SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RON DE LEON,

Plaintiff,

vs.

CAMPAIGNERS, et al.,

Defendants.

CASE NO. BC393826

ORDER ON MOTION FOR CLASS CERTIFICATION

Plaintiff has moved for class certification. Plaintiff alleges the following causes of action on behalf of himself and defendants' field service representatives or "delegates": (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) unfair competition; (4) failure to provide meal and rest periods; (5) failure to make payments within required time; and (6) failure to indemnify. Plaintiff proposes a class consisting of "all current and former hourly Field Service Representative employees (a.k.a. 'delegates') of defendants in the State of California from four years preceding the filing of this Complaint to the present."

Defendant Agua Enterprises, Inc. ("Agua"), formerly known as Campaigners, Inc., sold its operation, assets and trade name to defendant Advantage Sales and Marketing, LLC ("ASM") on January 1, 2007. Defendant Marketwide Advantage ("MWA") is

a subsidiary of ASM; Campaigners is a division of ASM. Defendants Agua (when operated as Campaigners) and MWA-ASM provide marketing, sales, merchandising and training techniques for clients. Defendants' "delegates" (putative class members here) provide services of evaluating, auditing and/or demonstrating the products distributed or manufactured by Agua or MWA-ASM's clients.

Evidentiary issues

Plaintiff objects to certain paragraphs in the declaration of Jigna Patel, a business analyst for ASM, filed June 5, 2009. Ms. Patel says she reviewed the R-Now database. (Patel Decl. ¶ 3, filed June 5, 2009.) This database is used by defendants; the software program manages and reports the marketing data obtained from field representatives/delegates. (Warren Decl. ¶ 4, filed June 8, 2009.) Warren helped Patel access the database. The instructions Warren provided to Patel are proprietary and not appropriate for disclosure. (Warren Decl. ¶ 9.) Patel announces various findings based on her review. She does not describe how she reached these conclusions. Plaintiff's objections that Patel's paragraphs 7-9 and 11-17 lack foundation are sustained. There is inadequate foundation for the establishment and maintenance of the database and for the conclusions supposedly derived from it.

Plaintiff objects to exhibits 17 and 18 attached to the declaration of T. Wayne Harman. The objections on the ground of lack of foundation and lack of personal knowledge are sustained.

Plaintiff seeks judicial notice of the declaration of Miles Locker, Chief Counsel, Department of Labor Standards Enforcement, filed Oct. 8, 1999 in San Francisco Super. Ct. Case No. 994947. The court takes judicial notice that the document was filed but does not notice the truth of anything stated in the declaration.

Plaintiff seeks judicial notice of three opinion letters of the Division of Labor Standards Enforcement. Judicial notice of these letters is appropriate. (See *Church v. Jamison* (2006) 143 Cal.App.4th 1568, 1579, fn. 19 (judicial notice taken of DLSE manual and opinion letter).

Numerosity

The class must be sufficiently numerous that joinder of all class members would be impractical.

The proposed class is sufficiently numerous. Plaintiff asserts that several hundred members have been identified by defendants. (Righetti Decl. ¶ 8, filed May 13, 2009.) Defendants do not dispute this. Defendants' Patel, in a passage objected to by plaintiff, says there are 513 in the proposed class. (Patel Decl. ¶ 17, filed June 5, 2009.)

Ascertainability

The class must be ascertainable.

The proposed class is sufficiently ascertainable. Defendants do not dispute that they can identify their employees. The R-Now database covers the period of the proposed class. (Warren Decl. ¶¶ 4-5; Patel Decl. ¶ 3.) This data, along with payroll records that defendants are required to maintain, can provide a reasonable means to identify the class members.

Plaintiff's definition of the class should be modified to state the specific class period dates of July 3, 2004 to the present (instead of four years preceding the filing of the complaint to the present).

Plaintiff's proposed definition, as modified, is clear and precise. Yet, the evidence shows a division in the common issues asserted against the defendants.

