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12 Attorneys for Plaintiff CLEMENT GRAY  
 13 individually, and on behalf of others  
 14 similarly situated

15 *Additional Parties listed on following page*

16 UNITED STATES DISTRICT COURT  
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 CLEMENT GRAY, individually, and  
 19 on behalf of others similarly situated

20 Plaintiff,

21 vs.

22 MARATHON PETROLEUM  
 23 LOGISTICS SERVICES, LLC, a  
 24 limited liability company;  
 25 MARATHON PETROLEUM  
 26 COMPANY, LP; a limited partnership;  
 27 ANDEAVOR LOGISTICS, LP, a  
 28 limited partnership; TESORO  
 REFINING & MARKETING  
 COMPANY, LLC, a limited liability  
 company; and DOES 1 through 50,  
 inclusive,

Defendants

CASE NO. 2:20 –CV-07865-JFW-JCX

**CLASS ACTION**

HON. JOHN J. WALTER  
 COURTROOM 7A

**PLAINTIFF’S EX PARTE  
 APPLICATION FOR AN ORDER  
 CONTINUING THE DEADLINE  
 FOR PLAINTIFF TO FILE HIS  
 MOTION FOR CLASS  
 CERTIFICATION PURSUANT TO  
 LOCAL RULE 23-3**

Complaint Filed: June 15, 2020  
 Removed: August 27, 2020

1 Plaintiff Clement Gray (“Plaintiff”) hereby applies ex parte for an order  
2 continuing the deadline for Plaintiff to file his motion for class certification  
3 pursuant to Local Rule 23-3, from January 25, 2021, to April 26, 2021.

4 This application is made on the grounds that, despite Plaintiff’s diligence in  
5 pursuing his claims, he has not yet received discovery necessary to file his motion  
6 for class certification in this matter, including class member contact information,  
7 time and payroll records, and the deposition of defendants Marathon Petroleum  
8 Logistics Services, LLC’s, Marathon Petroleum Company, LP’s, Andeavor  
9 Logistics, LP’s, and Tesoro Refining & Marketing Company’s (“Defendants”) Rule  
10 30(b)(6) witnesses. As a result, Plaintiff and the putative class members will suffer  
11 irreparable harm if the requested relief is not granted. *See ABS Entertainment, Inc.*  
12 *v. CBS Corporation*, 908 F.3d 405, 427 (9th Cir. 2018) (finding that the application  
13 of Local Rule 23-3 must allow time for a party to conduct necessary pre-  
14 certification discovery).

15 Because the deadline for Plaintiff to file his motion for class certification  
16 pursuant to the Court’s November 30, 2020 order is January 25, 2021,  
17 extraordinary relief is necessary. Only one previous extension of the deadline to file  
18 for class certification has been requested and was granted. Dkt. 37. The request was  
19 made by stipulation between the parties to accommodate Defendants’ briefing  
20 schedule for their Partial Motion to Dismiss, which overlapped with the class  
21 certification deadline and the Christmas and New Year holidays. Dkt. 36 at 2. It  
22 should be noted that until the Court’s January 12, 2021 ruling on Defendants’  
23 Partial Motion to Dismiss, the pleadings in this matter remained unsettled. This is  
24 the first request solely by Plaintiff for an extension of a filing deadline.

25 On January 19, 2021, Plaintiff’s counsel left a voicemail for Defendants’  
26 counsel advising that absent a stipulation to continue the deadline for Plaintiff to  
27 file his motion for class certification pursuant to Local Rule 23-3, Plaintiff intended  
28 to file an ex parte application to do so. Declaration of Tagore Subramaniam

1 (“Subramaniam Decl.”) ¶12. Plaintiff’s counsel also sent Defendants’ counsel an  
2 email informing them of Plaintiff’s intent to file an ex parte application. *Id.* On  
3 January 19, 2021, at approximately 4:21 p.m., Defendants’ counsel responded by  
4 email, stating that they would not stipulate to an extension and indicated they would  
5 oppose an ex parte application to extend the deadline for class certification. *Id.* On  
6 January 20, 2021, Plaintiff informed Defendants that it would file this ex parte  
7 application and alerted Defendants to the deadlines for opposition as stated in the  
8 Court’s Standing Order. Subramaniam Decl. ¶13, Ex. 1. On January 21, 2021,  
9 Defendants confirmed that they would oppose this motion. Subramaniam Decl. ¶15,  
10 Ex. 2.

