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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 LARONDA RASMUSSEN *et al.*,
16 Plaintiffs,
17 vs.
18 THE WALT DISNEY COMPANY *et al.*,
19 Defendants.

Case No: 19STCV10974

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THEIR
MOTION FOR CLASS CERTIFICATION**

Judge: Elihu M. Berle
Department: 6
Date: November 15, 2023
Time: 9:00 AM
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REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD
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1 **I. INTRODUCTION AND OVERVIEW OF CLAIMS**

2 Disney systematically pays women in California less than men. This pay disparity is not based
3 on legitimate factors, it is based on sex, with a less than one in one billion chance it occurred in the
4 absence of discrimination. The class as a whole was thus deprived of over \$150 million in wages.
5 Disney violated the Fair Employment & Housing Act (“FEHA”) because its common practices caused
6 a disparate impact on women. It also violated California’s Equal Pay Act (“EPA”), which does not
7 require Plaintiffs to identify the cause of the disparities, because it pays women less for substantially
8 similar jobs. Accordingly, Plaintiffs seek certification of a class of non-union, female employees in
9 California, below the level of Vice President, challenging sex discrimination in compensation at
10 Disney on or after April 1, 2015.¹

11 Disney,² which operates as an integrated enterprise, complete with an Enterprise Compensation
12 department that establishes pay programs and provides guidance to all Disney segments, has an
13 enterprise-wide system for classifying jobs into Job Families and Job Levels, so that jobs can be
14 compared and paid comparably across the enterprise. Throughout the class period, Disney’s
15 Compensation employees, a group of no more than ■ within each segment (Neumark App. E.1), have
16 had primary responsibility for establishing starting pay for new hires based on a common set of
17 criteria. Through October 2017, Disney’s compensation policies permitted prior pay to be considered
18 in setting starting pay. Under that policy, gender disparities in starting pay were particularly large.
19 Following Disney’s change in policy to prohibit consideration of prior pay, the disparities in starting
20 pay shrunk substantially. Disney also had a common practice for annual pay increases, which focused
21 on percentage increases, rather than assessing whether an employee’s salary was appropriate. This
22 practice had the predictable effect of perpetuating the disparities from starting pay.

23 As discussed below, for each of Plaintiffs’ legal challenges to Disney’s gender pay disparities,
24 the elements of the claim are proved by evidence that is common to the class as a whole. Common
25 questions thus predominate, and the other requirements of class certification are satisfied.

26 **II. STATEMENT OF FACTS**

27 **A. Disney’s Centralized Compensation System**

28 Disney controls the design and implementation of a centralized compensation philosophy and a

¹ Based on the FEHA and EPA violations, Plaintiffs also request class certification for Unfair Competition Law (“UCL”) and Labor Code Section 203, failure to pay all wages due at discharge, claims. Disney’s violation of either FEHA or EPA proves liability for these two claims.

² The Walt Disney Company (“TWDC”) is the parent company of all Disney affiliated entities. “Disney” refers to TWDC and its affiliated entities.

1 global framework that apply to employees across the company. Disney has “[REDACTED]
2 [REDACTED]” Ex. 84 at 31571.³
3 This consistent compensation system is central to Disney’s goal to “[REDACTED]
4 [REDACTED]” Ex. 22 at 5680.⁴ Disney’s common pay policies and practices
5 applied to all putative class members throughout the class period.

6 1. Disney’s Compensation Policies Are Established Centrally.

7 Disney’s centralized compensation system is governed by a select group of Human Resources
8 (“HR”) professionals. Disney’s Chief Human Resources Officer (“CHRO”), who reports to the CEO,
9 is responsible for leading Disney’s overall HR strategy. *See* Ex. 193 at 1. In 2013, the CHRO “led an
10 initiative to harmonize compensation and benefit programs across the Company to promote efficient
11 movement of talent within the Company.” Ex. 192 at p.34. Reporting to the CHRO is a Senior Vice
12 President (“SVP”) who oversees Disney’s compensation and benefits programs. *See* Ex. 8 at 5262.
13 Disney assigns an HR SVP to each segment,⁵ who is accountable to Disney’s CHRO,⁶ and to whom a
14 segment Vice President (“VP”) of Compensation reports.⁷ Segment Compensation VPs are also
15 accountable to Disney’s Compensation SVP.⁸ Disney’s Corporate segment houses two Compensation
16 VPs, one for Enterprise Compensation and one for Executive Compensation, both of whom report
17 directly to Disney’s Compensation SVP. *See* Ex. 95; Ex. 219 (Larson) 32:12-23, 39:22-41:12; Ex. 224
18 (Nagao) 35:4-9. Disney’s “[REDACTED]
19 [REDACTED]” Ex. 84 at 31574. Segment Compensation Leaders are responsible
20 for implementing Disney’s global compensation systems within each segment. *Id.*; *see also* Ex. 85 at
21 31619; Ex. 210 (Anderson) 280:16-21. Together, this small group of Compensation Leaders design
22 and implement enterprise-wide compensation policies.

23 Enterprise Compensation and Executive Compensation⁹ centrally manage the cross-segment

24 ³ All “Ex.” cites are to the exhibits in the master appendix attached to the Declaration of Lori
25 Andrus; “Neumark” cites are to the report attached to the Declaration of David Neumark; “Hough”
26 cites are to the report attached to the Declaration of Leaetta Hough.

27 ⁴ *See also* Ex. 84 at 31574; Ex. 42 at 23420; Ex. 158 at 39137; Ex. 219 (Larson) 43:2-11.

28 ⁵ Disney organizes its company into segments that are regularly restructured, all while remaining
under Disney’s complete control. *See* section II.A.3, *infra*.

⁶ *See, e.g.*, Ex. 8 at 5262; Ex. 217 (Fox) 64:9-21; Ex. 222 (Lygopoulos) 17:5-10; Ex. 195 at 3.

⁷ *See, e.g.*, Ex. 6; Ex. 90 at 31967; Ex. 195 at 3; Ex. 38.

⁸ *See, e.g.*, Ex. 217 (Fox) 71:1-7; Ex. 226 (Pate) 52:4-11.

⁹ Executive Compensation reviews senior executive compensation and designs Disney’s incentive
and bonus plans. *See* Ex. 210 (Anderson) 14:5-12; Ex. 228 (Temple) 18:5-21; Ex. 219 (Larson) 62:24-
64:1. Because the proposed class only contains employees below the level of Vice President, *see*
Section III.B, *infra*, the policies applicable to the class are primarily designed by Enterprise
Compensation.

1 initiatives fundamental to Disney’s compensation system. Enterprise Compensation establishes
2 systems and guidelines for the segment Compensation teams on how Disney evaluates and organizes
3 its jobs, through its Global Job Leveling Framework, and its Annual Compensation Planning
4 (“ACP”).¹⁰ Enterprise Compensation has also been responsible for: creating Disney’s companywide
5 compensation philosophy; establishing protocols and maintaining data for benchmarking jobs;
6 developing salary structures and functional hiring ranges; conducting enterprise-wide pay equity
7 analyses; establishing guidelines for compensation decisions, [REDACTED]
8 [REDACTED]; and developing consistent pay equity
9 practices.¹¹ Enterprise Compensation also develops training materials to communicate Disney’s
10 compensation policies consistently across the entire company.¹²

11 Disney holds weekly “Compensation Leaders” meetings with its Compensation SVP, and
12 various segment Compensation VPs to discuss a variety of compensation policies and practices,¹³
13 including Disney’s pay philosophy, compensation systems, ACP processes, benchmarking proposals,
14 pay equity policies, and information-sharing practices.¹⁴ Compensation Leaders meetings ensure that
15 Compensation teams across the enterprise are aligned on Disney’s pay systems and guidelines, and that
16 all receive the same direction from leadership on important issues. *See* Ex. 213 (Burnley) 29:19-30:5;
17 Ex. 210 (Anderson) 46:13-48:2, 49:12-23.

18 Disney has also centrally conducted analyses of its enterprise-wide compensation practices. In
19 2015 and 2017, Disney conducted two company-wide pay equity audits [REDACTED]
20 [REDACTED]
21 [REDACTED] *See* Ex. 204, Entry Nos. 1-123; Ex. 203, Entry Nos. 127-176.