- Against Agua: There was a period where Agua, or old Campaigners, considered putative class members to be independent contractors ("ICs"). (Pltf. Exh. 14, filed May 15, 2009.) The delegates were considered ICs between June 3, 2004 and June 14, 2005.
- Against Agua: there was a period in which the delegates, although doing work for Agua, were employed by defendant Archco Staffing Services Inc. (Pltf. Exh. 18.) Delegates were employed by Archco between June 15, 2005 and December 31, 2006.

- Against MWA-ASM: These defendants purchased old Campaigners' assets and trade name on January 1, 2007. (Tornincasa Decl. ¶ 6, filed June 5, 2009.)

This suggests there should be three sub-classes, as follows:

IC Sub-Class: "All former field service representatives (a.k.a. 'delegates') of defendant Agua Enterprises, Inc., formerly known as Campaigners, in the State of California, between June 3, 2004 and June 14, 2005, who were classified as independent contractors."

Agua Joint Employer Sub-Class: "All former field service representatives (a.k.a. 'delegates') of defendants Agua Enterprises, Inc., formerly known as Campaigners, and/or Archco Staffing Services, Inc. in the State of California, between June 14, 2005 and December 31, 2006."

MWA-ASM Sub-Class: "All current and former field service representatives (a.k.a. 'delegates') of defendant Marketwide Advantage and/or Advantage Sales and Marketing, in the State of California, between January 1, 2007 and the present."

Typicality

The claims of the named class representative must be sufficiently typical of those of the class.

According to plaintiff, he worked as a delegate of defendants during the class period, performed work for which he was not paid, was denied meal and rest breaks, and was not reimbursed for all business-related expenses. (Motion 19:1-4.)

Defendants say plaintiff understood the policies of defendants and never complained about the failure to be paid for all hours worked and/or missed breaks. (Agua Opposition 11:2-19.)

Plaintiff raises claims similar to those of the putative class members. Typicality looks to the nature of the claims or defenses, not to the specific facts from which the claims or defenses arose or the relief sought. (*Seastrom v. Neways, Inc.* (2007) 149

Cal.App.4th 1496, 1502.) The test is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." (*Ibid.*)

It is undisputed that plaintiff worked as a field service representative or delegate for both Agua and MSA-ASM between July, 2004 and August, 2007. (De Leon Decl. ¶ 3, filed May 15, 2009.)

Plaintiff declares that during his entire employment he averaged between 11- and 12-hour days, which included his drive time and reporting time, but he was not compensated for the time driving between jobs/projects. He also declares he was not compensated for the time to complete his reports or for prep work in the morning. On most days he was unable to take meal or rest breaks, so he ate in the car while driving to the next job. He was not compensated for his business-related expenses, including dress pants and shoes. (De Leon Decl. ¶¶ 5, 7, 9, 12.) Inasmuch as De Leon was a delegate during the three sub-class periods and he raises claims—he worked off the clock and was denied meal and rest breaks and indemnification—for which he seeks certification, he can be deemed a member of the class/sub-classes he seeks to represent.

The issue is whether plaintiff has established through evidence that the putative class members have claims similar to his own.

IC Sub-Class claims. For a period of time Agua considered its delegates to be ICs who performed various services for Agua clients. (Pltf. Exh. 4 - Orr Depo. Tr. 66:5-8; Agua Exh. 4 - Arkin Depo. Tr. 158:2-7.) The delegates were re-classified from ICs to Archco employees in June, 2005. (Pltf. Exh. 11; Orr. Depo. Tr. 66:5-8.) ICs are not entitled to Labor Code protections such as payment for all hours worked, reimbursement for business expenses, and meal and rest breaks. The IC contract specifically states that no business expenses will be reimbursed. (Pltf. Exh. 14 at ¶ 5.) If De Leon and the putative class members were improperly classified as ICs, they would be entitled to all

owed wages, including those for missed meal and rest breaks, and to reimbursement for business expenses. Therefore, the typicality requirement is met for these claims.

