UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:07-cv-08336-RGK-AFM	Date	August 07, 2018
Title	***Ortega v. J.B. Hunt Transport, Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Defendant's Motion for Decertification (DE 251); Defendant's Motion for Partial Summary Judgment (DE 250)**

I. INTRODUCTION

On November 17, 2008, Geraldo Ortega and Michael D. Patton ("Plaintiffs") filed a first amended class action complaint ("FAC") against their former employer, J.B. Hunt Transport, Inc. ("Defendant"). The FAC alleges the following claims against Defendant: (1) unpaid minimum wages under California Labor Code section 1194; (2) unpaid wages at the agreed rate under §§ 221–223; (3) failure to provide meal and rest periods under § 226.7; (4) failure to timely furnish accurate itemized wage statements under § 226(a); (5) waiting time penalties under § 203; (6) declaratory relief; (7) injunctive relief; and (8) unfair business practices under California Business and Professions Code section 17200 ("UCL").

On May 18, 2009, the Honorable Florence-Marie Cooper granted Plaintiffs' motion for class certification under Federal Rule of Civil Procedure ("Rule") 23. (*See* ECF No. 64.) Presently before the Court is Defendant's Motion for Decertification and Defendant's Motion for Partial Summary Judgment. For the reasons set forth below, the Court **GRANTS** Defendant's motion for decertification. The Court **GRANTS in part** and **DENIES in part** Defendant's motion for partial summary judgment.

II. BACKGROUND

A. Factual Background

Defendant J.B. Hunt Transport, Inc. is one of the largest transportation logistics companies in North America. It provides at least two types of services for its customers: (1) intermodal services, and (2) Dedicated Contract Services ("DCS"). Drivers for intermodal services deliver freight to and from railways; drivers for DCS deliver freight on behalf of a particular customer on a regular basis. Within the DCS Group, Defendant also employs "Final Mile" drivers, who not only transport freight on behalf

of a client, but also install the product (such as furniture or home appliances) at the delivery site. Named Plaintiffs Gerardo Ortega ("Ortega") and Michael Patton ("Patton") were formerly employed with Defendant as intermodal drivers based out of Defendant's location in South Gate, California. Ortega also worked for Defendant as a DCS driver for approximately seven months in 2004 and 2005.

In this case, Plaintiffs contend that Defendant's Activity-Based Pay ("ABP") compensation system applies uniformly to Defendant's intermodal services and DCS drivers. ABP is a type of piece rate pay. Instead of receiving hourly pay or a straight salary, drivers paid under the ABP system generally receive a rate per mile driven (or recorded on a navigation system), plus other flat payments for certain designated activities, like delivering a load of freight to a customer. Drivers may receive hourly pay during excessive customer delays or during other exceptional circumstances, but otherwise they are not paid hourly. Drivers compensated under the ABP system are therefore not separately compensated for certain activities that do not fall within either the ABP formula or within the hourly exception pay.

B. Procedural Background

Believing that Defendant's ABP system violates California wage laws, Ortega and Patton filed this action against Defendant on behalf of themselves and others similarly situated. In 2009, the Honorable Florence-Marie Cooper granted Plaintiffs' motion for class certification upon finding that the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) were satisfied. (Certification Order, ECF No. 64.) The Certification Order defines the class as "[a]ll of Defendant's California-based, local and regional intermodal and local and regional DCS drivers who worked for Defendant in the four years prior to the filing of the original complaint in this action and/or through the time of trial in this case." (Id. at 6–7.)

In 2012, following a lengthy stay, Defendant moved to decertify the class. Based in part on the more rigorous class certification standard articulated in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), Defendant argued Plaintiffs could not establish Rule 23's commonality and predominance requirements. The Honorable Michael W. Fitzgerald, to whom the case had been reassigned, denied Defendant's motion. (Order Re: Mot. for Decertification, ECF No. 87.) As to the rest break claims, the Court found "class wide questions include whether . . . JBH's policies compensated Plaintiffs for break time and missed breaks in compliance with the Labor Code." (Id. at 4.) As to the minimum wage claims, the Court held "[w]hether the 'piece rate' compensation scheme applied to all class members violates California law is a common question capable of resolution." (Id. at 5.) And as to the inaccurate wage statement claim, the Court found "the standard nature of the wage statements renders the claim appropriate for class treatment." (Id. at 6.)