22 [REDACTED]. *Id.* Regardless, their existence alone confirms that Disney maintains centralized control over
23 both its pay data and compensation structure. Disney documents also reveal that, in the midst of these
24 equity analyses, [REDACTED]

25 ¹⁰ *See* Ex. 217 (Fox) 109:8-15; Ex. 210 (Anderson) 61:20-62:19; Ex. 213 (Burnley) 37:10-18, 51:5-
26 21; Ex. 199 at p.15; Sec. II.A.2, II.C., *infra*.

27 ¹¹ *See, e.g.*, Ex. 188; Ex. 108 at 33162; Ex. 236 at 40752; Ex. 113 at 33896; Ex. 162 at 39531; Ex.
28 183; Ex. 158 at 39139; Ex. 103 at 32917-20; Ex. 213 (Burnley) 37:13-24; Ex. 224 (Nagao) 79:14-16;
Ex. 210 (Anderson) 59:18-24, 168:5-25.

¹² *See* Ex. 188; Ex. 236 at 40752; Ex. 108 at 33172; Ex. 219 (Larson) 312:25-313:22; Ex. 213
(Burnley) 38:23-39:9, 160:8-11; Ex. 228 (Temple) 16:6-12; Ex. 210 (Anderson) 266:14-24.

¹³ Ex. 213 (Burnley) 19:2-24; Ex. 211 (Bacon) 41:7-42:17; Ex. 210 (Anderson) 48:3-49:7.

¹⁴ Ex. 210 (Anderson) 46:13-49:23; Ex. 219 (Larson) 144:16-23, 441:16-19; Ex. 213 (Burnley)
29:19-30:5, 104:6-16, 112:6-13; Ex. 226 (Pate) 74:25-75:7; Ex. 211 (Bacon) 45:4-17; *see also, e.g.*,
Ex. 122 at 35277-79; Ex. 176 at 41270-73; Ex. 119 at 34958-59; Ex. 101.

1 [REDACTED]¹⁵

2 2. Disney Uses a Standardized Job Classification Framework that Drives
3 Compensation Decisions.

4 Disney uses a consistent “[REDACTED]”
5 [REDACTED].” Ex. 84 at 31581. Disney’s global framework
6 consists of four main elements that drive compensation decisions: (a) Job Functions, (b) Job Families,
7 (c) Career Bands, and (d) Job Levels. This framework “[REDACTED],” Ex. 84 at
8 31581, and “[REDACTED]” in setting pay. Ex. 84 at 31583.

9 a. Job Functions and Families

10 Job functions are “[REDACTED]”
11 [REDACTED].” Ex. 84 at 31583. Job
12 Families “[REDACTED]”
13 [REDACTED]” *Id.* Job Family is “a key element in determining
14 the appropriate salary grade and hiring range for open positions.” Ex. 77 at 31318. Requests for the
15 creation of Job Families “are vetted through Enterprise Compensation who will consult with Comp
16 Leadership as needed and make formal submission through Data Governance Request to HR
17 Technology.”¹⁶ Enterprise Compensation also manages certain “functional” Job Families that appear in
18 multiple segments, including those in the HR, Finance, Technology, and Legal functions, *see* Ex. 15 at
19 5456; Ex. 18 at 5485, including all related compensation decisions.¹⁷

20 Disney centrally managed the creation and definition of Job Families during the class period.¹⁸
21 In 2016, Enterprise Compensation stated it had “[REDACTED]”
22 [REDACTED]” Ex. 19 at 5530. In 2019, Disney launched Project Vista, a comprehensive review of Job
23 Families to remove redundancies and create any needed new Families.¹⁹ Project Vista was led by a
24 team including Enterprise Compensation. Ex. 219 (Larson) 263:2-264:20. A cross-segment team was

25 ¹⁵ See Ex. 181 at 41681-82 ([REDACTED]
26 [REDACTED]; Ex. 111 at 33851 ([REDACTED]
27 [REDACTED]); Ex. 120 at 34987-88 ([REDACTED]
28 [REDACTED].

29 Ex. 77 at 31318-19; *see also* Ex. 219 (Larson) 217:3-7; Ex. 210 (Anderson) 80:21-24, 93:24-94:6.
30 To create a new cross-segment family, “all parties would need to agree for the creation.” Ex. 210
31 (Anderson) 80:20-21; *see also* Ex. 211 (Bacon) 259:10-15.

32 ¹⁷ See Ex. 105 at 32939; Ex. 15 at 5456-60; Ex. 37 22887 at 22888; Ex. 219 (Larson) 323:5-6; Ex.
33 213 (Burnley) 56:23-58:11; Ex. 210 (Anderson) 183:15-25.

34 ¹⁸ Disney has long used job functions and had Job Families as early as 2014. *See* Ex. 219 (Larson)
35 196:20-197:19.

36 ¹⁹ See Ex. 44 at 23526; Ex. 228 (Temple) 91:9-93:22; Ex. 213 (Burnley) 116:23-118:12.

1 created for each job function. Ex. 43 at 23518; Ex. 235 at 34246. “Job family facilitators” or
2 “gatekeepers” were responsible for coordinating discussions and proposing any changes to their
3 assigned Job Families using a template created by Enterprise Compensation. *See* Ex. 44 at 23526; Ex.
4 96; Ex. 228 (Temple) 71:7-72:18, 91:9-93:22. The completed templates were returned to Enterprise
5 Compensation and proposals were reviewed at Compensation Leader work sessions. Ex. 98; Ex. 43 at
6 23520.

6 b. Job Levels Within Career Bands

7 Since 2015, Disney has organized all jobs in the class into career bands and levels. Ex. 27 at
8 5798; Ex. 75 at 31273 (“[REDACTED]”). Disney’s Global Job
9 Leveling Project, served its “[REDACTED]
10 [REDACTED]” Ex. 28 at 21922, 21928; *see also* Ex. 27 at 5791. Disney
11 acknowledged that the Global Job Leveling Framework “[REDACTED]”
12 Ex. 103 at 32913. As with other key components of Disney’s compensation system, the project was led
13 by the Compensation SVP and coordinated by Enterprise Compensation, with input from segment
14 Compensation Leaders. *See* (Bacon) Ex. 211 256:10-22; Ex. 213 (Burnley) 95:7-11.

14 Within Disney’s global leveling framework, jobs are assigned to one of its “bands” that
15 “[REDACTED]
16 [REDACTED]” Business Support (Admin), Technical Support, Professional,
17 Management, and Executive. Ex. 84 at 31583. Each band encompasses several Job Levels: B1-B4, T1-
18 T4, P1-P6+, M1-M3, and E1-E4+. *Id.* Disney uses consistent, specific definitions of Job Levels, based
19 on the “[REDACTED]”²⁰

19 c. Job Family and Job Level Determine Pay Range.

20 Based on the assigned Job Family and Job Level, Compensation then benchmarks a job by
21 matching it to relevant compensation surveys to see what the market pays for jobs with similar content
22 (family) and level. Ex. 22 at 5691-94; Ex. 81 at 31491. This process allows Compensation to assign the
23 job a “pay range,” which represents the “[REDACTED]
24 [REDACTED]” Ex. 84 at 31586. Job levels and Families are fundamental to how Disney
25 benchmarks a job to the external market to determine a pay range. Ex. 22 at 5692; Ex. 84 at 31586.

26
27 ²⁰ Ex. 84 at 31583; *see also* Ex. 28 at 21922 (Job Level assigned based on “[REDACTED]
28 [REDACTED]”). Disney created and distributed several “Global Job Leveling”
reference guides to educate employees on the global framework across the Company. *See, e.g.*, Ex. 79.

1 Disney has repeatedly reiterated that individuals in the same Job Family and Job Level are paid in the
2 same pay grade or range, with standard adjustments based on geographic region.²¹

3 d. Employees Within the Same Level and Family Are in Jobs with
4 Substantially Similar Work.