Agua Joint Employer Sub-Class claims. On June 15, 2005 defendant Agua/old Campaigners entered into a service agreement with Archco whereby Archco would employ the delegates who would then be provided to Agua for servicing Agua's clients. (Pltf. Exh. 18.) Plaintiff claims that during the period of this agreement he was not paid for all hours worked, including drive time, R-Now reporting time and prep work, and was not reimbursed for all business expenses. Putative class members also attest to not being fully compensated for all hours worked, to being denied meal and rest breaks, and to being denied reimbursement for all incurred expenses. (Decls. of Adams, Andreone, Bernet, Vorisek, Rahimzadeh, Riley, Walker, Kim at ¶¶ 4-6 (Compendium Exhs. 1, 2, 3, 4, 11, 12, 15, 16); Decls. of Dickson at ¶¶ 4-6, 8, Harris at ¶¶ 3-4, 6, Hsiao at ¶¶ 4-6, 9, Prieto at ¶¶ 4-5, 7-8 (Compendium Exhs. 6, 7, 8, 10).)

There is evidence supporting plaintiff's allegations that delegates were required to work off the clock. Delegates were to check their email and voice mail and respond with 24-48 hours. (Orr. Depo. Tr. 124:6-25; Pltf. Exh. 1 - Tornincasa Depo. Tr. 145:2-10.) Travel times between stores had no place to be recorded on call reports or anyplace else (Pltf. Exh. 3 - Gallela Depo. Tr. 65:6-20), and Kristin Tornincasa, ASM's Director of Operations, confirmed that defendants did not compensate delegates for drive time between assignments. (Tornincasa Depo. Tr. 11:7-22, 88:6-91:9. Dft. ASM Exh. 1 has pages 88, 89 & 91; Pltf. Exh. 1 has page 90. Account Supervisor and District Sales Manager Matthew Bader also confirmed that delegates were not paid for drive time between stores. (Agua Exh. 5 - Bader Depo. Tr. 60:14-24, 61:2-21.) And defendants' New Delegate Orientation materials reflect a number of tasks—check email, voice mail, print call reports and directions before leaving for job, reviewing product features and benefits, checking inventory of demonstration kits, reviewing training materials—for which delegates are not shown to have been compensated. (Pltf. Exh. 13 pp. MWA002963-64.)

There is conflicting evidence whether defendants compensated delegates for the time they spent preparing and submitting call reports.

- Tornincasa was unable to point to a document telling delegates that the time they spent on call reports was to be included within the in-store visit time they were required to enter in the R-Now system. She said she specifically looked for documents saying this in the Garmin and Vonage training materials given to field delegates but "c[ould]n't remember" what they showed. She was "not aware" of any training to this effect given to delegates. And at visits she conducted with corporate clients in stores, she did not instruct the delegate to include time for preparing call reports within the time reported for an in-store visit. She conceded that delegates should be compensated for time spent preparing and submitting call reports. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 100:17-107:10.)
- Project Manager Gallella testified that defendants' expectation forms said "we did not pay for admin time, we did not pay for call report entering and it [the form] gave some examples." (Pltf. Exh. 3 - Gallella Depo. Tr. 67:13-22.)
- Milton Hernandez, field supervisor for the Vonage program (Pltf. Exh. 2 - Hernandez Depo. Tr. 10:25-11:12), danced around this issue. He agreed that a demo day assignment required the delegate to be in the assigned store four hours. (*Id.* at 83:25-84:1.) Then he said the 10 to 15 minutes of admin time was part of the four hours, and that this was explained to delegates when they were first brought on. (Hernandez Depo. Tr. 83:13-84:13, 85:14-86:23. Pltf. Exh. 2 has pages 83-84; Agua Exh. 11 has pages 85-86.)
- Jasmina Aleksic, ASM Operations Manager and Campaigners Field Supervisor (Pltf Exh. 6 - Aleksic Depo. Tr. 8:25-10:24), said time entered into the R-Now program reflected in-store and reporting time (Agua Exh. 3 - Aleksic Depo. Tr. 68:21-69:6.)

