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**FILED**  
LOS ANGELES SUPERIOR COURT

SEP 24 2009

JOHN A. CLARKE, CLERK

BY S. SMITH, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

MIKE RUTTI, et al.,

Plaintiffs,

v.

LOJACK CORPORATION, INC.,

Defendant.

Case No. BC381043

**RULING RE MOTION FOR CLASS  
CERTIFICATION (REVISED)**

The Court hereby vacates its June 19, 2009 order which certified in part class action allegations in the complaint and hereby makes a new and different order containing the court's expanded rationale in certifying those claims and in appointing Mike Rutti as class representative. This expanded rationale is intended to comply with the September 1, 2009 Court of Appeal, Second Appellate District, Division Four Alternative Writ of Mandate, Paragraph (a), No. B218294.

**I. HISTORY**

Plaintiff Mike Rutti filed a complaint in the U.S. District Court on April 5, 2006, alleging that Defendant Lojack deprived him of overtime compensation by not paying for all hours worked pursuant to the FLSA; deprived him of overtime compensation for the

1 same hours worked and indemnification pursuant to California Labor law; and that said  
2 behavior was in violation of the California Unfair Competition Law. Defendant Lojack  
3 filed a Motion for Partial Summary Judgment. District Judge Carter on August 16, 2007,  
4 granted in part and denied in part Defendant's MSJ. Plaintiff Rutti appealed that order  
5 to the 9<sup>th</sup> Circuit Court of Appeal.

6 Plaintiff, along with Plaintiff Gerson Anaya, filed on November 20, 2007, the  
7 within matter. Plaintiffs alleges the following causes of actions (1) failure to provide  
8 meal breaks and accurate wage statements; (2) failure to provide rest breaks and  
9 accurate wage statements; (3) failure to indemnify; (4) failure to pay wages (including  
10 overtime wages); (5) failure to make timely payments; (6) violation of the Unfair  
11 Competition Law (UCL); and (7) penalties pursuant to the Private Attorney General Act  
12 (PAGA). This court heard argument on Plaintiffs' certification motion on April 16, 2009.  
13 After supplemental briefing, this court entered in order granting in part and denying in  
14 part Plaintiffs' motion for certification on June 19, 2009.

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16  
17 On August 21, 2009, the 9<sup>th</sup> Circuit issued its ruling on Plaintiff Rutti's appeal to  
18 the U.S. District Court's ruling on Defendant's Motion for Summary Judgment. The 9<sup>th</sup>  
19 Circuit affirmed in part and vacated in part the District Court's ruling.

20 The below chart illustrates this court's analysis of the differences between the  
21 U.S. District Court rulings and the 9<sup>th</sup> Circuit Court findings.

Cause of Action	District Court Holding	9 <sup>th</sup> Circuit Holding
Commuter time to and from 1 <sup>st</sup> and last job	Not Compensable under both federal and California law	Affirmed
Commuting time to and Waiting for Meetings	Not Compensable under both federal and California law	Affirmed
On-call time	Not Compensable as matter of law	Affirmed

1	Off-the-clock time re: washing and maintaining uniform	Not Compensable as matter of law under both federal and California law	Affirmed
2			
3	Off-the-clock time re: washing and maintaining company van	Not Compensable as matter of law	Affirmed
4			
5	Off-the-clock time re: driving, organizing supplies at UPS	Not Compensable as matter of law	Affirmed
6			
7	Off-the-clock time re: Charting route to 1 <sup>st</sup> job	Not Compensable as matter of law	Affirmed
8			
9	Off-the-clock time re: PDT transmissions	Not Compensable as matter of law	Vacated
10			
11	Off-the-clock time re: purchasing and maintaining tools	Not Compensable as matter of law	Affirmed
12			
13	Indemnification for purchased tools	Entitled to proceed on this claim	Not addressed
14			
15	Indemnification for expenses in washing company van and repairing van	Not Compensable under California law	Not addressed
16			

17  
18 In light of the 9<sup>th</sup> Circuit's determinations above, this court vacates the June 19,  
19 2009 order and reissues an expanded analysis below.