11 The contact information for Defendants’ counsel is as follows:

12 Sheryl L. Skibbe  
13 Seyfarth Shaw LLP  
14 2029 Century Park East, Suite 3500  
15 Los Angeles, California 90067-3021  
16 Tel: 310-277-7200  
17 Fax: 310-201-5291  
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21 400 Capitol Mall, Suite 2350  
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28 601 South Figueroa Street,  
Suite 3300  
Los Angeles, California 90017-5793  
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29 This application is based on the attached Memorandum of Points and  
30 Authorities, the Declaration of Tagore Subramaniam, the complete files and records  
31 in this action, and such oral or documentary evidence or argument that may be  
32 allowed at any hearing on this application.

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Dated: January 21, 2021

Respectfully submitted,  
MATERN LAW GROUP, PC

By: /s/ Tagore Subramaniam  
MATTHEW J. MATERN  
TAGORE SUBRAMANIAM  
SYDNEY A. ADAMS  
Attorneys for Plaintiff  
CLEMENT GRAY

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Clement Gray (“Plaintiff”) respectfully applies ex parte for an order continuing the deadline for Plaintiff to file his motion for class certification pursuant to Local Rule 23-3. The current deadline is January 25, 2021, and Plaintiff seeks to continue the deadline by ninety (90) days to April 26, 2021. Good cause exists to grant the requested relief because 1) the pleadings remain in their early stages; 2) Plaintiff has not yet received critical pre-certification discovery; and 3) Defendants will not be prejudiced by a change in briefing schedule for the class certification motion.

Even though this putative wage and hour class action was removed to federal court on August 27, 2020, the pleadings have until recently remained unsettled. For example, the parties twice stipulated to amend the complaint (First Amended Complaint, September 23, 2020; Second Amended Complaint, November 10, 2020) and then, on January 12, 2021, only nine days before the filing of this application, the Court granted Defendants’ Partial Motion to Dismiss. The effect of this recent dispositive motion was to dismiss three causes of action from the operative complaint, narrowing the claims and the scope of discovery. To the extent that the pleadings are now settled, that is a very recent development that will allow the parties to engage in more focused discovery.

However, Defendants’ response to Plaintiff’s discovery requests have thus far been inadequate to allow Plaintiff to properly prepare for class certification. For example, Defendants have not produced class member contact information, time or payroll records, and have not yet made persons most knowledgeable available for deposition pursuant to Rule 30(b)(6). Thus, Plaintiff and the putative class members will be severely prejudiced if Plaintiff is forced to file his motion for class certification without the benefit of critical pre-certification discovery.

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1 On the other hand, Defendants will not suffer any prejudice if the class  
2 certification deadline is continued. Instead, it has been to Defendants' benefit to  
3 have depositions of their persons most knowledgeable and much of their written  
4 discovery response delayed until after the Partial Motion to Dismiss. This delay  
5 allowed Defendants to avoid production of discovery that is no longer necessary.  
6 Now that the landscape of the pleadings has been brought into better focus, Plaintiff  
7 seeks time adequate to complete only the discovery needed for class certification.  
8 Accordingly, Plaintiff respectfully requests the Court to continue the deadline for  
9 Plaintiff to file his motion for class certification to April 26, 2021.

10 **II. STATEMENT OF FACTS**

11 On June 15, 2020, Plaintiff filed a putative class and representation action  
12 complaint in the Los Angeles County Superior Court on behalf of himself and other  
13 similarly situated employees against Defendants based on their numerous violations  
14 of California's labor laws. Dkt. 1, Ex. A.

15 On August 27, 2020, Defendants Marathon Petroleum Logistics Services  
16 LLC and Marathon Petroleum LP removed the action to this Court pursuant to the  
17 LMRA, the Class Action Fairness Act and supplemental jurisdiction under 28  
18 U.S.C. § 1367. Dkt. 1.

19 After removal, the parties met and conferred regarding a potential Rule 12  
20 motion to dismiss Plaintiff's complaint. Dkt. 15. The parties then stipulated to  
21 allow Plaintiff leave to file a First Amended Complaint in an effort to potentially  
22 narrow the issues in dispute, which the Court granted. Dkts. 15, 21, 22.

23 The parties filed a Joint Rule 26(f) Report on September 8, 2020, and the  
24 Court issued its Scheduling and Case Management Order on September 23, 2020.  
25 Dkts. 20, 25.