5 Dr. Leatta Hough, an Industrial Organizational Psychologist, applied her extensive experience,
6 knowledge, and professional standards to analyze the specific criteria, processes, purposes, and uses of
7 Disney’s well-defined job architecture. Hough 1-4, 41-42. Based on this analysis, Dr. Hough concludes
8 Disney employees “within the same Job Family and Job Level (i.e., Job Family/Job Level Composite)
9 are in jobs with substantially the same work.” *Id.* at 4.

10 Documents Disney used to run its business confirm Dr. Hough’s conclusion. An Enterprise
11 Compensation-created training instructs HR employees: “ [REDACTED]
12 [REDACTED] ” Ex. 75 at 31274; *see also* Sec. II.A.2.c, *supra*. It is the
13 foundation on which Disney states fair pay should be assessed: [REDACTED]

14 [REDACTED]. Ex. 84 at 31577; Ex. 215 (Cordero) 99:14-24
15 (testifying the Job Leveling framework and Job Families are “critical components” of ensuring fair
16 pay).²²

17 3. Disney’s Centralized Control Over Its Business Segments.

18 Disney is organized into “segments,” which are regularly combined and re-organized at the
19 direction of the CEO,²³ all while remaining part of Disney and subject to Disney’s centralized
20 employment policies and practices. *See* Neumark Table 1. Within each segment there are divisions that
21 may be referred to as a “business” or “business area,” but all report up to the Chair for the segment.
22 *See, e.g.*, Ex. 6; Ex. 89. Disney also refers to [REDACTED]²⁴ but Disney’s
23 witnesses testified that the company listed as employing a given individual in a segment does not
24 impact the policies they were subjected to, the identity of relevant decisionmakers, or how HR

25 ²¹ Ex. 22 at 5702; Ex. 105 at 32967; Ex. 85 at 31630; Ex. 84 at 31577, 31587; Ex. 210 (Anderson)
26 186:15-187:6; Ex. 213 (Burnley) 82:18-83:5; Ex. 219 (Larson) 351:22-357:13 (only identified one
27 exception in DPEP and one in Corporate); Ex. 216 (Fernandez) 153:9-154:1.

28 ²² Other components Disney identifies, pay structure and incentive targets, are determined by the
combination of Job Level and Job Family. *See* Ex. 75 at 31274.

²³ *See, e.g.*, Ex. 66 at 28212; Ex. 194 at 2.

²⁴ *See* Ex. 202 at p. 6. Contrary to Defendants’ claim, the data Disney produced shows that [REDACTED]
[REDACTED]. Neumark ¶ 21.

1 administered their responsibilities.²⁵ Indeed, the witnesses rarely knew which company might be listed
2 as the employing entity for any given person in their segment, and were not always certain about which
3 company had been listed as their own employer during points of their career with Disney. *Id.*

4 Moreover, [REDACTED]
5 [REDACTED]. *See* Ex. 202 at pp. 6-7. In addition, the Corporate segment houses HR and
6 Compensation groups that not only support the substantial Corporate segment but also [REDACTED]
7 [REDACTED] to the entire Disney enterprise. *See* Ex. 199 at pp. 8-9; Section II.A.1, *supra*.

8 Throughout Disney’s multiple re-organizations, employees remained subject to enterprise-wide
9 policies and practices that Disney established centrally, including the Global Job Leveling Framework,
10 and the numerous compensation systems and guidelines created by Enterprise and Executive
11 Compensation, described above. Disney has also exercised centralized control of its company through
12 other employment policies and practices that apply to all employees, regardless of segment. In addition
13 to controlling Disney’s organization into segments, the CEO exercises direct control over many aspects
14 of employment, including by directing the return to in-person work, establishing a hiring freeze,
15 imposing travel restrictions, and, most recently, requiring layoffs.²⁶ Disney also issues a company-wide
16 Employee Policy Manual, which has not materially changed throughout the class period.²⁷ Disney
17 provides “centralized human resources services spanning payroll, [and] benefits” through its “shared
18 services,” Ex. 97 at 2, and enterprise-wide Global HR Operations (“GHRO”), Ex. 5 at 3329, 3337.
19 Employee data is maintained in one system of record, *see* Ex. 210 (Anderson) 49:24-50:3, and all
20 employees use the same systems for HR information and professional development trainings. *See* Ex.
21 84; Ex. 661 at 31607-09; Ex. 211 (Bacon) 161:5-7. Disney’s job postings are also centrally located on
22 disneycareers.com. *See* Ex. 220 (Leon) 132:11-133:2; Ex. 230 (Watkins) 23:12-17. In sum, the
23 discriminatory compensation practices that Plaintiffs challenge applied to all putative Class members,
24 regardless of the Disney segment to which they were assigned.

25 ²⁵ *See* Ex. 210 (Anderson) 24:6-25, 259:12-18, 316:17-317:1; Ex. 223 (Lal) 16:14-24, 17:15-18:2,
26 26:25-27:12, 28:15-29:25; Ex. 223 (Burnley) 15:20-25, 28:10-29:2; Ex. 217 (Fox) 23:6-12, 63:10-17,
27 64:2-4, 101:10-13; Ex. 211 (Bacon) 12:10-18, 29:8-30:21; Ex. 226 (Pate) 15:7-10.

28 ²⁶ *See* Alex Sherman & Sarah Whitten, CNBC, *Bob Iger Tells Disney Employees They Must Return*
29 *to the Office Four Days a Week*, <https://www.cnbc.com/2023/01/09/disney-ceo-bob-iger-tells-employees-to-return-to-the-office-four-days-a-week.html> (Jan. 9, 2023) (last visited 06/21/23); Sarah
30 Witten, CNBC, *Disney to Cut 7,000 Jobs and Slash \$5.5 Billion in Costs as It Unveils Vast*
31 *Restructuring*, <https://www.cnbc.com/2023/02/08/disney-reorganization.html> (Feb. 8, 2023) (last
32 visited 06/21/23); Ex. 191 at 1; Ex. 217 (Fox) 41:7-43:1; Ex. 216 (Fernandez) 93:18-94:9; Ex. 212
33 35:25-36:5; Ex. 214 (Chaput) 44:13-45:1.

²⁷ *See, e.g.*, Ex. 2, Ex. 232, Ex. 234, Ex. 68; DISNEY-28661; (Leon) 156:3-8; (Lewis) 187:6-188:4.
The manual mandates “TWDC compliance training” for all employees. *See, e.g.*, Ex. 2 at 808.

1 B. Disney's Common Method of Setting Starting Pay

2 Since 2015, Compensation has determined starting pay offers based on Disney's global job
3 classification system and company-wide pay philosophy, using standard categories of information.²⁸

4 The starting point for setting starting pay is the pre-established pay range for the job, which is based on
5 the Job Level, Job Family, and region.²⁹ [REDACTED]

6 [REDACTED]³⁰
7 Compensation also reviews for internal equity, comparing the candidate to current employees in
8 substantially similar roles throughout Disney. *See* Ex. 211 (Bacon) 49:19-50:11; Ex. 228 (Temple)
9 209:8-22; Ex. 226 (Pate) 134:5-11. In addition, the candidate's salary at their prior job or salary
10 expectations could be considered, as discussed below.³¹ Based on this assessment, Compensation
11 provides an offer recommendation in the form of a narrow range or set figure³² to the Human
12 Resources Business Partner ("HRBP"), hiring leader, and/or recruiter.³³ If they disagree with the offer
13 recommended by Compensation, they must go back to Compensation for further discussion; any offer

14 ²⁸ *See* Ex. 2 at 5680-703; Ex. 81 at 31489-494; Ex. 696 at 31570-591; Ex. 85 at 31616-19, 31646-
15 48; Ex. 128 at 35581-87; Ex. 227 (Schultz) 91:9-93:2; Ex. 219 (Larson) 385:7-386:3; Ex. 211 (Bacon)
16 49:19-50:11; Ex. 210 (Anderson) 161:19-162:22; nns. 29, 30, 35, 37, *infra*.