20 **II. REASONS FOR THE RULING RE MOTION FOR CERTIFICATION**

21 Plaintiffs alleges the following causes of actions (1) failure to provide meal breaks  
22 and accurate wage statements; (2) failure to provide rest breaks and accurate wage  
23 statements; (3) failure to indemnify; (4) failure to pay wages (including overtime wages);  
24 (5) failure to make timely payments; (6) violation of the Unfair Competition Law (UCL);  
25 and (7) penalties pursuant to the Private Attorney General Act (PAGA). Plaintiffs are  
26 seeking by the within motion to represent a class of all hourly paid technicians and  
27 senior technicians employed by Defendant.  
28

1 As previously noted, at the time of the hearing on this motion on April 16, 2009,  
2 the court requested additional briefing on the issues of on-call time. The court read and  
3 considered the supplemental briefing. In conjunction with those additional briefs, the  
4 court's previous tentative, the decision of the U.S. District court and decision of the  
5 Ninth Circuit Court of Appeal, the court finds the following:

6 **A. Numerosity**

7  
8 Numerosity means the class is sufficiently numerous that individual joinder is  
9 impracticable. However "no set number is required as a matter of law for the  
10 maintenance of a class action." *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926,  
11 934. Here, the evidence presented established that the class consisted of at least 200  
12 individuals, which is sufficiently numerous that joinder is impractical. Therefore, this  
13 element is met.

14 **B. Ascertainability**

15  
16 An ascertainable class exists after examining "(1) the class definition, (2) the size  
17 of the class, and (3) the means available for identifying class members." *Global*  
18 *Minerals & Metals Corp. v. Superior Court (National Metals, Inc.)* (2003) 113 Cal. App.  
19 4<sup>th</sup> 836, 849. Here, the class definition is clear and precise in its definition. The class  
20 members are limited to Defendant's employed technicians during a specified time  
21 period. Furthermore, the class members are identifiable through Defendant's records.

22  
23 However, as will be elaborated below under Typicality and Commonality, the 1<sup>st</sup>  
24 cause of action for denied meal breaks is essentially divided into two time frames - time  
25 before a change in policy and time after a change in policy. The evidence shown below  
26 establishes that Plaintiffs lack typicality for any claim of denied meal breaks after  
27 Defendant change its policy relating to meal breaks. Simply, common questions do not  
28 predominate after the policy change. Therefore, a sub-class should be created to

1 concern itself with the 1<sup>st</sup> cause of action as relates to the period in which Defendant's  
2 old policy was in effect.

3 **C. Typicality**

4 The named plaintiff must be a member of the class. *Petherbridge v. Altadena*  
5 *Federal Savings and Loan Association* (1974) 37 Cal.App.3d 193, 200. Typicality looks  
6 to the nature of the claims or defenses, not the specific facts from which the claims or  
7 defenses arose or the relief sought. *Seastrom v. Neways, Inc.* (2007) 149 Cal. App. 4<sup>th</sup>  
8 1496, 1502. The test of typicality is "whether other members have the same or similar  
9 injury, whether the action is based on conduct which is not unique to the named  
10 plaintiffs, and whether other class members have been injured by the same course of  
11 conduct." *Id.*

12  
13 Here, the parties do not dispute that Plaintiffs Rutti and Anaya were employed by  
14 Defendant Lojack as technicians during the relevant class periods.

15  
16 1. Meal and Rest Breaks:<sup>1</sup> The presented evidence was that Plaintiffs  
17 Rutti and Anaya were encouraged to work throughout the day and not stop for a lunch  
18 or rest break. They would eat while 'on the go' because of their workloads.  
19 Furthermore, the presented evidence was that the putative class members prior to the  
20 policy change were unable to take meal and rest breaks due to the workload and drive  
21 time.

22  
23 In December 2006, Defendant implemented a policy that no assignment would  
24 be provided to its technicians for a 30-minute period. Plaintiff Rutti was not employed  
25 during this change in policy, and Plaintiff Anaya testified that due to the policy change  
26 he was able to take his meal breaks. Finally, no evidence was presented that after this  
27 change, the putative class members were unable to take their meal breaks.

