

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/19/09

DEPT. 17

HONORABLE Mary Thornton House

JUDGE M. Ferrara

DEPUTY CLERK

HONORABLE
Add-On

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. Kinney, CA

Deputy Sheriff

None

Reporter

11:00 am

BC381043

Plaintiff

Counsel

MIKE RUTTI ET AL

No Appearances

VS

Defendant

LOJACK CORPORATION INC

Counsel

170.6-J. MILLER (PLTF)

NON-COMPLEX (12-07-07)

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MOTIONS FOR CLASS CERT AND SJ/SA

The Court, having previously taken the motions under submission on 4/16/09, issues its ruling in accordance with the "RULING RE MOTION FOR CLASS CERTIFICATION; REQUESTS FOR JUDICIAL NOTICE; EVIDENTIARY OBJECTIONS; RULING RE MOTION FOR SUMMARY JUDGMENT/ADJUDICATION" consisting of 7 pages, filed this date and incorporated herein by reference to the Court file.

Summary of the court's Ruling: Motion for Class Certification is granted in part as to the first through 7th causes of action, but not as to all of the issues within those causes of action. A sub-class is to be created for the first cause of action, Mike Rutti is appointed as Class Representative, and Matthew Righetin and John Glugoski appointed as Class Counsel. Parties are ordered to confer on the form of the Notice of Pendency of Class Action. If parties can't agree to the form, each party is to submit their form in a jointly filed document to the court.

Motion for Summary Adjudication is denied on procedural grounds.

Plaintiff is ordered to give notice of the court's rulings.

CLERK'S CERTIFICATE OF MAILING/

<p align="center">MINUTES ENTERED 06/19/09 COUNTY CLERK</p>

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NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served RULING RE MOTION FOR CLASS ETC and minutes of 6/19/09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 6/19/09

John A. Clarke, Executive Officer/Clerk

By: _____

M. Ferrara

Matthew Righetti
RIGHETTI LAW FIRM
456 Montgomery ST. #1400
San Francisco, CA 94104

MINUTES ENTERED 06/19/09 COUNTY CLERK

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 19 2009

John A. Clarke, Executive Officer/Clerk
By _____, 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; REQUESTS FOR
JUDICIAL NOTICE; EVIDENTIARY
OBJECTIONS; RULING RE MOTION FOR
SUMMARY JUDGMENT/ADJUDICATION**

I. MOTION FOR CLASS CERTIFICATION

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

1 At the time of the hearing of this motion, the court requested additional briefing
2 on the issue of on-call time. The court has read and considered the supplemental
3 briefing. In conjunction with those additional briefs, the court's previous tentative, and
4 the decision of U.S. District court, it appears that as to those causes of action to which
5 the court has permitted certification of the class, the ruling in the district court did not
6 determine those issues as a matter of California law. Furthermore, as the ruling(s) in
7 the district court as to both strictly Federal and jointly with California law are on appeal,
8 the court is not inclined to change its tentative ruling.
9

10 Therefore, the court rules as follows:

11 (1) Grant Plaintiffs' Motion for Class Certification for the following causes of
12 actions/claims: (a) 1st cause of action for denied meal periods for the period of time
13 between April 5, 2002 and date Defendant instituted its new policy (i.e. in and around
14 December 2006); (b) 2nd cause of action for denied rest breaks; (c) 3rd cause of action
15 for failure to indemnify for purchased tools; (d) 4th cause of action for failure to pay
16 proper overtime rate on any hours over 8 in a day; (e) 4th cause of action for failure to
17 pay wages for (i) on-call time, (ii) time washing & maintaining company vehicle, (iii) PDT
18 transmission time, (iv) time charting route to first job site, (v) time to travel and pick up
19 supplies from UPS, and (vi) time to purchase business related tools; and (f) 5th through
20 7th causes of action for waiting time penalties, violation of the UCL and penalties
21 pursuant to PAGA.
22

23 (2) Deny Plaintiffs' Motion for Class Certification for lack of typicality and
24 commonality as to the 1st cause of action related to any denied meal periods after
25 Defendant's change in policy;
26

27 (3) Deny Plaintiffs' Motion for Class Certification for lack of typicality and/or
28 adequacy as follows: (a) 3rd cause of action related to reimbursement for costs incurred