- Bader testified that some programs "might say" delegates should enter one hour for 45 minutes of in-store visit and 15 minutes of admin time. (Agua Exh. 5 - Bader Depo. Tr. 65:17-66:6.)

All witnesses agreed that call reports were to be entered and transmitted within 24 hours of the store visit. (E.g., Pltf. Exh. 1 - Tornincasa Depo Tr. 139:5-11; Pltf. Exh. 13, pp. MWA002959, 61.)

Melissa Orr, the founder and CEO of Campaigners (Pltf. Exh. 13, p. MWA002952), said she never set any policy with respect to providing meal periods for delegates. (Agua Exh. 13 - Orr Depo. Tr. 45:3-7.) Defendants' agents could not point to any training given delegates on taking meal and rest breaks. (Pltf. Exh. 1 - Tornincasa Depo. Exh. 180:19-181:21, 184:1-185:2, 188:25-190:8; Pltf. Exh. 6 - Aleksic Depo. Tr. 65:7-66:17.) The Archco Employee Handbook For Campaigners said "[f]or each scheduled shift of six (6) hours or more, you are entitled to one unpaid meal break of no less than thirty- (30) -minutes. . . . [Y]our supervisor will establish the scheduling of these breaks." (Pltf. Exh. 1, p. 7.)

Insofar as reimbursement of business expenses, the evidence shows that Agua, during its alleged joint ownership, paid a gas stipend only if its agreement with the client provided for that. (Pltf. Exh. 4 - Orr Depo. Tr. 74:4-77:9.) Orr also said there was no policy for business expense reimbursement. (Agua Exh. 13 - Orr Depo. Tr. 45:9-15.) Agua's New Delegate Orientation manual contained a specific dress code. (Pltf. Exh. 13 p. MWA002962.)

The evidence establishes that plaintiff has similar claims with the putative class members during the Agua ownership of Campaigners (June 15, 2005 to December 31, 2006).

MWA-ASM Sub-Class claims. There is evidence that the putative class members who work or have worked for MWA-ASM were not paid for all hours worked (i.e., travel time, prep time, and possibly reporting time), were denied meal and rest breaks, and were not reimbursed for all business expenses, such as mileage between assignments

and dress. (Decls. of Adams, Andreone, Bernet, Vorisek, Rahimzadeh, Riley, Walker, Kim, Smith at ¶¶ 4-6 (Compendium Exhs. 1, 2, 3, 4, 11, 12, 15, 16, 13); Decls. of Dickson at ¶¶ 4-6, 8, Harris at ¶¶ 3-4, 6, Hsiao at ¶¶ 4-6, 9, Prieto at ¶¶ 4-5, 7-8, Soofi at ¶¶ 4, 5, 7 (Compendium Exhs. 6, 7, 8, 10, 14).)

Evidence shows that defendants MWA-ASM do not likely pay for travel time between store visits, although managers are aware that delegates could schedule more than one visit per day. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 90:25-91:9, 170:7-173:13; Agua Exh. 5 - Bader Depo Tr. 60:14-24, 61:2-21.) Again, there is conflicting evidence whether time to prepare/submit reports is included within time reported for in-store visit. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 100:17-107:10; Pltf. Exh. 3 - Gallella Depo. Tr. 67:13-22; Pltf. Exh. 2 - Hernandez Depo. Tr. 86:3-84:13; Pltf. Exh. 5 - Aleksic Depo. Tr. 68:21-69:5; Agua Exh. 5 - Bader Depo. Tr. 65:17-66:8.) There is no dispute that delegates were required to prepare/submit call reports after each store visit.