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<sup>1</sup> These relate to the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, and 7<sup>th</sup> causes of action.

1 Therefore, Plaintiffs have established typicality with the class members as relates  
2 to denied rest breaks and as it relates to denied meal breaks prior to the policy change,  
3 but not as to denied meal breaks after the policy change.

4 2. Indemnification:<sup>2</sup> Plaintiffs request indemnification for (i) tool  
5 purchases; (ii) car maintenance expenses; and (iii) deduction from pay for damages to  
6 company vehicle. As to categories (ii) and (iii), the U.S. District Court, Central District  
7 ruled that Plaintiff Rutti in a Motion for Summary Adjudication as a matter of law had no  
8 claim under California Labor Code §2802 for reimbursement of car wash expenses and  
9 for deduction from his wages for repairs done to the company vehicle. As a matter of  
10 law, Plaintiff Rutti has no legal claim for reimbursement as to those types of expenses,  
11 which then operates as collateral estoppel from him raising those same claims again.

12 *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal. App. 4<sup>th</sup> at 1193 (citing  
13 *Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal. App. 3d  
14 177, 181). Thus, Plaintiff Rutti is not a member of any class for indemnification for  
15 expense incurred in washing car and deduction for repairs.  
16  
17

18 Even if Rutti is precluded, such would not necessarily preclude Plaintiff Anaya or  
19 the class members to pursue these claims as the U.S. District Court's order concerned  
20 Plaintiff Rutti only and had no res judicata effect on Anaya or the class members. That  
21 being said, Plaintiff Anaya has no claim for alleged deduction from his wages for repair  
22 to his company vehicle in that he makes no allegation that such occurred. In fact, other  
23 than Plaintiff Rutti, no putative class members attested or testified that they had to pay  
24 for any damages incurred to their company vehicle.  
25

26 Plaintiff Anaya does, however, attest that he incurred costs for maintaining his  
27 company vehicle, for which he was not reimbursed. Some of the putative class  
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<sup>2</sup> These relate to the 3<sup>rd</sup>, 5<sup>th</sup>, and 7<sup>th</sup> causes of action.

1 members also attest that they incurred expenses in washing their company vehicle that  
2 were not reimbursed.

3 As to the reimbursement claim for tools purchase, Plaintiffs and putative class  
4 members attest that they purchased tools and supplies for their job for which they were  
5 not reimbursed. Furthermore, Defendant maintains a list of tools it requires its  
6 technicians to have and maintain, including power tools.

7  
8 Therefore, the above presented evidence establishes that Plaintiffs share in  
9 typical claims with the class members for alleged non-reimbursement for purchases of  
10 necessary work tools. Plaintiff Anaya shares in similar claims with the class members  
11 regarding expenses to maintain company vehicle, but neither Plaintiff shares in similar  
12 claims as relates to alleged unlawful deduction from wages for damages to company  
13 vehicle.

14 3. Overtime Wages.<sup>3</sup> The evidence presented established that Plaintiffs and  
15 putative class members allege that they worked overtime hours but were not paid the  
16 proper overtime rate. Such evidence is sufficient to establish that the Plaintiffs share in  
17 similar claims with the class members for unpaid overtime for hours worked over 8 in a  
18 single day.

19  
20 4. Off the Clock Wages.<sup>4</sup> Plaintiffs' claims for wages owed during time  
21 worked off the clock encompasses 8 different categories: (i) travel time from/to home  
22 to/from work and travel time to staff meetings; (ii) on-call time; (iii) washing and  
23 maintaining company vehicle; (iv) PDT transmission; (v) charting route to first job  
24 location; (vi) travel to and pick up supplies at UPS depot/store; (vii) purchasing tools;  
25 and (viii) washing clothes.

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28 <sup>3</sup> This relates to the 4<sup>th</sup> and 7<sup>th</sup> causes of action.

<sup>4</sup> This relates to the 4<sup>th</sup> and 7<sup>th</sup> causes of action as well.