17 ²⁹ *See* Ex. 219 (Larson) 405:7-17; Ex. 211 (Bacon) 233:3-8; Ex. 210 (Anderson) 161:19-162:22.
18 Disney has standard adjustments to pay ranges based on the region of a job. Ex. 22 at 5696. If the role
19 does not already have a pay range assigned, Compensation still uses its market pricing approach,
20 where it does a "job evaluation" and then determines the pay range based on the external market for
21 comparable jobs. *See* Ex. 84 at 31582; Ex. 228 (Temple) 208:13-20; Ex. 226 (Pate) 152:18-153:9.

22 ³⁰ *See, e.g.* Ex. 85 at 31631; Ex. 180 at 41679; Ex. 128 at 35586; Ex. 84 at 31588.

23 ³¹ While some segment Compensation teams have "tools" to expedite pay recommendations, the
24 same basic process and factors are applied either way. *See, e.g.*, Ex. 213 (Burnley) 140:21-23; Ex. 9 at
25 5295 (DPEP tool pulls relevant pay range as "starting point" for Compensation); Ex. 228 (Temple)
26 55:22-56:3; Ex. 100 (DGE template used in recommendation process); Ex. 33 at 22105-06 (DTCI used
27 form for offer process). Similarly, in 2016, Enterprise Compensation developed a Talent Acquisition
28 Center of Excellence ("TACOE") tool that recruiters for functional roles used to enter candidate
information. Ex. 19 at 5535-36; *see also* Ex. 227 (Schultz) 27:1-4.

29 ³² *See* Ex. 229 (Wahab) 32:12-33:4; Ex. 231 (Weirick) 36:13-38:12; Ex. 227 (Schultz) 97:10-15,
30 100:19-101:15; Ex. 219 (Larson) 406:7-10; Ex. 226 (Pate) 133:22-134:2, 135:14-19; Ex. 210
31 (Anderson) 188:10-18; Ex. 213 (Burnley) 153:18-154:17; Ex. 212 (Brahm) 55:7-20; Ex. 33 at 22102;
32 Ex. 128 at 35594.

33 HRBPs are "generalists," who provide HR support for their assigned business areas within
34 Disney, Ex. 211 (Bacon) 80:13-20; Ex. 228 (Temple) 14:23-25; Ex. 223 (Lal) 30:3-8; Ex. 221 (Lewis)
35 11:12-18. The hiring leader is the direct manager of the open position. *See* Ex. 212 (Brahm) 41:21-25;
36 Ex. 223 (Lal) 160:1-3. In Disney's DGE segment (formerly DATG), the HRBP takes the lead in
37 deciding where to place a candidate within the broader pre-determined pay range provided by
38 Compensation. Ex. 218 (Hirst) 26:2-21; Ex. 228 (Temple) 63:23-64:15. However, [REDACTED]

[REDACTED] Ex. 41 at 23410. [REDACTED]
Ex. 41 at 23418.

1 that exceeds the recommendation must be approved by Compensation.³⁴

2 Before October 2017, Disney permitted Compensation to consider a candidate’s prior salary in
3 developing a compensation recommendation. [REDACTED]

4 [REDACTED], *see, e.g.*, Ex. 233 at 862-67, Ex. 18 at 5494, and recruiters could ask candidates about
5 their current or prior pay, *see* Ex. 229 (Wahab) 27:14-29:22; Ex. 227 (Schultz) 96:2-19; Ex. 219
6 (Larson) 392:8-15. Current or prior salary information would be shared with Compensation as part of
7 the offer development process.³⁵ In October 2017, due to legislative changes, Disney announced a

8 [REDACTED] Ex.
9 54 at 24348, Ex. 55 at 24356. Following this policy change, however, Disney continued to collect
10 current or prior salary if it was provided by the candidate “voluntarily,” and would share this
11 information with Compensation.³⁶ Disney also encouraged recruiters to ask about a candidate’s
12 compensation expectations, as well as any compensation that would be “left on the table” if they were
13 to leave their current employer. Ex. 55 at 24357-58; Ex. 54 at 24348; Ex. 231(Weirick) 57:17-23.
14 Salary expectations were shared with Compensation and used to create offer recommendations until
15 approximately 2022.³⁷ Around November 2022, Disney changed its policy to “[REDACTED]
16 [REDACTED]” Ex. 94 at 32292.

17 C. Disney’s Company-Wide Annual Compensation Planning Process

18 Each year, Disney conducts a company-wide Annual Compensation Planning (“ACP”) process,
19 during which eligible employees are considered for merit increases, bonuses, and long-term incentive
20 payments. Ex. 84 at 31593. The budget for ACP, which is the same for each segment, is set by the
21 Board of Directors based on recommendation from Enterprise Compensation. *See* Ex. 213 (Burnley)

22 ³⁴ *See* Ex. 211 (Bacon) 231:12-25; Ex. 229 (Wahab) 34:1-13; Ex. 228 (Temple) 184:13-25; Ex. 226
23 (Pate) 167:13-21; Ex. 210 (Anderson) 201:4-12; Ex. 212 (Brahm) 56:5-24; Ex. 71 at 31090.

24 ³⁵ *See* Ex. 230 (Watkins) 51:4-10; Ex. 218 (Hirst) 27:18-28:7; Ex. 228 (Temple) 180:18-181:6; Ex.
25 184 ([REDACTED])

26 [REDACTED]; Ex. 185 ([REDACTED])

27 [REDACTED]; Ex. 179 at 41640 ([REDACTED])

28 [REDACTED]; Ex. 19 at 5535-36 ([REDACTED])

29 *See* Ex. 55 at 24361; Ex. 57 at 24580; Ex. 54 at 24351; Ex. 57; Ex. 210 (Anderson) 173:2-21; Ex.
30 187 ([REDACTED])

31 [REDACTED]; Ex. 186. [REDACTED]

32 *See* Ex. 54 at 24350 (“[REDACTED]”); Ex. 71 at 31083, 31085

33 [REDACTED]; Ex. 228
34 (Temple) 180:18-24; Ex. 211 (Bacon) 235:3-8; Ex. 210 (Anderson) 163:21-164:4, 172:24-173:1; Ex.
35 226 (Pate) 127:5-20.

1 215:7-216:10; Ex. 189 at 42587. Every year, Enterprise Compensation creates and distributes a “leader
2 guide” as guidance and framework for the ACP process.³⁸ While segments can insert their own internal
3 deadlines or segment-specific bonus plans, the substance of the leader guide, including the budget and
4 which factors to consider, is consistent across segments.³⁹

5 After receiving the annual ACP guidance, the segments designate “planning leaders,” to make
6 initial award recommendations within the provided budget and guidelines.⁴⁰ The ACP guidelines
7 consistently instruct planners to group employees based on whether they are “top performers,”
8 “inconsistent performers,” or neither, with top performers receiving around twice the percent increase
9 as the bulk of employees.⁴¹ The guides advise leaders to recommend awards as percentage increases
and illustrate how awards should be distributed in percentage terms.⁴²

10 After the planning leader has entered proposed awards, more senior leaders review and may
11 modify the plan. Ex. 226 (Pate) 213:7-12; Ex. 210 (Anderson) 241:21-242:23; Ex. 228 (Temple)
12 140:19-141:3. These leaders [REDACTED] Ex. 62 at
13 26708. Segment senior management then reviews the recommendations and may ask lower-level
14 leaders to “[REDACTED] *Id.* Before ACP awards are finalized,
15 Compensation conducts an “equity review,” of the merit planning data by gender, using data that exists
16 in a centralized system controlled by Enterprise Compensation. *See* Ex. 211 (Bacon) 64:9-65:5, 93:6-
17 14; Ex. 210 (Anderson) 264:5-17; Ex. 213 (Burnley) 286:12-25; Ex. 228 (Temple) 191:5-15. The
18 comparisons are made only based on the percentage increase, not the resulting annual pay rate. *See,*
19 *e.g.,* Ex. 93 at 32119; Ex. 210 (Anderson) 264:5-17; Ex. 211 (Bacon) 66:13-67:3; Ex. 228 (Temple)
20 191:5-15. Following Compensation review and segment senior management approval, final
recommendations are submitted to the Board. *See, e.g.,* Ex. 62 at 26708; Ex. 56 at 24577.