26 On October 6, 2020, Plaintiff served discovery upon Defendants, including  
27 special interrogatories, requests for production, requests for admission, and notices

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1 of deposition for persons most knowledgeable pursuant to Rule 30(b)(6).

2 Subramaniam Decl. ¶4.

3 On October 19, 2020, Defendants filed a Motion to Dismiss Plaintiff's  
4 Complaint but the motion was stricken for Defendants' non-compliance with the  
5 Court's Standing Order. Dkt. 28. The parties subsequently met and conferred and  
6 Plaintiff filed a Second Amended Complaint. Dkts. 33-34. Defendant filed a revised  
7 Partial Motion to Dismiss on November 24, 2020. Dkt. 35.

8 Given the pendency of Defendant's Partial Motion to Dismiss, the parties  
9 stipulated to a request to continue the class certification deadline. Dkt. 36. On  
10 November 11, 2020, the Court granted the request and issued its order extending  
11 the deadline to file a motion for class certification to January 25, 2021. Dkt. 37.

12 While the Court's ruling on the Partial Motion to Dismiss was pending,  
13 Plaintiff contacted Defendant's counsel on January 12, 2021, to meet and confer as  
14 to the adequacy of Defendant's response to discovery requests and the status of  
15 scheduling depositions for Defendants' persons most qualified. Subramaniam Decl.  
16 ¶10.

17 On January 12, 2021, the Court granted Defendants' Partial Motion to  
18 Dismiss as to Plaintiff's first cause of action for failure to provide required meal  
19 breaks, second cause of action for failure to provide required rest breaks, and third  
20 cause of action for failure to pay overtime wages. Dkt. 43. After the Court's ruling  
21 on Defendants' Partial Motion to Dismiss, on January 13, 2021, Defendants  
22 responded by email to Plaintiff's request to meet and confer regarding outstanding  
23 responses to discovery. Subramaniam Decl. ¶11. In this email, Defendants offered  
24 to discuss updated discovery, including updated topics for deposition, in light of the  
25 Court's ruling. *Id.*

26 On January 19, 2021, with discovery still incomplete, Plaintiff's counsel  
27 called and emailed Defendants to request a stipulation to extend the deadline to file  
28 a motion for class certification. Subramaniam Decl. ¶12. Plaintiff's counsel

1 informed Defendants that absent a stipulation, an ex parte application to continue the  
2 motion for class certification deadline would be necessary. *Id.* Defendants responded that  
3 they would not stipulated to a continuance and indicated that they would oppose the ex  
4 parte application. *Id.* Pursuant to this Court’s Standing Order (Dkt. 10), Plaintiff informed  
5 Defendants on January 20, 2021, of the intent to bring this application as well as the  
6 requirements in the Standing Order for filing any opposition or notice of non-opposition.  
7 *Id.*

### 8 **III. ARGUMENT**

#### 9 **A. Good Cause Exists to Continue the Deadline for Plaintiff to File** 10 **His Motion for Class Certification**

11 Local Rule 23-3 provides, “At the earliest possible time after service of a pleading  
12 purporting to commence a class action ... but no later than any deadline set by the  
13 assigned judge, the proponent of the class must file a motion for certification that  
14 the action is maintainable as a class action” L.R. 23-3. When a case is removed,  
15 the deadline for Plaintiff’s motion for class certification is based on the date of  
16 removal. *See Basilioli v. Allegiant Air, LLC*, No. 218CV03888RGKMRW, 2018  
17 WL 6133658, at \*1 (C.D. Cal. Sept. 19, 2018) (“Under Local Rule 23-3, Plaintiff’s  
18 Motion for Class Certification was due on August 7, 2018, which is 90 days  
19 after removal to this Court.”); *Vawter v. United Parcel Serv., Inc.*, No. CV 18-  
20 1318-RGK-E, 2018 WL 4677583, at \*1 (C.D. Cal. Sept. 26, 2018) (“Plaintiff failed  
21 to move for class certification within ninety days of the action’s removal to this  
22 Court, as Local Rule 23-3 requires.”).<sup>1</sup> However, the timing of class certification is  
23 committed to the discretion of the district judge and

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25 <sup>1</sup> *Basilioli* and *Vawter*, as with most cases cited, addressed extension of deadlines  
26 under the former Local Rule 23-3, which specified a 90-day deadline to file a  
27 motion for class certification. The current Local Rule 23-3 eliminates the 90-day  
28 deadline in favor of the court’s discretion. Accordingly, there is no case law to  
suggest that the court’s ability to extend the deadline by exercise of its discretion  
has been changed in any way.



