order
25 addressing further scheduling issues.

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United States District Court

For the Northern District of California

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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