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**United States District Court  
Central District of California**

KEITH HUCKABY,  
Plaintiff,  
v.  
CRST EXPEDITED, INC., et al.,  
Defendants.

Case No 2:21-CV-07766-ODW (PDx)

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
RECONSIDERATION [61]**

**I. INTRODUCTION**

Defendant CRST Expedited, Inc. (“CRST”) moves for reconsideration of the Court’s order granting in part and denying in part Plaintiff Keith Huckaby’s Motion to Certify Class. (Mot. Recons. (“Mot.” or “Motion”), ECF No. 61-1; *see also* Notice Errata, ECF No. 62 (correcting hearing date for Mot.)) CRST brings the Motion pursuant to Federal Rules of Civil Procedure (“Rule” or “Rules”) 23(c)(1)(C) and 60(b) and California Central District Civil Local Rule (“Local Rule”) 7-18. The Motion is fully briefed. (Opp’n, ECF No. 66; Reply, ECF No. 67.) For the following reasons, the Court **GRANTS IN PART AND DENIES IN PART** CRST’s Motion for Reconsideration.<sup>1</sup> (ECF No. 61.)

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<sup>1</sup> Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 On October 3, 2022, the Court issued an order granting in part and denying in  
3 part Huckaby’s Motion to Certify Class. (Order Re: Mot. Certify Class (“Order”),  
4 ECF No. 60.) The Court certified an “Amended Piece-Rate Class,” defined as  
5 follows:

6 All current and former employees that had a residential address in  
7 California and performed work as a truck driver for CRST (“CA  
8 Truck Driver”) who were compensated by a piece-rate from  
9 August 9, 2017, through the date of final disposition of this action,  
10 excluding the participants in the settlement in *Montoya v. CRST Expedited, Inc.*, Case No. 16-cv-10095-PBS (D. Mass.).

11 (*Id.* at 18.) The Court certified this class as to Huckaby’s first cause of action for  
12 failure to pay minimum wages, second cause of action for failure to pay  
13 statutory/contractual wages, and ninth cause of action for violation of California’s  
14 Unfair Competition Law. (*Id.*) The Court denied certification as to all other classes  
15 and issues. (*Id.*)

16 The Court found certification appropriate in part because Huckaby established  
17 that the class is sufficiently cohesive to warrant adjudication by representation,  
18 satisfying the predominance requirement under Rule 23(b)(3). (*Id.* at 9–12.) In doing  
19 so, the Court rejected CRST’s argument that “individualized questions regarding  
20 ‘when, for how long, and even *if* drivers spent time performing non-driving tasks’  
21 would predominate.” (*Id.* at 11.) The Court reasoned that “[t]he questions of when  
22 and for how long each driver performed these tasks are damages questions, and the  
23 Ninth Circuit has repeatedly held that ‘the need for individual damages calculations  
24 does not, alone, defeat class certification’ where the defendant’s actions caused the  
25 class members’ injury.” (*Id.* (citing *Vaquero v. Ashley Furniture Indus., Inc.*,  
26 824 F.3d 1150, 1154–55 (9th Cir. 2016) (collecting cases)).)

27 CRST now moves for reconsideration of the Court’s Order on two issues. (*See*  
28 *generally* Mot.) First, CRST contends that the Amended Piece-Rate Class cannot

1 satisfy predominance following a recent decision issued by the Ninth Circuit after the  
2 close of briefing on Huckaby’s motion for class certification, *Bowerman v. Field Asset*  
3 *Servs., Inc.*, 39 F.4th 652 (9th Cir. 2022). (*Id.* at 1.) Second, CRST requests that if  
4 the Court finds Huckaby satisfies predominance, the Court modify the class definition  
5 to only run through the date of the Court’s certification order, rather than the final date  
6 of disposition. (*Id.*)

### 7 III. LEGAL STANDARD

8 Rule 23(c)(1)(C) provides that “[a]n order that grants or denies class  
9 certification may be altered or amended before final judgment.” Thus, “[e]ven after  
10 the Court has certified a class, the Court retains the flexibility to address problems as  
11 they arise and may modify the certification order or even decertify the class.”  
12 *Franco-Gonzalez v. Napolitano*, No. 2:10-cv-02211-DMG (DTBx), 2012 WL  
13 10688876, at \*1 (C.D. Cal. Aug. 27, 2012).