Defendants MWA-ASM's agent Tornincasa testified that ASM's policies and procedures document contains a meal break provision. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 174:23-176:21.) Yet, the MWA Policies & Procedures Booklet contains no instruction about taking meal and rest breaks; it says only that "[a]ssociates should accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period." (Tornincasa Decl. ¶ 11 & Exh. A p. 1, filed June 5, 2009.) Although some call reports may have had a question whether a meal break was taken in situations where the job required the employee to work five or more hours, the general layouts for call reports have no place for meal periods to be recorded. (*Id.* ¶ 15 & Exh. C.) Tornincasa said delegates could take rest breaks because their schedules were flexible. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 188:4-14.)

Defendant MWA-ASM's agent Tornincasa testified that a program-specific mileage stipend would be paid by MWA. (ASM Exh. 1 - Tornincasa Depo. Tr. 52:9-18.) The excerpt provided for Gallella has insufficient context to understand the testimony. (ASM Exh. 5 - Gallella Depo. Tr. 60:4-16.)

The evidence cited above is sufficient to conclude that plaintiff De Leon has raised claims similar to those of the MWA-ASM delegates.

Adequacy

Class counsel must be qualified to prosecute the class action, and the class representative must be able to adequately protect the interest of class members.

Proposed class counsel

Class counsel must be qualified, experienced and generally able to conduct the proposed litigation. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 874; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.)

Plaintiff's counsel appears to meet these requirements. (See Righetti Decl. ¶¶ 2-7, filed May 15, 2009.)

Proposed class representative

The class representative must adequately represent and protect the class interests. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 463.) He/she must raise claims "reasonably expected to be raised by the members of the class." (*Id.* at 464.) There must exist no antagonisms or conflict between the class representative and the class members' interests. (*J.P. Morgan & Co., Inc. v. Superior Court* (195, 212.) "[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

MWA-ASM claims plaintiff De Leon quit his employment after being confronted with evidence that he falsified call reports by stating he worked with store managers who had not been in the store for months. (Opp. pp. 13-14.) The supposed evidentiary support for this contention is attorney Harman's declaration attaching an alleged MWA email string. (See Opp. p. 14, fn. 13.) Attorney Harman lacks the personal knowledge to authenticate the exhibit. Defendants have put forward no record testimony laying a foundation for and explaining this exhibit, and the court is not going to spend the time trying to figure out what it means. It was apparently of insufficient importance to raise in any

of the depositions or declarations of defendant's witnesses. The court has sustained plaintiff's objections to the exhibit.

MWA-ASM contends that data in the R-Now program refutes plaintiff's declaration concerning the amount of time he spent preparing/submitting call reports each night and whether he self-scheduled store visits or received specific assignments the morning of the visit. The court has sustained plaintiff's objection to the Patel declaration, upon which defendant's contention relies.

MWA-ASM contends (Opp. 12 & fn. 68) plaintiff De Leon's declaration (¶ 12) that Campaigners told him what days he had to complete store visits and where he had to go is contradicted by his own testimony. The supposed support for this contention is a string cite to 13 pages (consisting of 7 stand-alone pages and 3 two-page offerings) in plaintiff's deposition. In violation of California Rules of Court, rule 3.1116, none of the pages are marked to call attention to the relevant portion of the testimony. One of the cited pages (Tr. 251), where plaintiff confirms interrogating counsel's statement that at the beginning of the month there was a list of each visit with the date and time indicated, directly supports his contention. On the previous page De Leon says he could change the hours of the scheduled visits. Elsewhere (Tr. 216-217) plaintiff says half the jobs on the assignment had to be done in the first half of the month and the other half, in the last half. The remaining pages cited in this footnote do not appear to the court to refute the quoted declaration statement.

MWA-ASM also juxtaposes (Opp. 12) plaintiff's declaration statement (¶ 7) that he was not paid for time spent on call reports and an email (Tornincasa Decl. ¶ 21 & Exh. D) where plaintiff says he "was told by Garmin supervisor to enter 0.75 hours for my reports, and use the other 15 minutes for reporting. I get pay 1 hour for the visit. . . ."