1 As with the reimbursement claims, the U.S. District Court held that Plaintiff Rutti  
2 as a matter of law had no Fair Labor Standard Act and Labor Code claims for  
3 compensation during commute and travel to meetings, and for time washing uniforms.  
4 The U.S. District Court also found that Plaintiff Rutti had no standing for his other  
5 alleged off-the-clock work. Yet, the order is unclear if such finding was made under  
6 California law in addition to federal law. The Ninth Circuit recently upheld the U.S.  
7 District Court's decision, except as to Plaintiff's Rutti claim for time worked during PDT  
8 Transmission. Yet, the Ninth Circuit decision provides no clarification of whether such  
9 finding that the off-the-clock work is non-compensable under California law. Rather, the  
10 Ninth Circuit decision addresses the off-the-clock claims as relates to federal law  
11 standards, not California law.  
12

13 Thus, as to those claims, Plaintiff Rutti is given the benefit of the doubt that the  
14 District Court's order was limited to federal law standards. Plaintiff Rutti can pursue his  
15 other alleged off-the-clock work under California law. However, he is precluded from  
16 pursuing personal claims for compensation for travel time and washing clothes. Thus,  
17 as with the reimbursement claims, he is not a member of the class he seeks to  
18 represent as to those two off-the-clock categories.  
19

20 Plaintiffs Rutti and Anaya attest that part of their jobs duties included PDT  
21 transmissions every night, traveling to meetings, purchasing tools, maintaining their  
22 truck, charting their route to their first job. Furthermore, essentially all of the class  
23 members who submitted declarations and/or were deposed attested or testified that  
24 they performed some or all of the tasks for which Plaintiffs claim should be  
25 compensable time.  
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1 Therefore, Plaintiffs Rutti (except as to the two off-the-clock work categories  
2 adjudicated by the District Court) and Anaya share in similar claims with the class  
3 members.

4 **D. Adequacy**

5 Adequacy consists of two factors: (1) adequacy of the proposed class  
6 representative, and (2) adequacy of proposed class counsel. In order to satisfy due  
7 process and res judicata requirements, the class representative must adequately  
8 represent and protect the class interests. *City of San Jose v. Superior Court (Lands*  
9 *Unlimited)* (1974) 12 Cal.3d 447, 463. No antagonisms or conflict between the class  
10 representative and the class members' interests may exist. *J.P. Morgan & Co., Inc. v.*  
11 *Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal. App.4th 195, 212. In regards  
12 to class counsel, he/she must be qualified, experienced and generally able to conduct  
13 the proposed litigation. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450;  
14 *Miller v. Woods* (1983) 148 Cal.App.3d 862, 874.

15  
16  
17 1. Class Representative: Both Plaintiffs attest that they will fairly and  
18 adequately protect the interest of the class members; have been and will continue to  
19 participate in the litigation; and understand that they must seek the best interest of the  
20 class throughout this litigation.

21 *Mike Rutti:* Although the declaration of Rutti indicates that he understands  
22 his obligations herein, Defendant Lojack argues that he is inadequate in that the U.S.  
23 District Court adjudicated his claims against him, except as to the meal and rest breaks  
24 and reimbursement for purchased power tools. As elaborated above, the U.S. District  
25 Court's order findings as a matter of law against Rutti were found under the federal  
26 labor law standards, except for claims related to travel time, washing clothes, expenses  
27 to maintain company vehicle and deduction of wages for repair costs. Plaintiff Rutti is  
28

1 not precluded from seeking state relief for the same claims and relief for the class  
2 members under state law only. So although Ruttli may be precluded from representing  
3 the class as to the claims for travel time, washing clothes, expenses to maintain  
4 company vehicle and deduction of wages for repair costs due to lack of typicality, he is  
5 not precluded from representing the class as to the remaining claims.

6 *Gerson Anaya:* Although Anaya's declaration establishes his willingness to  
7 represent the class in a fiduciary matter, Defendant argues he is inadequate due to the  
8 conflict that occurs from the unique defense against him for falsifying records. The  
9 presented evidence from Defendant is that Anaya was terminated for falsifying his  
10 hours. Plaintiff Anaya disputes that he falsified his hours. There is a dispute over  
11 whether Plaintiff Anaya falsified records; but whether Anaya was properly terminated or  
12 not is irrelevant here. The issue here is whether the claim by Defendant against Anaya  
13 is such that it presents a conflict between Anaya and the class that will preclude him  
14 from representing them. The answer is yes. A conflict is one that goes to the heart of  
15 the litigation. Here, one of the main cruxes of this litigation is claims for unpaid time  
16 while working on the job.