21 _____
22 ³⁸ *See, e.g.,* Ex. 34; Ex. 30; Ex. 61; Ex. 35; Ex. 10; Ex. 23; Ex. 62; Ex. 56; Ex. 91; *see also* Ex. 210
(Anderson) 220:24-222:8; Ex. 211 (Bacon) 185:3-17; Ex. 213 (Burnley) 212:6-18; Ex. 228 (Temple)
23 16:6-12; Ex. 219 (Larson) 58:10-16.

24 ³⁹ *See* Ex. 213 (Burnley) 214:4-217:11, 226:6-25, 229:3-16; Ex. 226 (Pate) 120:10-122:1; Ex. 211
(Bacon) 183:19-184:13, 185:3-17; *see generally,* Ex. 34; Ex. 30; Ex. 61; Ex. 35; Ex. 10; Ex. 23; Ex.
25 62; Ex. 56; Ex. 91.

26 ⁴⁰ *See* Ex. 34 at 22313; Ex. 30 at 21937; Ex. 61 at 26618; Ex. 35 at 22374; Ex. 10 at 5361; Ex. 23 at
5746; Ex. 62 at 26702; Ex. 56 at 24571; Ex. 91 at 32053. The planning leader may sometimes be the
employee’s direct manager but is otherwise a next level manager. *See* Ex. 225 (Olsgaard) 75:23-76:25.

27 ⁴¹ *See* Ex. 34 at 22313; Ex. 30 at 21940; Ex. 61 at 26619; Ex. 35 at 22377; Ex. 10 at 5364; Ex. 23 at
5748; Ex. 62 at 26704; Ex. 56 at 24573; Ex. 91 at 32056.

28 ⁴² *See* Ex. 34 at 22312-14; Ex. 30 at 21937, 21940; Ex. 61 at 26618-19; Ex. 35 at 22374, 22376-77;
Ex. 10 at 5362, 5364; Ex. 23 at 5746, 5748; Ex. 62 at 26702, 26704; Ex. 56 at 24571, 24573; Ex. 91 at
32054, 32056; Ex. 210 (Anderson) 258:12-259:11; Ex. 228 (Temple) 194:2-196:9.

1 D. Expert Evidence Reveals Common Practices.

2 Labor economist David Neumark used the well-accepted technique of multiple regression
3 analysis to analyze Disney’s HR data and identify disparities in pay.⁴³ Neumark ¶ 51. Multiple
4 regression controls for certain variables, such as job levels, to isolate the impact that other variables,
5 such as gender, have on salaries. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*,
6 31 F.4th 651, 671 (9th Cir. 2022). Here, Dr. Neumark controlled for Job Levels, function or family,
7 tenure, and other factors that could impact pay. He found Disney paid women 2% less. This finding is
8 statistically significant—there is less than a one in one billion chance such results would be found in
9 the absence of gender differences.⁴⁴

10 As to FEHA claims, Plaintiffs identify practices that cause these pay disparities: (a) through
11 October 2017, Disney considered prior salary in setting pay for new hires, and considered “salary
12 expectations” thereafter, *supra* at II.B; (b) throughout the class period, a small, cohesive group of
13 Compensation partners were responsible for setting starting pay, *id.*, determining how much weight to
14 give to prior pay and other factors, relying on a common mode of exercising discretion. These
15 practices combined to produce differences in starting pay of 2.8%, that were statistically significant at
16 2.9 standard deviations. Neumark ¶ 119, Table 7. The third practice, setting annual merit increases as a
17 percentage of current salary, perpetuates the disparities in pay created at time of hire. If men and
18 women got the same 3% increase, the gender disparity in starting pay would never be eliminated.

19 Notably, Dr. Neumark found the gender difference in starting pay from 2015 to late 2017, when
20 Disney relied on prior pay, was 4.36%. After Disney stopped using prior salary, starting pay disparities
21 dropped to 1.3%, illustrating the adverse impact of Disney’s prior pay policy. Neumark ¶ 120, Table 7.

22 For both starting and annual pay, controlling for education, more detailed information about
23 prior experience, and performance *increases* the size and significance of the pay gap. *See* Neumark ¶¶
24 98, 122, Tables 4, 8 (starting pay gap increases to 3.1%; annual pay gap nearly doubles). While Dr.
25 Neumark only has this data for about one-third of individuals, it is a sufficient to conclude that such

24 ⁴³ Multiple regression analysis is routinely used in discrimination and other cases. *See e.g.*, Daniel
25 L. Rubinfeld, *Reference Guide on Multiple Regression*, 306 n.5 (Fed. Judicial Ctr. 3d ed. 2011)
26 (“Discrimination cases using multiple regression analysis are legion.”) (collecting cases).

27 ⁴⁴ Roughly two or more standard deviations (a .05 level of statistical significance) are considered
28 statistically and legally significant and sufficient to establish a *prima facie* case of discrimination,
particularly for disparate impact claims. *See, e.g., Paige v. California*, 233 F. App’x 646, 648 (9th Cir.
2007) (finding it was error to require more than 1.96 standard deviations to establish disparate impact);
Bouman v. Block, 940 F.2d 1211, 1226 (9th Cir. 1991) (statistical significance of disparate impact
shown where disparity was significant at the .05 level).

1 additional information cannot explain away the pay disparity but suggests the true gap is larger.⁴⁵

2 In Dr. Neumark’s analysis restricted to the EPA class, for whom a full job family is available in
3 the data, he shows that for men and women in substantially similar jobs as identified by Dr. Hough,
4 women are paid less, a result that is statistically significant at 3.7 standard deviations. Neumark ¶ 133.

5 **III. ARGUMENT**

6 **A. Legal Standard**

7 Class certification is appropriate when there are: (1) “a sufficiently numerous, ascertainable
8 class,” (2) “a well-defined community of interest,” and (3) “proceeding as a class is superior to other
9 methods.” *In re Tobacco II Cases*, 46 Cal. 4th 298, 313 (2009) (citation omitted). Community of
10 interest means there are: “(1) predominant common questions of law or fact; (2) class representatives
11 with claims or defenses typical of the class; and (3) class representatives who can adequately represent
12 the class.” *Id.* (citation omitted). California “public policy ... encourages the use of the class action
13 device.” *Sav-On Drug Stores, Inc. v. Superior Ct.*, 34 Cal. 4th 319, 340 (2004) (citation omitted).
14 Certification is further encouraged where the claims are remedial. *Id.* (holding the Labor Code’s
15 remedial purposes support certification). The “certification question is essentially a procedural one that
16 does not ask whether an action is legally or factually meritorious.” *Sav-On*, 34 Cal. 4th at 326 (citation
17 and internal quotation omitted).

18 **B. Proposed Class Definition**

19 Plaintiffs request certification of the following class to pursue FEHA and UCL claims:

20 Women who have been or will be employed by Disney, in California, between April 1,
21 2015 and three months before trial, below the level of Vice President, and in a non-
22 union position with a Job Level of B1-B4, T1-T4, TL, P1-P6, P2L-P5L, M1-M3, A1-5,
23 E0, E1, or E1X. This proposed class excludes (a) individuals working in Hulu, ESPN,
24 Pixar, 21st Century (Fox), FX, National Geographic, Bantech, and ILM; (b) employees
25 in the HR_Compensation job family; (c) any in-house counsel actually involved in
26 representing Disney with respect to this case; and (d) any judge to whom the case is
27 assigned and immediate family members of such judge.⁴⁶

28 Plaintiffs also request certification of an EPA and UCL subclass which would be limited to those class
members for whom Disney assigned a full job family (not just function). *See* Motion at 2.

25 ⁴⁵ Neumark ¶¶ 83-86, 97-99, 121-23. Plaintiffs requested similar information for all relevant
employees, however Disney declined to produce such education and experience data for any
employees other than those who were hired during the class period. *See* Ex. 200.

26 ⁴⁶ This proposed class excludes individuals in certain acquired business areas that were not entirely
27 incorporated into Disney’s common compensation system, or not incorporated until late in the class
28 period. It also excludes employees in Compensation, who by virtue of their position are making the
challenged decisions and establishing challenged policies and practices. The UCL four-year limitations
period sets the start date for the class. Cal. Bus. & Prof. Code §17208.

