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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LEE WISE, an individual; MICHAEL DIAZ, an individual; on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

CUBIC DEFENSE APPLICATIONS, INC., a California Company; CUBIC CORPORATION, a Delaware Corporation; CUBIC APPLICATIONS, INC., a California Company; CUBIC DEFENSE APPLICATIONS GROUP; and DOES 1 to 10,

Defendants.

CASE NO. 08cv2315-LAB (CAB)

ORDER RE: JURISDICTION

I. Introduction

In an order entered on December 22, 2008, the Court ordered Plaintiffs to show cause why their state law claims in this case should not be dismissed for lack of jurisdiction. Plaintiffs responded with a memorandum of points and authorities the following day. Although the Court specified in its order to show cause that no subsequent order would issue "except to dismiss claims or order further briefing," the Court advised the Magistrate Judge assigned to this case to continue an Early Neutral Evaluation Conference while it considered the jurisdictional issues it ordered briefing on. Apparently, this generated some confusion,

1 and so the Court now issues this Order to confirm that it will retain jurisdiction over the state
2 law claims in this case.

3 **II. Analysis**

4 The Court has never doubted that it has original jurisdiction over Plaintiffs' Fair Labor
5 Standards Act claim. It plainly does under 28 U.S.C. § 1331, and 28 U.S.C. § 216(b) allows
6 that an action brought against an employer for violating § 206 or § 207 may be brought in
7 "any Federal or State court of competent jurisdiction."

8 The Court was initially under the impression that Plaintiffs believed, problematically,
9 that the Court had jurisdiction over the entire action under the Class Action Fairness Act
10 ("CAFA"), 28 U.S.C. § 1332(d). Plaintiffs have made clear this is not so. Rather, their
11 position is "[t]he federal claim and state law claims are all part of the same case or
12 controversy involving the Defendants' employment classification practices, and therefore,
13 supplemental jurisdiction over the related state law claims is proper under 28 U.S.C. § 1367."
14 The Court agrees – and respects the Plaintiffs' request that it resolve the supplemental
15 jurisdiction question up front "to avoid the inefficiency of dismissing state law claims after
16 significant litigation has occurred."

17 In assuming supplemental jurisdiction over the state law claims in this case, the Court
18 is persuaded by Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist Lexis 60344 (S.D. Cal.
19 2008). On a very similar set of facts, the court in Weltman retained jurisdiction over a FLSA
20 claim and related state law claims. The Court also finds persuasive the Ninth Circuit's
21 holding in Dent v. Cox Communs. Las Vegas, Inc., 502 F.3d 1141, 1143 (9th Cir. 2007), cited
22 by both Weltman and the Plaintiffs in their memorandum to the Court.

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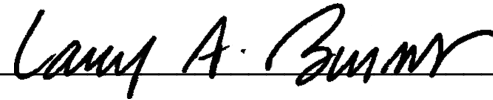
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1 **III. Conclusion**

2 The Court will retain jurisdiction over all claims in this case. The parties are ordered
3 to contact the assigned Magistrate Judge's chambers to reschedule the Early Neutral
4 Evaluation Conference.

5 **IT IS SO ORDERED.**

6 DATED: February 11, 2009

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge

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