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Following another lengthy stay,[1] Plaintiffs brought a motion for partial summary judgment. This Court denied Plaintiffs' motion with one exception. The Court found the ABP system failed to separately compensate employees for rest breaks and eight other nonproductive tasks: pre- and post-trip inspections; paperwork; waiting time at a customer before hourly pay begins; time spent dealing with mechanical breakdowns, again before hourly pay kicks in; fueling the trucks; washing the trucks; and waiting for assignments. (Order Re: Pls.' Mot. for Partial Summ. J. at 5, ECF No. 270.) The Court further held the ABP system violated California law to the extent it failed to separately compensate drivers for these nonproductive tasks. (Id. at 6.) Nevertheless, the Court found that a triable issue remained as to whether all class members were compensated under the ABP system and whether each class member was denied separate compensation for any of these tasks. (Id. at 7.)

While Plaintiffs' motion for partial summary judgment was pending, Defendant filed the two motions currently before the Court: its motion for decertification its own motion for partial summary judgment.

III. MOTION FOR DECERTIFICATION

A. Judicial Standard

"[A] a district court retains the flexibility to address problems with a certified class as they arise, including the ability to decertify." *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010); Fed. R. CIv. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."). "The standard used by the courts in reviewing a motion to decertify is the same as the standard used in evaluating a motion to certify." *O'Connor v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 409–10 (C.D. Cal. 2000).

Under Federal Rule of Civil Procedure 23(a), a case can proceed as a class action only if four requirements are met:

(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of law or fact common to the class:
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
(4) the representative parties will fairly and adequately protect the interests of the class.

[1] The stay was due to an appeal of the Court's 2014 order that held Plaintiffs' wage claims were preempted by the Federal Aviation Administration Authorization Act. (*See* ECF NO. 168.) Proceedings resumed after the Ninth Circuit reversed and remanded the case in July 2017, and the case was reassigned to this Court. (*See* ECF No. 186.)

Fed. R. Civ. P. 23(a).

Besides the four Rule 23(a) requirements, a class must also satisfy one of three subsections under Rule 23(b). In this case, Plaintiffs seek to maintain a class under Rule 23(b), which requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are commonly referred to as "predominance" and "superiority."

"Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The party seeking to maintain a class action bears the burden of affirmatively demonstrating that the requirements of Rule 23 continue to be satisfied. *See Marlo v. U.P.S.*, 639 F.3d 942, 947 (9th Cir. 2011). A district court should permit a class action to proceed only if the court "is satisfied, after a rigorous analysis," that the Rule 23 prerequisites have been met. *Dukes*, 564 U.S. at 350–51 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982)).

B. Discussion

The class was certified under the belief that Defendant applied a single ABP system uniformly to all intermodal and DCS drivers. Defendant argues discovery has shown this is not in fact true. Rather, Defendant contends that "[t]he more than 11,000 intermodal and [DCS] drivers who comprise the class were paid through approximately 190 different pay plans," only some of which used the ABP piece rate formula. (Mot. for Decertification at 1, ECF No. 251-1.) Based primarily on these varied plans, Defendant argues that this action does not meet Rule 23's adequacy, commonality, or predominance requirements and that it is unsuitable for class treatment. Because the Court agrees that individual issues predominate, it does not reach Defendant's other arguments.

The predominance inquiry asks whether one or more important questions common to the class predominate over individual questions. Fed. R. Civ. P. 23(b)(3); *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). At base, "[t]he 'predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Id.* (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Defendant argues that because of the variations in pay plans applied to intermodal and DCS drivers, individualized inquiries will predominate over any common questions on each of Plaintiffs' claims.

1. Wage Claims

Plaintiffs first emphasize that Defendant was aware of some of these variations when it first opposed certification in 2009 and moved for decertification in 2012, and yet it conceded that both its

intermodal and DCS drivers were subject to an ABP piece rate compensation system. It is true that Defendant has not disputed the uniformity of the ABP policy until now; but this does not bar its argument.