1 This class of women were all subjected to common compensation policies and all bring claims
2 under the UCL and FEHA challenging compensation policies having an adverse impact on women
3 with respect to pay; the subclass also brings claims under California’s EPA as women at Disney are
4 paid less than men for substantially similar work.⁴⁷

5 C. Ascertainability and Numerosity are Met.

6 Ascertainability is met because the class definition is based on objective characteristics. *See*
7 *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). Disney’s records provide information that
8 identifies class members. These records also show numerosity is met because there are over [REDACTED]
9 putative class members, and [REDACTED] EPA sub-class members. Neumark ¶ 10.b.

10 D. Common Questions of Law and Fact Predominate Because Plaintiffs Can Prove the
11 Elements of Their Claims with Common Evidence.

12 For predominance, the court “must determine whether the elements necessary to establish
13 liability ... are susceptible to common proof or, if not, whether there are ways to manage effectively
14 proof of any elements that may require individualized evidence.” *Ayala v. Antelope Valley*
15 *Newspapers, Inc.*, 59 Cal. 4th 522, 533 (2014) (citation omitted). This determination turns on “whether
16 the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to
17 prove amenable to class treatment.” *Sav-On*, 34 Cal. 4th at 327 (citations omitted). Here,
18 predominance is met because Plaintiffs’ classwide evidence can prove liability. *See e.g., Lubin v. The*
19 *Wackenhut Corp.*, 5 Cal. App. 5th 926, 935 (2016) (“As a general rule if the defendant’s liability can
20 be determined by facts common to all members of the class, a class will be certified even if the
21 members must individually prove their damages.”) (citation omitted).

22 1. Whether The Walt Disney Company Is an Integrated Enterprise or an Employer
23 Is a Classwide Question on Which All Claims Turn.

24 Defendants claim they are not liable to the class because they are separate companies. Defs.’
25 Answer to Fourth Am. Compl. at 2 n.1. Whether TWDC is liable to the class for the challenged
26 employment practices presents a common question that Plaintiffs can resolve with classwide evidence
27 showing TWDC and its “affiliated” entities meet the integrated enterprise test. This question can be
28 answered with the same class evidence Plaintiffs will use to prove the elements of their class claims,
establishing it is a common question. *See, e.g., Adams v. Pinole Point Steel Co.*, 1994 WL 515347, at
*2-3 (N.D. Cal. May 18, 1994) (certifying FEHA class against several defendants as “one entity”

⁴⁷ Both class and subclass also raise waiting time claims for the delay in receiving payment of wages due, claims that are derivative of the FEHA and EPA claims.

1 because the “same procedures permeate each of the defendants’ employment practices.”).

2 The integrated enterprise test considers four factors together: (1) centralized control of labor
3 relations, (2) interrelation of operations, (3), common management, and (4) common ownership or
4 financial control. *Mathews v. Happy Valley Conf. Ctr., Inc.*, 43 Cal. App. 5th 236, 248 (2019)
5 (quotation omitted).⁴⁸ Here, all four of these factors can be established using common proof and will
6 result in the same finding of integrated enterprise (either proving it or not) for all class members.
7 Classwide evidence of Disney’s control over labor includes Disney’s centralized compensation
8 policies, classwide job classification system, Board control over the annual compensation budget, and
9 central corporate control over the ACP process. *See* Sec. II, *supra*. Disney centrally established its pay
10 policies, made the decision to put all jobs in the class into its Global Leveling Framework, and
11 oversaw the creation of Job Families. *See* Sec. II.A. Decisions Plaintiffs challenge in this case were
12 centrally controlled: encouraging consideration of prior pay in setting starting salary, and later
13 prohibiting asking about prior pay but encouraging questions about expectations. Throughout, Disney
14 awarded annual raises as a percentage of base pay (thereby perpetuating starting pay disparities it
15 created and never corrected). *See* Sec. II.B-C.

14 The remaining factors of the integrated enterprise test can similarly be established with
15 classwide evidence. Disney maintains interrelated operations across the enterprise by providing
16 centralized HR services, including payroll and benefits, new hire onboarding, employee separations,
17 and [REDACTED], and by storing employee data in one system of record. Sec.
18 II.A.3, *supra*. *See, e.g., Trosper v. Stryker Corp.*, 2014 WL 1619052, at *7 (N.D. Cal. Apr. 22, 2014)
19 (interrelated operations found where there was “payroll processing relationship,” some shared
20 employees, and the parent handling at least some of the bookkeeping).⁴⁹ The Disney entities also have
21 “common officers, directors, and managers,” including “at least one manager” of the parent company
22 who “influence[s] ‘day-to-day managerial decision[s]’ for the subsidiary.” *Mills v. Ethan Allen*
23 *Interiors, Inc.*, 2016 WL 7655772, at *8 (C.D. Cal. Aug. 10, 2016) (citations omitted). Disney’s
24 Executives, including the CEO, CHRO, numerous SVPs, and the Chairs of each segment, control how
25 fundamental employment decisions are made across the enterprise. *See* Sec. II.A.1, II.A.3. Disney
26 Executives also serve as officers and legal representatives for the Disney companies, according to state

26 ⁴⁸ The integrated enterprise test applies to EPA and FEHA claims. *See e.g., Maddock v. KB Homes,*
27 *Inc.*, 631 F. Supp. 2d 1226, 1238 (integrated enterprise test has been used for claims under FEHA and
the Labor Code) (collecting cases).

28 ⁴⁹ Also, all Defendants in this action are also represented by the same counsel. *See Adams*, 1994
WL 515347, at *2 (finding that fact supported treatment as one entity for class certification).

1 filings. *See, e.g.*, Ex. 237, 238, 239, 240, 241. Finally, Disney’s financial reports demonstrate common
2 ownership and financial control. *See e.g.*, Ex. 60 at 25079, 25147, 25150 (financials of TWDC and
3 subsidiaries in TWDC’s 10-K, audited together, and signed by TWDC’s executives and Board).⁵⁰

4 2. Plaintiffs’ UCL Claim Based on FEHA Violation Can be Proven With Common Evidence.

5 Disparate impact claims ask whether a facially neutral employment practice causes a “group-
6 based disparity,” which depends on statistical evidence since “discriminatory consequences are
7 perceptible only in the *aggregate*” *See Stockwell v. City & Cnty. of S.F.*, 749 F.3d 1107, 1115 &
8 n.4 (9th Cir. 2014) (emphasis added); *Foroudi v. Aerospace Corp.*, 57 Cal. App. 5th 992, 1004 (2020)
9 (quotation omitted); *Freyd v. Univ. of Or.*, 990 F.3d 1211, 1224 (9th Cir. 2021).⁵¹ A neutral
10 “employment practice” is “any act, omission, policy or decision of an employer or other covered entity
11 affecting any of an individual’s employment benefits or consideration for an employment benefit.”
12 Cal. Code Regs. tit. 2, § 11008. To demonstrate the disparity and causation required to establish
13 liability, plaintiffs must offer evidence showing “[s]tatistical disparities ... sufficiently substantial that
14 they raise such an inference of causation.” *Carter v. CB Richard Ellis, Inc.*, 122 Cal. App. 4th 1313,
15 1323-24 (2004) (quoting *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 994-95 (1988)). Once
16 plaintiffs establish this prima facie case, the “burden ... shifts to the employer to demonstrate that the
17 practice is a business necessity, which is valid and job-related.” *Stender v. Lucky Stores, Inc.*, 803 F.
18 Supp. 259, 325 (N.D. Cal. 1992).⁵²

19 Here, Plaintiffs’ theory is that common practices have had a disparate impact on women. First,
20 Disney used prior pay and then salary expectations when setting starting pay. *See* Sec. II.B, *supra*.
21 Second, a small number of Compensation partners were responsible for setting starting pay, and did so
22 considering a common set of factors, reflecting a common mode of exercising discretion. *See* Sec. II.B,

22 ⁵⁰ Alternatively, Plaintiffs can show TWDC is an employer if it either: (1) “directly or indirectly, or
23 through an agent or any other person, employs or exercises control over the wages, hours, or working
24 conditions;” or (2) suffered or permitted the class to work. *Martinez v. Combs*, 49 Cal. 4th 35, 60
(2010), *as modified* (June 9, 2010). The classwide evidence described above—including the setting of
25 centralized compensation policies, Disney’s global job classification system, and its rights to control
26 where employees work and to discharge them—likewise satisfies this test.