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19 The conflict issue should be examined by looking at "the seriousness and  
20 extent of the conflicts involved compared to the importance of issues uniting the class;  
21 the alternatives to class representation available; the procedures available to limit and  
22 prevent unfairness; and any other facts bearing on the fairness with which the absent  
23 class member is represented." *J.P. Morgan & Co., Inc. v. Superior Court (Heliotrope*  
24 *General, Inc.)* (2003) 113 Cal. App. 4<sup>th</sup> 195, 213. Defendant Lojack has a unique  
25 defense against Plaintiff Anaya that is not shared with the other technicians/putative  
26 class members. The adjudication of Anaya claims will be attacked on the ground that  
27 he allegedly falsified his records. Such adjudication will take away from the class issues  
28

1 that do not revolve around issues of falsification. Furthermore, designating Anaya as  
2 inadequate creates no harm for the absent class members in that Plaintiff Rutti still can  
3 represent their claims. Therefore, Anaya is deemed inadequate.

4           2.     Class Counsel: Attorney Righetti submitted a declaration which  
5 provides sufficient information for the Court to hold that he and his firm are adequately  
6 experienced and qualified.

7           **E.     Commonality**

8           “The ultimate question in every [purported class action] is whether, given an  
9 ascertainable class, the issues which may be jointly tried, when compared with those  
10 requiring separate adjudication, are so numerous or substantial that the maintenance of  
11 a class action would be advantageous to the judicial process and to the litigants.”  
12

13 *Brown v. The Regents of the University of California* (1984) 151 Cal.App.3d 982, 989.

14           1.     Meal and Rest Breaks:<sup>5</sup> The common questions here are

15           (i) Did Defendant provide 30-minute free of duty meal breaks?

16           (ii) Did Defendant authorize and permit two 10-minute rest breaks?

17           (iii) Did the class members not receive or missed their meal and rest  
18 breaks?  
19

20           (iv) Were their meal and/or rest breaks interrupted; (v) does such  
21 constitute an unfair business practice?

22           (vi) What are the remedies?

23           Labor Code §226.7 states that an employer “shall not require any  
24 employee to work during any meal or rest period mandated by an applicable order of  
25 the Industrial Welfare Commission.” All wage orders (§12) contain the language that  
26 “every employer shall authorize and permit all employees to take rest periods.” Rest  
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<sup>5</sup> This relates to the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, and 7<sup>th</sup> causes of action.

1 periods are to be authorized and permitted for every 4 hours of work or major fraction  
2 thereof. Labor Code §512 and all applicable wage orders (§11) state that an employer  
3 shall not employ a person for more than 5 hours without a 30-minute meal period,  
4 unless the employee works less than 6 hours, then the meal period can be mutually  
5 waived.

6 Courts and litigants are generally in agreement that rest breaks need only to be  
7 authorized and permitted, which means made available. See *Cicairos v. Summit*  
8 *Logistics, Inc.* (2005) 133 Cal. App. 4<sup>th</sup> 949, 963; *White v. Starbucks Corp.* (N.D. Cal.  
9 2007) 497 F.Supp.2d 1080, 1086; *Brown v. Federal Express Corporation* (C.D. Cal.  
10 2008) 249 F.R.D. 580, 584.

11 The standard imposed on an employer for providing meal breaks is presently  
12 before the California Supreme Court. Yet, Labor Code §§226.7, 512 is clear that an  
13 employer must provide a meal break, and as elaborated in *Cicairos*, *White* and *Brown*.  
14 An employer must ensure that employees are provided with such meal breaks and that  
15 the employer does not do anything, constructively (impede) or overtly (demand), to  
16 prevent a meal from being taken. Additionally, it is the employer's obligation to clearly  
17 communicate to its employees the right to take off-duty meal and rest breaks. *Cicairos*,  
18 *supra*, 133 Cal. App. 4<sup>th</sup> at 963.