Plaintiffs next counter that the identified variations in Defendant's pay plans are immaterial. According to Plaintiffs, the key element of the ABP design – "building in" time spent performing nonproductive tasks into the mileage pay in lieu of separate compensation – applies uniformly to the intermodal and DCS drivers. The Court recently rejected this argument in its order on Plaintiffs' motion for partial summary judgment, finding that "Defendant's pay plans are not uniform for all of its drivers." (Order Re: Pls.' Mot. for Partial Summ. J. at 6, ECF No. 270.) This conclusion stemmed in part from evidence regarding "Final Mile" drivers, who earned hourly rather than piece rate pay. Apparently recognizing the problems Final Mile drivers posed to establishing class wide liability, Plaintiffs' opposition stipulated to exclude them from the class. (*See* Pls.' Opp. to Def.'s Mot. for Decertification at 5–6, ECF No. 258.) But other drivers falling under the nominal "ABP" umbrella likewise received straight hourly, daily, or weekly pay when driving for certain accounts. For example, DCS drivers in Santa Fe Springs receive an hourly wage, and intermodal drivers in Stockton receive flat daily pay for drops at a local Walmart. (Order Re: Pls.' Mot. for Partial Summ. J. at 6, ECF No. 270.) In addition, starting January 25, 2009, DCS drivers for the General Mills account in Fontana, California were paid a straight hourly rate. (Summary Chart at 11, Edelman Decl. Ex. 1006-A.1, ECF No. 251-36.) Similarly, starting April 7, 2009, DCS drivers for the Orchard Supply account in Tracy, California were paid a set daily minimum. (Id. at 30.) This evidence shows that Defendant does not in fact uniformly apply its ABP compensation system to all class members.

Plaintiffs further argue that any variations merely affect damages, not liability. Individualized issues in "damage calculations alone cannot defeat certification" in the Ninth Circuit. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (quoting *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010)). Here, however, the variations in pay plans do not merely affect the amount of wages owed—it affects Defendant's liability. To establish class wide liability, Plaintiffs would have to prove that each individual class member drove for an account that failed to separately pay for at least one of the eight nonproductive tasks at issue. As this Court recently held, "[b]ecause not all drivers are compensated solely via Defendant's ABP system, Defendant may not be liable to every member of the class." (Order Re: Pls.' Mot. for Partial Summ. J. at 6, ECF No. 270.)

Plaintiffs contend that they can "filter out" class members who were paid hourly or who received guaranteed minimum pay. For example, Plaintiffs' retained experts propose that by evaluating the pay codes in Defendant's payroll and compensation pay plan systems (IPAY and PACE), they can identify and exclude hourly-paid shifts. (Burke and Rosevear Decl., ¶ 20, ECF No. 258-11.) Defendant disputes whether its payroll systems contain information adequate to determine whether a driver was paid a guaranteed rate or hourly on a particular day or for a particular activity. (*See, e.g.*, McMahon Rebut.

Decl. ¶¶ 28–49, ECF No. 264-8.) Regardless, Plaintiffs have proposed no manageable way to narrow the class or determine which class members were subject to the unlawful ABP plan without looking at each class members' individual activity logs and payroll documents. The Court therefore finds individual issues would overwhelm the common questions presented in Plaintiffs' wage claims.

2. Wage Statement Claim

Plaintiffs' inaccurate wage statement claim is derivative of its wage claims: Plaintiffs contend that the statements were inaccurate in light of Defendant's failure to separately compensate class members for hours spent on certain nonproductive tasks. Thus, the Court finds the absence of a uniform pay plan likewise renders this claim unsuitable for class treatment.