25 ⁵¹ “California courts often look to Title VII in interpreting the FEHA.” *State Dep’t of Health Servs.*
26 *v. Superior Ct.*, 31 Cal. 4th 1026, 1040 (2003) (citation omitted).

26 ⁵² The UCL imposes liability for any unlawful business act. Cal. Bus. & Prof. Code §17200. Such
27 an unlawful act is shown by violations of other laws. *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel.*
28 *Co.*, 20 Cal. 4th 163, 180 (1999) (quotation marks and citations omitted). The UCL focuses “on the
defendant’s conduct, rather than the plaintiff’s damages,” *In re Tobacco II Cases*, 46 Cal. 4th 298, 312
(2009), and imposes strict liability, *Cortez v. Percolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 181
(2000). Thus, by establishing Plaintiffs’ FEHA (or EPA) claim, Plaintiffs establish a UCL violation.

1 *supra*. Third, Disney’s common policy of percentage increases in pay for annual merit awards
2 perpetuated disparities originating at hire, meaning that even if men and women received the same 3%
3 increase, the disadvantages in starting pay were not eliminated. *See* Sec. II.C, *supra*. The existence of
4 each challenged practice as applied to the proposed class can be demonstrated with Disney’s own
5 documents, deponents, and Dr. Neumark’s testimony. *See* Sec. II.B-D, *supra*. And the statistical
6 evidence establishes the disparate impact of these practices as to the class. *See* Sec. II.D, *supra*.

7 For this disparate impact claim, with this common evidence, a class trial is superior. Whether
8 the claim is brought individually or as a class, all class members must identify a facially neutral
9 practice that has a disparate impact on women. *See e.g., Stockwell*, 749 F.3d at 1115 (“In whatever
10 procedural guise a disparate impact claim appears, the party asserting it must demonstrate a statistical
11 disparity affecting members of the protected group. Absent such a group-based disparity, the claim
12 fails, whether it is articulated by an individual or a class.”) (citations omitted). Because Plaintiffs’
13 classwide evidence will either prove the existence of the challenged practices and their disparate
14 impact on women or not, common questions predominate. *See e.g., Scott v. Fam. Dollar Stores, Inc.*,
15 2016 WL 9665158, at *6 (W.D.N.C. June 24, 2016) (certifying disparate impact class alleging prior
16 pay and other criteria caused a disparate impact on women); *Chen-Oster v. Goldman, Sachs & Co.*,
17 325 F.R.D. 55, 74-75 (S.D.N.Y. 2018) (certifying disparate impact claim where the challenged criteria
18 “pervades the entire company,” including criteria permitting managers to exercise discretion, and thus
19 “raises yes-or-no questions that can be answered in one stroke.”) (quoting *Wal-Mart Stores, Inc. v.*
20 *Dukes*, 564 U.S. 338, 350 (2011)) (internal quotations omitted).

21 Once liability is established, injunctive relief is appropriate under the UCL and FEHA. *See e.g.,*
22 *Herr v. Nestle U.S.A., Inc.*, 109 Cal. App. 4th 779, 789 (2003). The appropriate procedures for
23 resolving damages questions are determined after classwide liability is shown. *Nicodemus v. Saint*
24 *Francis Mem’l Hosp.*, 3 Cal. App. 5th 1200, 1221 (2016), *as modified on denial of reh’g* (Oct. 6, 2016)
25 (“At the class certification stage, however, it is not necessary to determine the appropriate method for
26 resolving such questions, as they may wait ‘until the class-wide issues have been determined.’”). Here,
27 the damages awardable to eligible members of the class can be formulated with a multiple regression
28 analysis of classwide data. Neumark ¶¶ 135-37. Regardless, “[i]n most circumstances a court can
devise remedial procedures which channel the individual damage determinations,” including, for
example, a “bifurcated trial.” *Nicodemus*, 3 Cal. App. 5th at 1221 (citation and internal brackets
omitted).⁵³

⁵³ FEHA regulations expressly refer to a bifurcated approach. Cal. Code Regs. tit. 2, § 11009(a).

1 3. Equal Pay Act and UCL Claims Can be Proven with Class Evidence.

2 Plaintiffs meet their prima facie EPA burden if they show women are paid less than men for
3 substantially similar work; they need not show the cause of the disparity. The statute addresses
4 payment of “employees,” Cal. Lab. Code § 1197.5(a). That use of the plural means it is appropriate to
5 analyze claims using “the average of wages paid to all employees of the opposite sex,” as opposed to a
6 single comparator. *Hein v. Or. Coll. of Educ.*, 718 F.2d 910, 916-17 (9th Cir. 1983) (finding same
7 based on the plural in the more restrictive federal EPA).⁵⁴

8 Plaintiffs’ EPA theory is that Disney pays women less than men for substantially similar work,
9 which Disney has determined, and Dr. Hough agrees, is identified by the combination of Job Level and
10 Job Family. Liability will be determined based on two common questions: (1) Has Disney, through its
11 global job classification system, which organizes all jobs according to Job Levels and Families,
12 identified jobs with substantially similar work? (2) Does Disney pay women less than men for
13 substantially similar work? Both questions are capable of classwide resolution because the evidence
14 will either prove the elements or not for the entire class.⁵⁵

15 For the first question, Plaintiffs will rely on: (a) the testimony of Dr. Hough, who concludes
16 that Disney determined jobs within the same Job Level and Job Family require substantially similar
17 work; (b) Disney documents, including its repeated use of the combination of Job Level and Job
18 Family as the key identifiers of like jobs; and (c) corporate witness testimony.⁵⁶ See Sec. II.A.2, *supra*.
19 To show Disney paid women less for substantially similar work, Plaintiffs will rely on Dr. Neumark’s
20 multiple regression analysis.⁵⁷ This regression, which controls for substantially similar work (family

21 ⁵⁴ Despite this one similarity, California’s EPA is broader than the federal EPA because when the
22 legislature amended the state EPA in 2015 it found it had become “virtually identical to the federal
23 Equal Pay Act” and “must be improved.” The Fair Pay Act of 2015 (Sen. Bill No. 358 (2015–2016
24 Reg. Sess.) §§ 1-3).

25 ⁵⁵ The willfulness of Disney’s violation, which increases the limitations period, can also be
26 established based on common evidence as it looks to Disney’s knowledge.

27 ⁵⁶ How an employer evaluates and organizes jobs is evidence—“and often exceedingly good
28 evidence”—that the employer’s job classification system shows substantially similar work. *Hodgson v.*
Corning Glass Works, 474 F.2d 226, 234 n.10 (2d Cir. 1973), *affd. sub. nom. Corning Glass Works v.*
Brennan, 417 U.S. 188, 203 (1974) (rejecting employer’s attempt to “differentiate between jobs which
the company itself has always equated”); *Garner v. Motorola*, 95 F.Supp.2d 1069, 1076 (D. Ariz.
2000) (fact that both plaintiff and male comparators were level “E11” software engineers was evidence
of substantial equality between the jobs); *Mullenix v. Forsyth Dental Infirmary for Child.*, 965 F. Supp.
120, 139 (D. Mass. 1996) (decision to classify jobs within the same compensation range is evidence of
substantial equality); *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1311 (2d Cir. 1995) (same).

⁵⁷ Multiple regression analyses are used for equal pay claims. See e.g., *Siler-Khodr v. Univ. of Tex.*
Health Sci. Ctr. San Antonio, 261 F.3d 542, 544-45, 547 (5th Cir. 2001) (jury properly relied upon
regression analysis for federal EPA and Title VII claims); *Lavin-McEleney*, 239 F.3d at 481 (relying
on regression in EPA case).