14 Under Rule 60(b), “the court may relieve a party or its legal representative from  
15 a final judgment, order, or proceeding.” The Rule provides several bases for seeking  
16 this relief, including: “(1) mistake, inadvertence, surprise, or excusable neglect;  
17 (2) newly discovered evidence”; (3) fraud, misrepresentation, or misconduct by an  
18 opposing party; (4) a void judgment; (5) a satisfied judgment; and “(6) any other  
19 reason that justifies relief.” Fed. R. Civ. P. 60(b). Motions for relief pursuant to  
20 Rule 60(b) “are addressed to the sound discretion of the district court,” *Casey v.*  
21 *Albertson’s Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004), but “the Rule is used  
22 sparingly . . . to prevent manifest injustice,” *Latshaw v. Trainer Wortham & Co.*,  
23 452 F.3d 1097, 1103 (9th Cir. 2006) (internal quotation marks omitted).

24 Pursuant to Local Rule 7-18, the grounds on which a party may move for  
25 reconsideration are limited to: (a) “a material difference in fact or law from that  
26 presented to the Court that, in the exercise of reasonable diligence, could not have  
27 been known to the party moving for reconsideration at the time the Order was  
28 entered;” (b) “the emergence of new material facts or a change of law occurring after

1 the Order was entered;” or (c) “a manifest showing of a failure to consider material  
2 facts presented to the Court before the Order was entered.”

3 **IV. DISCUSSION**

4 First, CRST’s Motion for Reconsideration is untimely. A motion under  
5 Rule 60(b) must be made within a reasonable time. Fed. R. Civ. P. 60(c). CRST  
6 relies on the *Bowerman* decision as grounds for the Motion, but the Ninth Circuit  
7 issued that decision on July 5, 2022, about three months before the Court issued the  
8 Order on Huckaby’s motion for class certification. Local Rule 7-18 permits parties to  
9 move for reconsideration only where there is a material difference in fact or law that  
10 could not have been known to the party moving for reconsideration “at the time the  
11 Order was entered.” *See* C.D. Cal. L.R. 7-18(a). Although CRST could have known  
12 about this decision prior to the Court’s issuance of the Order, CRST did not file a  
13 notice of supplemental authority. Indeed, CRST did not move for reconsideration  
14 until October 17, 2022, yet offers no reason for its months-long delay in seeking  
15 relief. Absent any reasonable explanation, the Court finds the delay unreasonable.  
16 *See* Fed. R. Civ. P. 60(c) (“A motion under Rule 60(b) must be made within a  
17 reasonable time . . .”).

18 Nonetheless, the Court finds it appropriate to consider CRST’s Motion pursuant  
19 to Rule 23(c)(1)(C), which allows for the alteration or amendment of an order granting  
20 class certification before final judgment. *See* Fed. R. Civ. P. 23(c)(1)(C).

21 Huckaby moves for reconsideration of the Court’s Order on the bases that the  
22 Amended Piece-Rate Class (1) cannot satisfy predominance, and (2) should run  
23 through the date of the Court’s certification order, not the date of final disposition.  
24 (*See generally* Mot.)

25 **A. Predominance**

26 First, CRST moves for reconsideration on the basis that the Amended Piece-  
27 Rate Class cannot satisfy predominance pursuant to the Ninth Circuit’s recent opinion  
28 in *Bowerman v. Field Asset Servs., Inc.*, 39 F.4th 652 (9th Cir. 2022). (*Id.* at 3–6.)

1 However, the opinion on which CRST relies was amended and superseded in  
2 February 2023, after CRST filed its motion. *See Bowerman v. Field Asset Servs., Inc.*,  
3 60 F.4th 459 (9th Cir. 2023). The amendments in the superseding opinion undermine  
4 CRST’s argument and clarify that *Bowerman* does not reflect a material change in  
5 law.