3. Rest Break Claim

Individual issues also predominate in Plaintiffs' rest break claim.[2] For a claim to be suitable for class treatment, "plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability." *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (citing *Comcast Corp. v. Behrend*, 569 U.S. 27, 38 (2013)). The central district addressed this issue in a similar minimum wage claim in *Mares v. Swift Transportation*, and the Court finds the reasoning therein persuasive. In a claim for failure to separately compensate a class for rest breaks, each member's damages stem from the defendant's wrongful conduct only if the member "work[ed] at least three and a half hours per day [in California] at solely a piece rate." *Mares* v. *Swift Transp.*, No. 15-cv-07920-VAP, Dkt. 80 at 20 (C.D. Cal. May 23, 2017) (citing ICW Wage Order 9-2001 § 12). "[A]s the Court would need to examine driver logs and related documents to determine whether each driver worked at a piece rate for at least three and a half hours in California, individual issues would predominate." *Id.* at 22.

4. Remaining Claims

As to Plaintiffs' remaining claims under Labor Code § 203 and the UCL and for declaratory and injunctive relief, those claims were previously certified only because they are derivative of Plaintiffs' wage, wage statement, and rest break claims. Thus, decertification is also proper for these claims.

[2] In an attempt to preserve class wide manageability, Plaintiffs stipulated to narrow their third claim for failure to provide meal and rest breaks. They claim only that Defendant failed to separately compensate the class for rest breaks when working shifts of 3.5 hours or longer. (*See* Pls.' Opp. to Def.'s Mot. for Decertification at 5–6, ECF No. 258.)

5. Summary

Discovery has revealed that individual issues predominate in each of Plaintiffs' claims. Consequently, the Court must decertify the class. The Court accordingly **GRANTS** Defendant's Motion for Decertification.

IV. MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant also moves for partial summary judgment. Because the Court has granted Defendant's Motion for Decertification, the Court construes the Defendant's Motion for Partial Summary Judgment as pertaining only to Patton and Ortega. The term "Plaintiffs" as used below refers to Patton and Ortega only.

A. Judicial Standard

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper only where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On issues where the moving party does not have the burden of proof at trial, the moving party is required only to show that there is an absence of evidence to support the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Upon such showing, the court may grant summary judgment "on all or part of the claim." Fed. R. Civ. P. 56(a)–(b).

To defeat a summary judgment motion, the non-moving party may not merely rely on its pleadings or on conclusory statements. Fed. R. Civ. P. 56(e). Nor may the non-moving party merely attack or discredit the moving party's evidence. *Nat'l Union Fire Ins. Co. v. Argonaut Ins. Co.*, 701 F.2d 95, 97 (9th Cir. 1983). The non-moving party must affirmatively present specific evidence sufficient to create a genuine issue of material fact for trial. *See Celotex Corp.*, 477 U.S. at 324. The materiality of a fact is determined by whether it might influence the outcome of the case based on the contours of the underlying substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputes over such facts amount to genuine issues if a reasonable jury could resolve them in favor of the nonmoving party. *Id.*

B. Discussion

Defendant seeks partial summary judgment as to three issues: (1) willful or bad faith conduct under Labor Code sections 1194.2 and 203(a); (2) failure to provide meal or rest breaks; and (3)

Plaintiffs' standing to assert claims under section 226.2.[3] Additionally, Defendant seeks to strike any class allegations with respect to orientation pay.

The Court addresses each issue in turn.

1. Willful or Bad Faith Conduct

Defendant first argues that there is no evidence that it acted in a willful or bad faith manner such that liquidated or statutory damages can be awarded under Labor Code sections 1194.2 and 203(a).

Section 1194.2 provides that "an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid," but the Court can refuse to award liquidated damages if "the employer demonstrates . . . that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage." Cal. Lab. Code § 1194.2(a), (b). Similarly, under section 203(a), employers are required to pay waiting time penalties when they "willfully fail[] to pay" wages to employees. § 203(a). Courts interpret willfulness under section 203(a) similarly to good faith under section 1194.2. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1202–04 (Ct. App. 2008) (explaining that a good faith belief in a legal defense will preclude a finding of willfulness).

In its previous summary judgment order, the Court explained that "Defendant's continued use of its ABP system through the class period was not willful or in bad faith" because Defendant had a good faith belief in a legal defense. (*See* Order Re: Pls.' Mot for Partial Summ. J., ECF No. 270.) Specifically, because Defendant reasonably believed that the FAAAA preempted Plaintiffs' claims, the Court found that Defendant had a good faith belief in a legal defense that precluded a finding of bad faith. The Court consequently denied Plaintiffs partial summary judgment as to the issues of bad faith and willfulness under sections 1194.2 and 203(a), respectively.