1 and level), finds Disney pays women less than men for substantially similar work.⁵⁸

2 Once liability is established, injunctive relief is appropriate under the UCL, which vests courts
3 with “broad equitable powers to remedy violations.” *Kwikset Corp. v. Superior Ct.*, 51 Cal. 4th 310,
4 320 (2011); Cal. Bus. & Prof. Code §17203. The damages awardable to eligible members of the class
5 can be formulated by use of Dr. Neumark’s multiple regression. *See, e.g., Lavin-McEleney v. Marist*
6 *Coll.*, 239 F.3d 476, 482 (2d Cir. 2001) (multiple regression analysis “properly supported plaintiff’s
7 [EPA] case and was appropriately employed to calculate damages”); Neumark ¶¶ 135-37. But the
8 appropriate procedures for resolving damages questions should be determined after classwide liability
is resolved in a bifurcated proceeding. *See* Sec. III.F.

9 4. Disney’s EPA and FEHA Affirmative Defenses Are Amenable to Class
10 Treatment.

11 Disney’s affirmative defense to the disparate impact claim, that the challenged practices are
12 justified by “a business necessity, which is valid and job-related,” can also be adjudicated collectively.
13 *Stender*, 803 F. Supp. at 325. Similarly, its most likely defense to the EPA claim, a “bona fide factor
14 other than sex,” also requires Disney to show a factor that is “job related” and “consistent with a
15 business necessity.” Cal. Lab. Code § 1197.5(a)(1)(D). This affirmative defense requires showing that
16 Disney’s chosen factors explain the entire disparity Plaintiffs established. Cal. Lab. Code §
17 1197.5(a)(1) (employer must show that one or more factors listed were “applied reasonably” and
18 “account for the entire wage differential”).⁵⁹ For a factor to be job related and applied reasonably, it
19 must be applied consistently across class—and thus this affirmative defense should be resolved on a
20 classwide basis. *Cf. Belfi v. Prendergast*, 191 F.3d 129, 139 (2d Cir. 1999) (regarding federal EPA).

21 Numerous courts have recognized that business necessity and job-related affirmative defenses
22 are common questions. *See Chen-Oster*, 325 F.R.D. at 82 (“Whether the challenged processes are job
23 related or consistent with business necessity is a question of generalized proof.”); *McReynolds v.*
24 *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 489 (7th Cir. 2012) (whether the
25 employer’s practice has an adverse impact and “whether it nonetheless is justified by business
26 necessity are issues common to the entire class and therefore appropriate for class-wide
27 determination”). Like a showing of adverse impact, the affirmative defense of validity and job-

26 ⁵⁸ This finding is statistically significant at 3.55 standard deviations, which means there is less than
27 a one in one thousand chance this disparity occurred by random chance.

28 ⁵⁹ The factors listed are: “a seniority system,” “a merit system,” “a system that measures earnings
by quantity or quality of production,” and “a bona fide factor other than sex, such as education,
training, or experience.” Cal. Lab. Code §§ 1197.5(a)(1), (a)(1)(D).

1 relatedness require expert evidence looking at the challenged policies systematically, not the
2 correctness of an individual decision. These affirmative defenses thus must be decided collectively. *Cf.*
3 *Duran v. U.S. Bank Nat'l Assn.*, 59 Cal. 4th 1, 34, 38 (2014) (noting in case relying on classwide
4 statistical evidence to show misclassification, affirmative defense could proceed collectively as well).

5 E. Plaintiffs Have Typical Claims and Will Adequately Represent the Class.

6 Typicality focuses on “whether other members have the same or similar injury, whether the
7 action is based on conduct which is not unique to the named plaintiffs, and whether other class
8 members have been injured by the same course of conduct.” *Martinez v. Joe’s Crab Shack Holdings*,
9 231 Cal. App. 4th 362, 375 (2014), *as modified on denial of reh’g* (Dec. 3, 2014) (citation omitted).
10 Here, Plaintiffs allege the same claims as the Class—Disney’s practices caused them to be paid less
11 than similarly situated men, and they were paid less than men for substantially similar work.⁶⁰ *See*
12 *Named Plaintiffs’ Declarations*, submitted herewith.

13 Adequacy is satisfied if the class representatives have no conflicts of interest with the absent
14 class members. *Capitol People First v. State Dep’t of Developmental Servs.*, 155 Cal. App. 4th 676,
15 697 (2007). Adequacy is also demonstrated by the retention of competent and experienced class
16 counsel. *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 352 (2017) (citation omitted). Here,
17 Plaintiffs have demonstrated their commitment to pursuing this action on behalf of the class. Each has
18 the same interest in remedying the pay disparities and discriminatory practices. Plaintiffs have chosen
19 accomplished attorneys with significant experience in complex class action litigation, including actions
20 involving employment discrimination. *See Class Counsel Declarations*.

21 F. Trial of the Class Claims Is the Superior Method.

22 Superiority asks whether “proceeding as a class is superior to other methods.” *In re Tobacco II*
23 *Cases*, 46 Cal. 4th at 313. The “relevant comparison” for class certification is “between the costs and
24 benefits of adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by
25 numerous separate actions.” *Sav-On*, 34 Cal. 4th at 339 n.10. Here, class treatment is more efficient
26 because it can resolve the core issues in one proceeding instead of repetitive individual proceedings.
27 *See e.g., Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 540 (N.D. Ca. 2012) (“[A] classwide
28 adjudication is far more manageable than the alternative individual proceedings on all issues, because
it has the potential to resolve multiple issues in one proceeding before proceeding to individual

⁶⁰ The three named plaintiffs for the EPA Subclass, Rasmussen, Train, and Joo, all had a full job family for at least one year of their employment, and allege they were paid less than men in substantially similar jobs, making them typical of the EPA subclass. Neumark Table E.7.

1 hearings on relief.”); Webber Decl. ¶¶ 12-23 (describing manageable trial plan).

2 Superiority also requires “considering the role of the class action mechanism in deterring and
3 redressing wrongdoing.” *Capitol People First*, 155 Cal. App. 4th at 689 (citation omitted). Proceeding
4 as a class here furthers the goals of FEHA and EPA because, absent class treatment, systematic
5 discrimination remains unaddressed. *Harris v. City of Santa Monica*, 56 Cal. 4th 203, 223-24 (2013)
6 (quoting Gov. Code 12920.5 (under FEHA, “to eliminate discrimination, it is necessary to provide
7 effective remedies that will both prevent and deter unlawful employment practices and redress the
8 adverse effects of those practices on aggrieved persons.”); Fair Pay Act of 2015 (Sen. Bill No. 358
9 (2015–2016 Reg. Sess.) § 1) (EPA’s purpose is “[t]o eliminate the gender wage gap.”).

10 Any individual damages issues are manageable. The California Supreme Court has repeatedly
11 held that damages determinations do not preclude certification. *See Sav-On*, 34 Cal. 4th at 333, 339;
12 *Emp. Dev. Dep’t v. Superior Ct.*, 30 Cal. 3d 256, 266 (1981). Plaintiffs propose bifurcation, with
13 refinements on damages after classwide liability is determined.

14 Only as a class can the women at Disney address wage gaps and receive effective injunctive
15 and monetary remedies. Injunctive relief to address systematic disparities is unattainable through
16 individual actions as the scope of relief would be limited to the scope of the violation shown, and an
17 individual plaintiff would not obtain the breadth of discovery of a class. And many class members are
18 unlikely to bring individual actions. *ABM Indus. Overtime Cases*, 19 Cal. App. 5th 277, 300 (2017), as
19 modified (Jan. 10, 2018). Moreover, the “substantial upfront costs of litigating a complex
20 discrimination case against a multi-national corporate defendant” means “few potential class members
21 could afford to undertake individual litigation ... [and] few class members would have any meaningful
22 redress against [the employer] as a practical matter.” *Buchanan v. Tata Consultancy Servs., Ltd.*, 2017
23 WL 6611653, at *22 (N.D. Cal. Dec. 27, 2017) (internal citation & quotation marks omitted).

24 **IV. CONCLUSION**

25 For the foregoing reasons, Plaintiffs’ proposed class and subclass should be certified.
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