6 The thrust of CRST’s Motion for Reconsideration is that the Ninth Circuit in  
7 *Bowerman* clarified that a proposed class cannot satisfy predominance if  
8 individualized damages calculations would prove “excessively difficult.” (Mot. 3–6.)  
9 However, in the superseding decision, the Ninth Circuit removed the language on  
10 which CRST relies concerning the excessive difficulty of damages calculations. *See*  
11 *Bowerman*, 60 F.4th at 468–71. In addition, the Ninth Circuit reaffirmed that “the  
12 presence of individualized damages cannot, by itself, defeat class certification.” *See*  
13 *id.* at 469. The Ninth Circuit explained, “a district court is not precluded from  
14 certifying a class even if plaintiffs may have to prove individualized damages at trial,”  
15 because such a conclusion would be “implicitly based on the determination that such  
16 individualized issues do not predominate over common ones.” *Id.* (quoting *Olean*  
17 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir.  
18 2022) (en banc)). The Court relied on these now-reaffirmed principles in its initial  
19 Order.

20 Additionally, although the Ninth Circuit again concluded that individualized  
21 questions predominated over common ones in the superseding *Bowerman* opinion, the  
22 court did so by focusing on the particular circumstances at issue there. *See*  
23 *Bowerman*, 60 F.4th at 468–71. Those circumstances are not at issue here. For  
24 example, the Ninth Circuit explained that the *Bowerman* plaintiffs “withdrew their  
25 expert after the district court ‘raised questions about the reliability of his data and  
26 opinions concerning an aggregate damages model.’” *Id.* at 469. “Lacking any sort of  
27 representative evidence, the class members [in *Bowerman*] were left relying on  
28 individual testimony to establish the existence of an injury and the amount of

1 damages.” *Id.* Even so, the Ninth Circuit concluded that “[s]uch an approach would  
2 not necessarily have doomed class certification—so long as common questions  
3 continued to predominate.” *Id.* However, the damages phase of *Bowerman* became  
4 “far messier than promised by plaintiffs’ counsel when the case was certified,”  
5 resulting in a series of mini-trials concerning the work history and credibility of each  
6 individual class member. *Id.* at 469–70 (internal quotation marks omitted).

7 Here, and unlike the circumstances presented in *Bowerman*, Huckaby proposes  
8 relying on representative evidence and CRST’s corporate records, timekeeping, and  
9 pay data to prove damages on a classwide basis. (*See* Opp’n 6.) Huckaby further  
10 contends that his experts can calculate certain damages by reviewing CRST’s  
11 electronic records. (*Id.*) Moreover, Huckaby does “not need to present a fully formed  
12 damages model ‘when discovery [is] not yet complete and pertinent records may [be]  
13 still within [CRST’s] control.” *Owino v. CoreCivic, Inc.*, 60 F.4th 437, 447 (9th Cir.  
14 2022). Rather, Huckaby “must show that damages are capable of measurement on a  
15 classwide basis, in the sense that the whole class suffered damages traceable to the  
16 same injurious course of conduct underlying [Huckaby’s] legal theory.” *Id.* (internal  
17 quotation marks omitted). Huckaby satisfies this standard because, as the Court found  
18 in its previous Order, he alleges that “any damages stem from CRST’s uniform  
19 compensation practices.” (Order 11.) Based on this record, the Court again finds that  
20 common issues predominate over individual issues.

21 Accordingly, the Court **DENIES** CRST’s Motion for Reconsideration on this  
22 basis.

### 23 **B. End Date for Class Membership**

24 Second, CRST moves for reconsideration on the basis that membership in the  
25 Amended Piece-Rate Class should not extend “through the date of final disposition of  
26 this action.” (Mot. 6–7.) CRST argues that allowing membership to extend through  
27 the date of final disposition would be unmanageable and raise serious due process  
28 concerns because individuals who are not formal parties to the case must be provided

1 notice and an opportunity to opt out. (*Id.* at 6.) Instead, CRST requests that the Court  
2 modify the definition of the Amended Piece-Rate Class to extend to the date the Court  
3 entered its class certification order—October 3, 2022. (*Id.* at 7.)