1 for maintaining company vehicle and in repairing company vehicle; (b) 4th cause of
2 action related to claim of non-compensation for commute time and time traveling to
3 company meetings; and (d) 4th cause of action related to claim of uncompensated time
4 for washing and maintaining uniforms;

5 (4) Create a sub-class for the 1st cause of action, e.g.: "All California based
6 Technicians (including Senior Technicians) employed by Defendant during the time
7 period of April 5, 2002 to [date policy changed (December 2006)] who were denied a
8 30-minute meal break after working five or more hours";
9

10 (5) Appoint only Plaintiff Mike Rutti as Class Representative, and appoint
11 attorneys Matthew Righetti and John Glugoski as Class Counsel; however Plaintiff
12 Gerson Anaya is an inadequate representative;

13 (6) See below for proposed rulings on the parties' request for judicial notice
14 and evidentiary objections (pp. 28-30);
15

16 (7) Defendant's Exhibit C to the Declaration of Bornemann contains putative
17 class members' Social Security Numbers, which is in violation of Rules of Court, Rule
18 1.20(b). The Court should order that these scanned documents be pulled from imaging,
19 and these exhibits redacted before re-scanned and/or filed in the public record; and

20 (8) Order parties to confer on the form of the Notice of Pendency of Class
21 Action to be sent to the putative class member; and submit said proposal in accordance
22 with CRC, Rule 3.765. If the parties cannot agree on the form of notice, then each party
23 to submit their form in a jointly filed document to the court.
24

25 II. REQUEST FOR JUDICIAL NOTICE

26 A. Plaintiffs' Request for Judicial Notice, filed February 20, 2009

27 1. Decl. of Miles Locker in matter of *Aguardo v. Pizza Hut*, case no. 994947

28 **Grant per Evid. Code §452(d)**

1 2. Lojack Press Release entitled "Lojack Reports Record Increases in
2 Revenue and Net Income for Fourth Quarter and 2005; Provides 2006 Guidance."

3 **Deny**

4 3. Cal. Dept. of Industrial Relations, Division of Labor Standards
5 Enforcement, Chief Counsel H. Thomas Cadell, Opinion Letter re Compensable Time,
6 February 3, 1994

7 **Grant per Evid. Code §452(c). See also Church v. Jamison (2006) 143**
8 **Cal. App. 4th 1568, 1579 n.19 (on its own motion, court took judicial notice of sections**
9 **of the DLSE's manual and DLSE opinion letter which were obtainable from DLSE's**
10 **website)**

11 4. Cal. Dept. of Industrial Relations, Division of Labor Standards
12 Enforcement, Chief Counsel H. Thomas Cadell, Opinion Letter re On Call Time, March
13 31, 1993

14 **Grant per Evid. Code §452(c); Church, supra, 143 Cal. App. 4th at 1579,**
15 **fn. 19.**

16 5. Comments of Justice Silverman of the Ninth Circuit Court of Appeal at oral
17 argument in the *Rutti v. Lojack* USDC, Central District of California Case No. 07-56599

18 **Deny**

19 B. Defendant's Request for Judicial Notice, filed March 13, 2009

20 1. The Court's decision in *Rutti v. Lojack Corporation, Inc.*, case no. CV 06-
21 0350 DOC (RNBx) (C.D. Cal. August 16, 2007)

22 **Grant per Evid. Code §452(d)**

23 2. DLSE Enforcement Policies and Interpretation Manual, §48.1.9.

24 **Grant per Evid. Code §452(c); Church, supra, 143 Cal. App. 4th at 1579**
25 **n.19**

1 3. Cal. Dept. of Industrial Relations, Division of Labor Standards
2 Enforcement, Chief Counsel H. Thomas Cadell, advice letter, "Compensable Time"

3 Grant per Evid. Code §452(c); *Church, supra*, 143 Cal. App. 4th at 1579,
4 fn. 19

5 **III. EVIDENTIARY OBJECTIONS**

6 A. Defendant's Evidentiary Objections, filed March 13, 2009

7 Class Member & Plaintiffs Declarations

8 *Sustain Objections to:* Chavez at ¶12; Furtado at ¶7; Hamilton at ¶9; Haupt at ¶8;
9 Kiersey at ¶10; Kondo at ¶8; Narvaiz at ¶11; Nelson at ¶14; Owens at ¶11; Rutti at ¶¶11
10 and 13; Short at ¶11; Wagner at ¶¶12 and 15; Welch at ¶¶12 and 13; White at ¶12;
11 and 13; Short at ¶11; Wagner at ¶¶12 and 15; Welch at ¶¶12 and 13; White at ¶12;
12 Essery at ¶¶7 and 26; Anaya at ¶¶9 and 11.