19 First, as to the claim for denied rest breaks, the presented evidence is that  
20 Defendant maintained no written policy wherein the technicians were informed that they  
21 had the right to take 10-minute rest breaks for every four hours worked. Furthermore,  
22 Defendant in a memorandum dated October 25, 2005 indicates that it is aware that the  
23 technicians, due to the current system, did not have time to take breaks. Although there  
24 is competing evidence, the presented evidence is common for all putative class  
25 members and can be presented to the trier of fact for its determination of whether  
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1 Defendant failed to provide, authorize or permit rest breaks and that such rest breaks  
2 then were missed by the technicians.

3 Second, as to the meal breaks, the presented evidence indicates two different  
4 time frames – the time before Defendant instituted a block of time for meals to be taken  
5 and time after said policy was instituted. As with the evidence related to the rest  
6 breaks, Defendant had no clear written policy stating that the technicians were entitled

10 to stop for meals breaks. They ate in their cars while going to their next job.

11 Additionally, Defendant's agent testified that technicians would be receiving jobs during  
12 the meal break and that Defendant's automated system did not allow a time period for  
13 lunch to be taken. Therefore, as with rest breaks, Plaintiffs can attempt to establish  
14 through common proof that Defendant failed to properly communicate and provide 30-  
15 minute free of duty meals to its employees.

17 However, Defendant in or around December 2006 instituted a policy change  
18 whereby they manipulated their automated system so that instead of a stream of jobs  
19 being sent, a specific period of time was blocked out for technicians to take a meal.  
20 There is no evidence presented after this policy change by Plaintiffs to establish that  
21 they can prove on a class-wide basis that the technicians were denied meal breaks.  
22 Rather, individual inquiry will be required from each putative class member after the  
23 policy change of why a meal break was missed or interrupted.

25 2. Indemnification:<sup>6</sup> The common questions presented here are:

26 (i) Are the class members entitled to reimbursement for costs incurred in  
27 purchasing tools for their trade?

28 <sup>6</sup> This relates to the 3<sup>rd</sup>, 5<sup>th</sup>, and 7<sup>th</sup> causes of action. -13-

1 (ii) Which tools purchased are subject to reimbursement?

2 (iii) Did Defendant require its technicians to purchase hand and/or power  
3 tools for their jobs?

4 (iv) Did class member incur any expenses for tools?

5 (v) Did class member incur any costs for maintaining and cleaning their  
6 company vehicles?

7 (vi) Can Defendant properly deduct from wages any repair costs for  
8 company vehicles damaged by class members?

9 (vii) Did any class member incur any costs for maintaining vehicle?

10 (viii) Did any class member get any deduction from wages for repair work  
11 to their company vehicle?

12 (ix) Does such constitute an unfair business practice?

13 (x) What are the remedies?  
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15 These common questions predominate.

16  
17 Plaintiffs presented evidence that Defendant maintained a policy that the  
18 technicians were to purchase and maintain certain tools for their job, required to  
19 maintain and clean their company vehicles, and that technicians could be liable for a  
20 portion of repairs to company vehicle based upon a technician's gross negligence.  
21 Whether such policy is in compliance with California Labor Code §2802 is a common  
22 question for all class members. Furthermore, the determination of which tools are  
23 subject to reimbursement and which are not are subject to common proof because  
24 individual inquiry is not required. Furthermore, whether a class member had any  
25 deductions from his wages for repairs to their company vehicle will not require individual  
26 inquiry. Such deductions show up on the technicians' pay stubs.  
27  
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1 The only individual inquiry would be as to whether the class member incurred  
2 any costs not reimbursed and how much. Yet, the necessity of class members to  
3 individually establish eligibility and damage does not mean individual fact questions  
4 predominate. *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4<sup>th</sup> 319, 334.  
5 Even if the damages of each putative class member may require an individual showing  
6 such does not preclude class certification as long as they can be managed. *Id.* at 332,  
7 334. Damages can be proven by the use of statistical evidence, sampling evidence,  
8 and/or expert testimony as such "does not dispense with proof of damages but rather  
9 offers a different method of proof." *Id.* at 333 (citing *Bell v. Farmers Ins. Exchange*  
10 (2004) 115 Cal. App. 4<sup>th</sup> 715, 750). Here, Plaintiffs' expert attests that a survey could  
11 be conducted to determine these issues. Therefore, commonality is met.  
12

13 3. Overtime Wages:<sup>7</sup> The common questions are:

14 (i) Did the class members work over 8 hours in a day?