4 In response, Huckaby argues that (1) this argument is improper because CRST  
5 did not oppose Huckaby’s proposed class definition in its briefing in opposition to  
6 Huckaby’s Motion to Certify Class, and (2) the class should be certified through the  
7 date of final disposition of this action. (Opp’n 7–10.)

8 The Court finds that CRST could have made this argument in opposition to  
9 Huckaby’s Motion to Certify Class, but it did not. Thus, CRST’s request does not  
10 meet the requirements of Local Rule 7-18. *See* C.D. Cal. L.R. 7-18. Nonetheless,  
11 Rule 23(c)(1)(C) allows for the alteration or amendment of an order granting class  
12 certification before final judgment, and the Court exercises its discretion to consider  
13 CRST’s argument on this basis. *See* Fed. R. Civ. P. 23(c)(1)(C).

14 Rule 23(c) provides that for a class certified under Rule 23(b)(3), like the class  
15 here, “the court must direct to class members the best notice that is practicable under  
16 the circumstances, including individual notice to all members who can be identified  
17 through reasonable effort.” Fed. R. Civ. P. 23(c). Moreover, “[i]n the context of a  
18 class action predominantly for money damages . . . [the] absence of notice and opt out  
19 violates due process.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 363 (2011).  
20 Thus, courts often “reject[] open-ended class periods, at least where notice and opt-out  
21 under Rule 23(b)(3) applies.” *Melgar v. CSk Auto, Inc.*, No. 13-CV-03769-EMC,  
22 2015 WL 9303977, at \*7 (N.D. Cal. Dec. 22, 2015), *aff’d*, 681 F. App’x 605 (9th Cir.  
23 2017). Further, as CRST points out, setting an appropriate class period now will help  
24 ensure that the parties have an opportunity to conduct discovery relating to the class  
25 members’ claims. (Mot. 7.)

26 In light of these considerations, the Court finds it appropriate to amend the  
27 definition of the Amended Piece-Rate Class such that its membership ends prior to the  
28 final disposition of this case, allowing the parties to provide class members with

1 adequate notice and an opportunity to opt-out. As such, the Court finds that class  
2 membership shall be defined by the period from August 9, 2017, through the date of  
3 this order amending the class definition—April 10, 2023.

4 Accordingly, the Court **GRANTS** CRST’s Motion for Reconsideration on this  
5 basis and **AMENDS** the definition of the Amended Piece-Rate Class as follows:

6 All current and former employees that had a residential address in  
7 California and performed work as a truck driver for CRST (“CA  
8 Truck Driver”) who were compensated by a piece-rate from  
9 August 9, 2017, through the date of the Court’s April 10, 2023 order  
10 amending this class definition, excluding the participants in the  
11 settlement in *Montoya v. CRST Expedited, Inc.*, Case No. 16-cv-  
10095-PBS (D. Mass.).

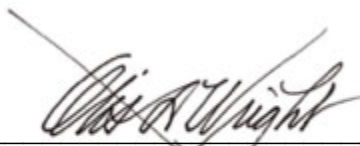
12 **V. CONCLUSION**

13 For the reasons discussed above, the Court **GRANTS IN PART AND**  
14 **DENIES IN PART** CRST’s Motion for Reconsideration. (ECF No. 61.) The Court  
15 **AMENDS** the definition of the Amended Piece-Rate Class as follows:

16 All current and former employees that had a residential address in  
17 California and performed work as a truck driver for CRST (“CA  
18 Truck Driver”) who were compensated by a piece-rate from  
19 August 9, 2017, through the date of the Court’s April 10, 2023 order  
20 amending this class definition, excluding the participants in the  
21 settlement in *Montoya v. CRST Expedited, Inc.*, Case No. 16-cv-  
10095-PBS (D. Mass.).

22 **IT IS SO ORDERED.**

23  
24 April 10, 2023

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27 **OTIS D. WRIGHT, II**  
28 **UNITED STATES DISTRICT JUDGE**