FILED
LOS ANGELES SUPERIOR COURT
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BY S. SMYTHE, 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

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

Plaintiff, along with Plaintiff Gerson Anaya, filed on November 20, 2007, the within matter. 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). This court heard argument on Plaintiffs' certification motion on April 16, 2009. After supplemental briefing, this court entered in order granting in part and denying in part Plaintiffs' motion for certification on June 19, 2009.

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

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

Cause of Action	District Court Holding	9th Circuit Holding
Commute time to and from 1st 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

Off-the-clock time re: washing and maintaining uniform	Not Compensable as matter of law under both federal and California law	Affirmed
Off-the-clock time re: washing and maintaining company van	Not Compensable as matter of law	Affirmed
Off-the-clock time re: driving, organizing supplies at UPS	Not Compensable as matter of law	Affirmed
Off-the-clock time re: Charting route to 1st job	Not Compensable as matter of law	Affirmed
Off-the-clock time re: PDT transmissions	Not Compensable as matter of law	Vacated
Off-the-clock time re: purchasing and maintaining tools	Not Compensable as matter of law	Affirmed
Indemnification for purchased tools	Entitled to proceed on this claim	Not addressed
Indemnification for expenses in washing company van and repairing van	Not Compensable under California law	Not addressed

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

II. REASONS FOR THE RULING RE MOTION FOR 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.

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

A. Numerosity

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

B. Ascertainability

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

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

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

C. **Typicality**

The named plaintiff must be a member of the class. *Petherbridge v. Altadena Federal Savings and Loan Association* (1974) 37 Cal.App.3d 193, 200. Typicality looks to the nature of the claims or defenses, not 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 of typicality 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." *Id.*

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

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

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

[1] These relate to the 1st, 2nd, 5th, and 7th causes of action.

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

2. Indemnification:[2] Plaintiffs request indemnification for (i) tool purchases; (ii) car maintenance expenses; and (iii) deduction from pay for damages to company vehicle. As to categories (ii) and (iii), the U.S. District Court, Central District ruled that Plaintiff Rutti in a Motion for Summary Adjudication as a matter of law had no claim under California Labor Code §2802 for reimbursement of car wash expenses and for deduction from his wages for repairs done to the company vehicle. As a matter of law, Plaintiff Rutti has no legal claim for reimbursement as to those types of expenses, which then operates as collateral estoppel from him raising those same claims again. *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal. App. 4th at 1193 (*citing Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal. App. 3d 177, 181). Thus, Plaintiff Rutti is not a member of any class for indemnification for expense incurred in washing car and deduction for repairs.

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

Plaintiff Anaya does, however, attest that he incurred costs for maintaining his company vehicle, for which he was not reimbursed. Some of the putative class

[2] These relate to the 3rd, 5th, and 7th causes of action.

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

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

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

3. Overtime Wages:[3] The evidence presented established that Plaintiffs and putative class members allege that they worked overtime hours but were not paid the proper overtime rate. Such evidence is sufficient to establish that the Plaintiffs share in similar claims with the class members for unpaid overtime for hours worked over 8 in a single day.

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

[3] This relates to the 4th and 7th causes of action.
[4] This relates to the 4th and 7th causes of action as well.

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

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

Plaintiffs Rutti and Anaya attest that part of their jobs duties included PDT transmissions every night, traveling to meetings, purchasing tools, maintaining their truck, charting their route to their first job. Furthermore, essentially all of the class members who submitted declarations and/or were deposed attested or testified that they performed some or all of the tasks for which Plaintiffs claim should be compensable time.

Therefore, Plaintiffs Rutti (except as to the two off-the-clock work categories adjudicated by the District Court) and Anaya share in similar claims with the class members.

D. Adequacy

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

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

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

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

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

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

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

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

E. Commonality

"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.

1. Meal and Rest Breaks:[5] The common questions here are

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

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

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

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

(vi) What are the remedies?