1 Rule 23-3 allows extension of the certification deadline by order of the court.  
2 *Perez v. Safelite Grp. Inc.*, 553 F. App'x 667, 669 (9th Cir. 2014), *as amended on*  
3 *denial of reh'g and reh'g en banc* (Mar. 7, 2014). Indeed, “[c]ourts have discretion  
4 to allow class certification [even] after the 90 day period has expired.” *Clark v.*  
5 *Sprint Spectrum L.P.*, No. CV 10-9702 CAS SSX, 2011 WL 835487, at \*2 (C.D.  
6 Cal. Mar. 7, 2011); *Misra v. Decision One Mortg. Co., LLC*, 673 F. Supp. 2d 987,  
7 993 (C.D. Cal. 2008).

8  
9 **1. The pleadings remain in their early stages, favoring the Court’s  
10 discretion to extend time to file for class certification.**

11 The September 23, 2020 Scheduling and Case Management Order set the  
12 deadline to file a motion for class certification at 120 days after the date of removal.  
13 Dkt. 25 at 34. However, despite Plaintiff’s diligence in prosecuting this action, the  
14 pleadings remained largely unsettled until January 12, 2021, when the court ruled  
15 on Defendants’ Partial Motion for Dismissal. After removal of this case to federal  
16 court and concurrent with the Court’s September 23, 2020 Scheduling and Case  
17 Management Order, the parties stipulated to Plaintiff filing a First Amended  
18 Complaint to accord his claims to federal pleading standards. Dkts. 21, 23;  
19 Subramaniam Decl. ¶3. After multiple efforts to meet and confer regarding the  
20 scope of the litigation and the attendant scope of discovery, the parties stipulated to  
21 Plaintiff filing a Second Amended Complaint. Dkt. 31; Subramaniam Decl. ¶5. The  
22 Second Amended Complaint was filed on November 10, 2020. Dkt. 33;  
23 Subramaniam Decl. ¶6. Defendants then filed their Partial Motion to Dismiss on  
24 November 24, 2020. Dkt. 35. The Court ruled in favor of the motion on January 12,  
25 2021, eliminating three causes of action from the Second Amended Complaint. Dkt.  
26 43. Therefore, even though 120 days have passed since the case was removed to  
27 federal court, only in the last nine days have the pleadings approached a state of  
28 being settled. Now that the issues and claims have been narrowed, Plaintiff requests

1 time to complete the discovery necessary to support his motion for class  
2 certification. Indeed, the Central District has acknowledged, “without evidence, the  
3 Court has no way to know what the result of a class certification motion in this case  
4 will be.” *Gordon v. Aerotek, Inc.*, No. EDCV170225DOCKKX, 2017 WL 4351744  
5 (C.D. Cal. Sept. 29, 2017).

6  
7 **2. Defendants’ have not provided a response to discovery adequate to**  
8 **inform Plaintiff’s motion for class certification.**

9 Where additional time is needed to conduct pre-certification discovery, it is  
10 appropriate to extend the motion for class certification deadline. *ABS*  
11 *Entertainment, Inc., v. CBS Corporation*, 908 F.3d 405, 427 (9th Cir. 2018); *see*  
12 *also Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975) (holding that  
13 the “[t]he propriety of a class action cannot be determined in some cases without  
14 discovery” and that “[t]o deny discovery in [such cases] would be an abuse of  
15 discretion.”); *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir.1977)  
16 (stating that “the better and more advisable practice for a District Court to follow is  
17 to afford the litigants an opportunity to present evidence as to whether a class  
18 action was maintainable” and that such an opportunity requires “enough discovery  
19 to obtain the material”). Thus, it is an abuse of discretion not to provide a party  
20 sufficient time to conduct pre-certification discovery prior to the filing of a motion  
21 for class certification. *See Perez v. Safelite Grp. Inc.*, 553 F. App’x 667, 668-69  
22 (9th Cir. 2014), *as amended on denial of reh’g and reh’g en banc* (Mar. 7, 2014)  
23 (holding that district court’s denial of plaintiff’s requests for extension of time to  
24 file motion for class certification in order to engage in discovery prior to class  
25 certification “effectively denied [plaintiff] the opportunity to engage in  
26 precertification discovery, which constitutes an abuse of discretion”).