13 B. Plaintiffs' Evidentiary Objections, filed March 27, 2009

14 Decl. of Bell

15 *Overrule Objections to:* Exhibits B and C

16 *Sustain Objections to:* ¶3 at 1:14-15;

17 **IV. RULING RE MOTION FOR SUMMARY ADJUDICATION OF ISSUES**

18 Defendant Lojack Corporation, Inc.'s Motion for Summary Adjudication of Issues
19 is denied on procedural grounds. The court finds that the motion improperly seeks to
20 adjudicate multiple purported "issues of duty" that, even assuming each such issue is
21 properly characterized as a duty, do not completely dispose of a cause of action or
22 defense as required by C.C.P. § 437c(f). None of the purported issues are expressly
23 pled as such in Plaintiffs' operative pleading nor do they appear to represent separate
24 discreet issues that could have been individually pled as separate causes of action.
25
26

27 The court is not persuaded that *Lilienthal & Fowler v. Superior Court* (1993) 12
28 Cal.App.4th 1848 applies here to warrant adjudication of the issues proffered by

1 Defendant, nor does the fact that the federal district court, operating under separate
2 summary judgment rules, found it appropriate to separately adjudicate these issues.

3 Weil & Brown note that “[p]ermitting adjudication of ‘duty’ where it does not
4 resolve the entire cause of action or defense seems incorrect. If carried to a logical
5 conclusion, courts could be adjudicating things like ‘plaintiff had the duty to obey her
6 manager’s directions’ or ‘defendant had a duty to yield the right of way at the
7 intersection.’ This would defeat the legislative intent to avoid piecemeal adjudication of
8 what are basically factual issues.” Weil & Brown, *Civ. Pro. Before Trial* (2008) Chap.
9 10--Summary Judgment, 10:44.10, p. 10-19.

11 The Fourth District concurred in *Crouse*. There, the court was faced with a legal
12 malpractice action for which a motion sought to adjudicate discreet acts of alleged
13 negligence. “Nothing in the summary judgment statute allows a single cause of action
14 alleging legal malpractice to be separated into component acts with separate statutes of
15 limitations running on each discrete act. When a cause of action for malpractice alleges
16 a single injury, the fact that the attorney’s course of conduct involved discrete negligent
17 acts or omissions does not create separate causes of action with a separate statute of
18 limitations for each act or omission. (Cf. *Panos v. Great Western Packing Co.* (1943) 21
19 Cal.2d 636, 638 [134 P.2d 242] [where single injury alleged, different acts of negligence
20 contributing to injury do not create separate causes of action].)

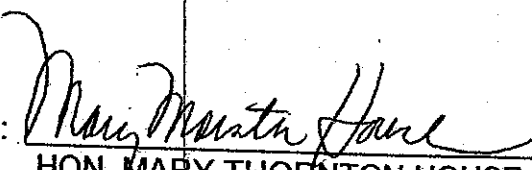
21
22 Boatwright relies on *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th
23 1848 [16 Cal. Rptr. 2d 458] to support his argument. However, in *Lilienthal*, separate
24 statutes of limitations ran on different claims for malpractice because the claims arose
25 from different services provided at different times involving separate and distinct
26 unrelated transactions.” *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th
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1509, 1526 at fn. 2; see also, the Second District opinion in *Bagley v. TRW, Inc.* (1999)
73 Cal. App.4th 1092, 1094 at fn. 2 questioning the analysis of *Lilienthal*.

Accordingly, the court declines to rule on Defendant's motion on the merits.
Plaintiff is ordered to give notice of the court's rulings herein.

Dated: June 19, 2009

By: 
HON. MARY THORNTON HOUSE
Superior Court Judge