MWA-ASM believes the points discussed in the five preceding paragraphs disqualify plaintiff De Leon from serving as class representative. The first two points lack evidentiary support, as noted, and the court does not find the remaining three sufficient to disqualify plaintiff.

The court finds that the representative plaintiff, Ron De Leon, will fairly and adequately protect the interests of the class.

Commonality

Common questions of law or fact must predominate over individual questions.

"The ultimate question in every [purported class action] is whether, given an ascertainable class, the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brown v. The Regents of the University of California* (1984) 151 Cal.App.3d 982, 989.)

Plaintiff must "place substantial evidence in the record that common issues *predominate*. [Citation.] . . . '[T]his means "each member must not be required to individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment; and the issues which may be jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants."' [Citation.]" (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1108.)

In relation to the proposed IC Sub-Class, the court concludes that whether delegates were properly classified as ICs between June 3, 2004 and June 14, 2005 can be determined through the testimony of Agua/old Campaigners employees and documentary evidence, such as plaintiff's exhibits 13 and 14.

Similarly, in relation to the proposed Agua Joint Employer Sub-Class and the MWA-ASM Sub-Class, the court concludes that whether Archco and Agua were joint employers and whether MWA and ASM were joint employers can be determined through the testimony of defendants' agents and documentary evidence. (See, e.g., Tornincasa Depo. Tr. 122:15-124:17, 127:1-128:1; Bader Depo. Tr. 68:11-69:23; Ramos Depo. Tr. 50:11-51:4 - Pltf. Exhs. 1, 8, 9, 16.)

Off-the-clock claims (1st - 3d & 5th causes of action)

The common questions for these claims are: (i) did defendants pay for all hours worked; (ii) did defendants pay for travel time between stores; (iii) did defendants have means available for putative class members to record travel time; (iv) did defendants pay for the time it took delegates to prepare and submit call reports; (v) did defendants have means available for putative class members to record call report preparation time; (vi) is there an unfair business practice here; (vii) what are the remedies? The evidence establishes that, despite variances in the projects, common questions predominate due to the common policies/practices of defendants.

An employee must be paid for all hours worked, but an employer is liable for off-the-clock work only if it knew or should have known its employees were working off the clock. (*Marillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

Defendants present considerable testimony from various agents who say that each project worked on by a delegate is different. Yet, defendants also clearly state that there are three major types of activities done by delegates that do not vary from project to project: sales calls, merchandise calls, and demonstration days. (Pltf. Exh. 2 - Hernandez Depo. Tr. 78:20-80:21; 81:12-25; Pltf. Exh. 6 - Aleksic Depo. Tr. 91:18-93:17.) The evidence is to the effect that sales calls are generally one-hour events, merchandise calls are 30 minutes, and demonstration days are four hours. (E.g., Pltf. Exh. 4 - Orr Depo. Tr. 132:5-15.) And all delegates are paid hourly. (Pltf. Exh. 1 - Tornincasa Depo. Tr. 57:11-16.) Finally, none of defendants' policies cover payment for travel time spent going from one assignment to another. The lack of a policy, a common issue, tends to show defendants did not pay for travel time between assignments.

The testimony is contradictory whether time recorded on call reports was limited to the time spent inside the store or whether it included the administrative time to complete the reports. No written policy guidance for delegates on this point has been presented. This is a common issue for the trier of fact.

Meal and rest break claims (3d - 5th causes of action)

The common questions for these claims are: (i) did defendants have a policy providing 30-minute free of duty meal breaks to its employees when they worked assignments totaling more than five hours in a day; (ii) did defendants have a policy authorizing and permitting rest breaks of 10 minutes for every four hours worked; (iv) does the evidence show an unfair business practice in regard to these matters; (v) what are the remedies?