15 (ii) Did Defendant pay 1.5 times the technician's hourly rate for all hours  
16 over 8 in a day?  
17

18 (iii) Does such constitute an unfair business practice?

19 (iv) What are the remedies?

20 These common questions predominate. The ability to determine whether an employee  
21 worked over 8 in day for which not properly paid the overtime rate does not require any  
22 individual inquiry. Defendant's time records and payroll records can be used to  
23 determine such.  
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<sup>7</sup> This relates to the 4<sup>th</sup> and 7<sup>th</sup> causes of action.

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4. Off the Clock Wages.<sup>6</sup> The common questions are:

- (i) What amount of control did Defendant exert over its technicians as related to time before and after their scheduled compensable hours of 8:00 am to 5:00 pm?
- (ii) Is the following activities compensable time: on-call for one hour, commute travel or travel to company meetings, PDT transmission, charting route to first job site, UPS supply pick ups, time purchasing required tools, time maintaining company vehicle, and time washing uniforms?
- (iii) Does California recognize the de minimis doctrine?
- (iv) Did the class members engage in these alleged off-the-clock activities?
- (v) Does such constitute an unfair business practice?
- (vi) What are the remedies?

Defendant argues that as to any washing uniforms, maintaining vehicle, conducting PDT transfers, charting routes and purchasing tools, they are de minimis time they do not need to compensate. However, whether such is true does not defeat that the question remains common to the entire class. Whether such times are compensable and whether California law recognizes the de minimis doctrine will need to be answered for each putative class member. Furthermore, the determination of whether the time class members commute to and from work is compensable is a common issue. The determination of whether Defendant exerts such control over its technicians during their drive time to work and home looks to its policies, procedures and practices, not to the individual class member.

<sup>6</sup> This relates to the 4<sup>th</sup> and 7<sup>th</sup> causes of action.

1 If it is determined that all or some of the off the clock work is compensable, then  
2 the only individual inquiry would be how much time each class member spent on any  
3 one activity in a daily, weekly or monthly basis. However, as stated above, individual  
4 determinations of what damages are owed does not defeat commonality. Again, the  
5 expert for Plaintiffs attests that a survey could be conducted to ascertain this  
6 information. Therefore, commonality is met.

7  
8 **F. Superiority/Substantial Benefits**

9 In addition to the requirements stated in CCP §386, the courts have held that a  
10 "class action also must be the superior means of resolving the litigation, for both the  
11 parties and the court." *Aguiar v. Cintas Corporation No. 2* (2006) 144 Cal.App.4<sup>th</sup> 121,  
12 132-33. As there is a potential to create injustice, the Court must "carefully weigh  
13 respective benefits and burdens and . . . allow maintenance of the class action only  
14 where substantial benefits accrue both to litigants and the courts". *Linder v. Thrifty Oil*  
15 *Co.* (2000) 23 Cal.4th 429, 435; *Aguiar, supra*, 144 Cal.App.4<sup>th</sup> at 132-33.

16  
17 Class adjudication of the presented issues promotes judicial efficiency and  
18 economy. One judgment on this matter is preferable to multiple litigations or DLSE  
19 hearings that may result in conflicting judgments. The absent class members benefit  
20 from class adjudication in that they get their statutory rights adjudicated without them  
21 having to incur the expense and time of suing for themselves. Plus, some class  
22 members may fear stepping forward, especially if they are current employees.  
23 Defendant Lojack also benefits from class adjudication in that it obtains the ability to  
24 receive a singular adjudication of its policies, method of payments and what is  
25 compensable time once versus potentially multiple times.  
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28