27 After the Court issued its September 23, 2020 Scheduling and Case  
28 Management Order, Plaintiff diligently pursued the discovery necessary to support

1 his motion for class certification. Subramaniam Decl. ¶4. On October 6, 2020,  
2 Plaintiff propounded special interrogatories, requests for production, requests for  
3 admission, and notices of deposition for persons most knowledgeable pursuant to  
4 Rule 30(b)(6) upon all Defendants. *Id.* On November 16, 2020, Defendants served  
5 their response to Plaintiff’s first sets of discovery for defendant Marathon  
6 Petroleum Logistics Services, LLC only. Subramaniam Decl. ¶7. Unfortunately,  
7 Marathon Petroleum Logistics Services, LLC’s discovery responses contained  
8 numerous objections and partial responses. Defendants have not produced class  
9 member contact information, time or payroll records, and have not yet made  
10 persons most knowledgeable available for deposition pursuant to Rule 30(b)(6).  
11 Subramaniam Decl. ¶8.<sup>2</sup>

12 In order to have sufficient evidence to meet Plaintiff’s burden for class  
13 certification, Plaintiff must have access to the class list and relevant contact  
14 information for putative class members, the time records and payroll data for  
15 putative class members, and reasonable time to interview putative class members  
16 regarding their experiences working for Defendants. Such material is directly  
17 relevant to Plaintiff’s class allegations, and well within the scope of permissible  
18 discovery. Subramaniam Decl. ¶9. Plaintiff’s counsel has sought to meet and  
19 confer with Defendants’ counsel regarding Defendants’ discovery responses and the  
20 scheduling of depositions, however, given the Court’s ruling on the Partial Motion  
21 for Dismissal, Defendants wished to discuss “updated” topics to be covered by  
22 additional written discovery or deposition testimony. Subramaniam Decl. ¶11.  
23 Completing discovery relevant to class certification is paramount to Plaintiff and  
24 the putative class members’ interests. Accordingly, Plaintiff seeks this continuance

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25 <sup>2</sup> Plaintiff received discovery responses from defendants Marathon Petroleum  
26 Company, LP, Andeavor Logistics, LP, and Tesoro Refining & Marketing  
27 Company on January 20, 2021. Subramaniam Decl. ¶14. These defendants appear  
28 to have served only objections in response to all special interrogatories, requests for  
production, and requests for admission. *Id.*

1 to allow time for that discovery so that the Court may properly evaluate whether  
2 this class action is maintainable.

3 **B. Defendant Will Not Be Prejudiced by the Requested Relief**

4 No harm will accrue to Defendants should the Court continue the deadline  
5 for Plaintiff to file his motion for class certification. Defendants have already  
6 sought and secured an extension of the class certification filing deadline and yet  
7 Defendants have not yet identified dates for depositions of any persons most  
8 knowledgeable. Extension of the deadline will provide Defendants with added time  
9 to identify deponents pursuant to Rule 30(b)(6) and to complete their own  
10 discovery. Because the Court has narrowed the scope of claims with its ruling on  
11 the Partial Motion to Dismiss, this discovery will likewise be narrower and more  
12 streamlined.

13 **IV. CONCLUSION**

14 Based on the foregoing argument and authority, and consistent with the  
15 Court's prior briefing schedule for this motion, Plaintiff respectfully requests that  
16 the Court continue the deadline for Plaintiff to file his motion for class certification  
17 to April 26, 2021. Defendants' opposition would be due 21 days later, on May 17,  
18 2021. Plaintiff's reply would be due 14 days after that, on May 31, 2021.

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Dated: January 21, 2021

Respectfully submitted,

MATERN LAW GROUP, PC

By: /s/ Tagore Subramaniam  
MATTHEW J. MATERN  
TAGORE SUMBRAMANIAM  
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CLEMENT GRAY

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On January 21, 2021, I served the following document or documents:

**PLAINTIFF’S EX PARTE APPLICATION FOR AN ORDER CONTINUING THE DEADLINE FOR PLAINTIFF TO FILE HIS MOTION FOR CLASS CERTIFICATION PURSUANT TO LOCAL RULE 23-3**

**By fax transmission.** I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which is printed out, is attached.

Sheryl L. Skibbe, Esq. <b>SEYFARTH SHAW LLP</b> 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 Telephone: (310) 277-7200 Facsimile: (310) 201-5219 Email: sskibbe@seyfarth.com	Attorneys for Defendants MARATHON PRETROLEUM LOGISTICS SERVICES LLC; MARATHON PETROLEUM COMPANY LP
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 21, 2021 at Manhattan Beach, California.

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Roxana Barcenas