Except for an Archco Employee Handbook For Campaigners, which misstates the law on when employees are entitled to meal breaks and says your supervisor will schedule these breaks for shifts of six hours or more, and the MWA Policies & Procedures Booklet, which says associates should accurately record the beginning and ending time of each meal period, defendants' guidance documents provided to employees contain no instructions on taking meal breaks. The general layouts for call reports have no place to record meal periods.

As noted above, the evidence is to the effect that sales calls are generally one-hour events, merchandise calls are 30 minutes, and demonstration days are four hours. Defendants would possibly be required to provide an uninterrupted meal period where employees worked five hours in a day. Defendants seem to think their R-Now database will show the number of days where each employee worked five hours or more. (See Patel Decl. ¶¶ 8, 14-16, filed June 5, 2009.) Travel time between assignments, which appears to have been uncompensated, would have to be considered in the total.

The failure to provide meal breaks is a common issue.

The evidence is to the effect that defendants had no policy authorizing and permitting rest breaks. Defendants argue that putative class members could take rest breaks because they self-scheduled their work. Even if employees did self-schedule their work, the common issue is whether defendants communicated a policy authorizing such rest breaks where applicable.

Indemnification claims (3d & 6th causes of action)

The common questions for this claim are: (i) are defendants obligated to reimburse for mileage driven between assignments; (ii) are defendants obligated to reimburse for mileage driven from last assignment to home; (iii) did defendants reimburse for all mileage driven where reimbursement was required; (iv) were putative class members required to wear a uniform; (v) were putative class members reimbursed for uniform expenses incurred; and (vi) what are the remedies?

The determination of these issues, as with the others, turns on applicable law, defendants' policies or the lack thereof, and defendants' records (e.g., payroll).

With all of these claims, the necessity for class members to individually establish eligibility and damage does not mean that individual fact questions predominate. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334.) Even if the damages of each putative class member may require individual showing, that does not preclude class certification so long as providing for such a showing can be done in a manageable way. (*Id.* at pp. 332, 334.) Damages can be proven by the use of statistical evidence, sampling evidence, and/or expert testimony, as these do not dispense with proof of damages but rather offer a different method of proof. (*Id.* at p. 333.)

For all of these claims, the court concludes that common issues predominate.

Superiority/substantial benefits

The class action must confer substantial benefits on both the litigants and the court and must be superior to other means of adjudicating the dispute.

> In deciding whether a class action would be superior to individual lawsuits, "the court will usually consider [four factors]: [¶] [(1)] The interest of each member in controlling his or her own case personally; [¶] [(2)] The difficulties, if any, that are likely to be encountered in managing a class action; [¶] [(3)] The nature and extent of any litigation by individual class members already in progress involving the same controversy; [and]

[¶] [94)] the desirability of consolidating all claims in a single action before a single court." [Citations.]

(*Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 121.)

"'[W]age and hour disputes (and others in the same general class) routinely proceed as class actions.'" (*Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121, 138, quoting *Prince v. CLS Transportation, Inc.* (2004) 188 Cal.App.4th 1320, 1328.)

For both the parties and the court, class treatment in this case is the superior means for resolving the litigation.

Should any class element fail, the court can decertify the class during trial.

Conclusion

1. Plaintiff's motion for class certification is granted. A class action is proper as to all causes of action alleged in the complaint.

2. The sub-classes are defined as set forth on page 3 of this Order.

3. Matthew Righetti is appointed class counsel.

4. Ron De Leon is certified as class representative.

5. Within 15 days of the entry of this order defendants shall compile and provide to plaintiff's counsel a master mailing list consisting of the names and addresses of class members.

6. Within 15 days of the entry of this order counsel for the parties shall meet and confer on the form of notice to the class and shall present that issue to the court within 30 days. Defendants shall pay the costs of preparing and mailing notice.

Dated: November 3, 2009

RALPH W. DAU

Ralph W. Dau, Judge