Labor Code §226.7 states that an employer "shall not require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." All wage orders (§12) contain the language that "every employer shall authorize and permit all employees to take rest periods." Rest

[5] This relates to the 1st, 2nd, 5th, and 7th causes of action.

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

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

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

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

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.
16
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.
24
25 2. Indemnification:[6] 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

[6] This relates to the 3rd, 5th, and 7th causes of action.

(ii) Which tools purchased are subject to reimbursement?

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

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

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

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

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

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

(ix) Does such constitute an unfair business practice?

(x) What are the remedies?

These common questions predominate.

Plaintiffs presented evidence that Defendant maintained a policy that the technicians were to purchase and maintain certain tools for their job, required to maintain and clean their company vehicles, and that technicians could be liable for a portion of repairs to company vehicle based upon a technician's gross negligence. Whether such policy is in compliance with California Labor Code §2802 is a common question for all class members. Furthermore, the determination of which tools are subject to reimbursement and which are not are subject to common proof because individual inquiry is not required. Furthermore, whether a class member had any deductions from his wages for repairs to their company vehicle will not require individual inquiry. Such deductions show up on the technicians' pay stubs.

The only individual inquiry would be as to whether the class member incurred any costs not reimbursed and how much. Yet, the necessity of class members to individually establish eligibility and damage does not mean 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 an individual showing such does not preclude class certification as long as they can be managed. *Id.* at 332, 334. Damages can be proven by the use of statistical evidence, sampling evidence, and/or expert testimony as such "does not dispense with proof of damages but rather offers a different method of proof." *Id.* at 333 (*citing Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715, 750). Here, Plaintiffs' expert attests that a survey could be conducted to determine these issues. Therefore, commonality is met.

3. Overtime Wages:[7] The common questions are:

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

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

(iii) Does such constitute an unfair business practice?

(iv) What are the remedies?

These common questions predominate. The ability to determine whether an employee worked over 8 in day for which not properly paid the overtime rate does not require any individual inquiry. Defendant's time records and payroll records can be used to determine such.

[7] This relates to the 4th and 7th causes of action.

4. Off the Clock Wages:[8] 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.

[8] This relates to the 4th and 7th causes of action.

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

F. **Superiority/Substantial Benefits**

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

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

III. RULING

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

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

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

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

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

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

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

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

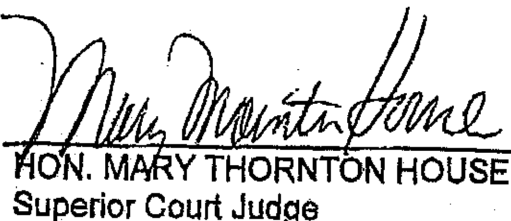
(7) Parties are to confer on the form of the Notice of Pendency of Class Action to be sent to the putative class member; and submit said proposal in accordance with CRC, Rule 3.765. If the parties cannot agree on the form of notice, then each party to submit their form in a jointly filed document to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

IV. REMAINING MATTERS

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

Plaintiff is to give notice of this ruling.

Dated: September 24, 2009

By: 

HON. MARY THORNTON HOUSE
Superior Court Judge

1 PROOF OF SERVICE BY MAIL - 1013A, 2015.5 C.C.P.

2 STATE OF CALIFORNIA }
3 COUNTY OF LOS ANGLES }

4 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:
5

6 111 North Hill Street, Los Angeles, California

7 On September 25, 2009, I served the within RULING RE MOTION FOR CLASS CERTIFICATION (REVISED).
8

9 On the parties

10 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:
11

12 Clerk, Court of Appeal, Second District, Div. 4
California Appellate District
13 300 S. Spring Street, 2nd Floor, N. Tower
Los Angeles, CA 90013-1213
14
15
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17
18
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20
21
22
23
24 I declare, under penalty of perjury, that the foregoing is true and correct.

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

26

27 Patricia Lewis

28