1           **III. RULING**

2           As a consequence of the above analysis, the Court rules as follows:

3           (1)    The court GRANTS Plaintiffs' Motion for Class Certification for the  
4 following causes of actions/claims: (a) 1<sup>st</sup> cause of action for denied meal periods for the  
5 period of time between April 5, 2002 and date Defendant instituted its new policy (i.e. in  
6 and around December 2006); (b) 2<sup>nd</sup> cause of action for denied rest breaks; (c) 3<sup>rd</sup>  
7 cause of action for failure to indemnify for purchased tools; (d) 4<sup>th</sup> cause of action for  
8 failure to pay proper overtime rate on any hours over 8 in a day; (e) 4<sup>th</sup> cause of action  
9 for failure to pay wages for (i) on-call time, (ii) time washing & maintaining company  
10 vehicle, (iii) PDT transmission time, (iv) time charting route to first job site, (v) time to  
11 travel and pick up supplies from UPS, and (vi) time to purchase business related tools;  
12 and (f) 5<sup>th</sup> through 7<sup>th</sup> causes of action for waiting time penalties, violation of the UCL  
13 and penalties pursuant to PAGA.  
14

15  
16           (2)    The Court DENIES Plaintiffs' Motion for Class Certification for lack of  
17 typicality and commonality as to the 1<sup>st</sup> cause of action related to any denied meal  
18 periods after Defendant's change in policy;

19           (3)    The Court DENIES Plaintiffs' Motion for Class Certification for lack of  
20 typicality and/or adequacy to the following: (a) 3<sup>rd</sup> cause of action related to  
21 reimbursement for costs incurred for maintaining company vehicle and in repairing  
22 company vehicle; (b) 4<sup>th</sup> cause of action related to claim of non-compensation for  
23 commute time and time traveling to company meetings; and (d) 4<sup>th</sup> cause of action  
24 related to claim of uncompensated time for washing and maintaining uniforms;  
25

26           (4)    The Court creates a sub-class for the 1<sup>st</sup> cause of action, e.g.: "All  
27 California based Technicians (including Senior Technicians) employed by Defendant  
28

1 during the time period of April 5, 2002 to [date policy changed (December 2006)] who  
2 were denied a 30-minute meal break after working five or more hours”;

3 (5) The Court appoints only Plaintiff Milke Rutti as Class Representative, and  
4 appoint attorneys Matthew Righetti and John Glugoski as Class Counsel; Plaintiff  
5 Gerson Anaya is an inadequate representative;

6 (6) Defendant's Exhibit C to the Declaration of Bornemann contains putative  
7 class members' Social Security Numbers, which is in violation of Rules of Court, Rule  
8 1.20(b). That exhibit is ordered to be pulled from scanning, and this exhibit redacted  
9 before it is rescanned and/or filed in the public record; and  
10

11 (7) Parties are to confer on the form of the Notice of Pendency of Class  
12 Action to be sent to the putative class member, and submit said proposal in accordance  
13 with CRC, Rule 3.765. If the parties cannot agree on the form of notice, then each party  
14 to submit their form in a jointly filed document to the court.  
15


16 **IV. REMAINING MATTERS**

17 As to the requests for judicial notice and objections, the court incorporates its June  
18 19, 2009 rulings by reference as though set forth fully herein.

19 Plaintiff is to give notice of this ruling.  
20  
21  
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23  
24 Dated: September 24, 2009

25 By:

  
26 HON. MARY THORNTON HOUSE  
27 Superior Court Judge  
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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am a resident of/employed in the county aforesad; I am over the age of eighteen years and not a party to the written action; my business address/residence address is:

111 North Hill Street, Los Angeles, California

On September 25, 2009, I served the within RULING RE MOTION FOR CLASS CERTIFICATION (REVISED).

On the parties

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, i the United States mail at 111 North Hill Street, Los Angeles, Ca 90012 addresssed as follows:

Clerk, Court of Appeal, Second District, Div. 4  
California Appellate District  
300 S. Spring Street, 2<sup>nd</sup> Floor, N. Tower  
Los Angeles, CA 90013-1213

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 25, 2009 at Los Angeles, California.

  
Patricia Lewis