Accordingly, and for the same reason, the Court concludes that Plaintiffs are not entitled as a matter of law to liquidated and statutory damages under sections 1194.2 and 203. The Court therefore **grants** Defendant partial summary judgment as to this issue, and judgment as to the Fifth Claim for waiting time penalties under section 203(a).

[3] Defendant also argues that Plaintiffs fail to show sufficient injury to make their wage statement claims. The Court, however, has already found that Plaintiffs have sufficiently demonstrated injury here. *See Ortega v. J.B. Hunt Transp., Inc.*, 258 F.R.D. 361, 374 (C.D. Cal. 2009). The Court therefore declines to address the issue again.

2. Failure to Provide Meal and Rest Breaks

Second, Defendant moves for partial summary judgment as to the Third Claim for failure to provide meal and rest breaks under section 226.7 of the Labor Code.

Section 226.7 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period." Cal. Lab. Code § 226.7(b). If the employer "fails to provide an employee a meal or rest or recovery period," then "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." § 226.7(c).

Defendant argues that that there is no evidence that it failed to provide meal or rest breaks, so Defendant should be granted summary judgment on Plaintiffs' meal and rest break claims.

The Court first concludes that Defendant did not fail to provide Plaintiffs with meal breaks under California law.[4] An employer satisfies its obligation to provide meal breaks when it "relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity" to take a meal break. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040–41 (Cal. 2012). In other words, the employer must give employees an opportunity to take a break, but is "not obligated to police meal breaks" and "need not ensure that the employee does no work." *Id.* at 1034, 1040–41. Here, both plaintiffs, Ortega and Patton, admit that they could take meal breaks if they so desired. (*See* Pl.'s Resp. to Statement of Uncontroverted Facts ("SUF") 30, 34, 35, ECF No. 257-1.) And by their nature of their work as drivers, Defendant could not and did not police their meal breaks, nor did Defendant force Plaintiffs to work through a meal break if they desired to take one. There is therefore no genuine dispute that Defendant satisfied its obligation to provide meal breaks to Plaintiffs under California law.[5]

With respect to rest breaks, however, the Court concludes that Defendant failed to provide Plaintiffs with paid rest breaks, in violation of California law. Under the IWC's wage orders, employers must pay employees for rest breaks. *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103–04 (Cal. 2007). The applicable wage order provides that every employer shall permit employees to take rest breaks, that "[a]uthorized rest period time shall be counted as hours worked for which there shall be no

[4] The Court assumes Plaintiffs wish to maintain their meal break claims in the absence of class treatment. *See* note 2, *supra*.
[5] The Court stated in its prior order that "Defendant's ABP compensation system violates California law to the extent that its piece-rate formula fails to separately compensate drivers for meal and rest breaks and other nonproductive time." (*See* ECF No. 270.) This statement was in error as pertains to meal breaks: California law requires paid rest periods, but meal periods may be unpaid. *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103–04 (Cal. 2007); *see also* Cal. Lab. Code § 226.2 (explaining that employees must be paid "for rest and recovery periods and other nonproductive time separate from any piece-rate compensation"). Thus, Defendant satisfied its *meal* break obligations by providing Plaintiffs with the opportunity to take meal breaks if they chose to take such breaks.

deduction from wages," and that "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee" a penalty. Cal. Code Regs., tit. 8 § 11090, § 12(A), (B). Here, Defendant did not provide paid rest breaks "in accordance" with the provisions of the wage order. Drivers compensated under the ABP system were able to take rest breaks if they so chose, but the ABP formula did not separately allocate compensation for those rest breaks. (*See* SUF 29–35; Order Re: Pl.'s Mot. Summ. Judg., ECF No. 270.) As such, Plaintiffs in essence were not paid for rest breaks—every minute Plaintiffs spent taking a rest break was a minute that they could not earn wages under the ABP formula.[6] And so by failing to separately pay for rest breaks, Defendant in effect withheld wages from drivers who chose to take rest breaks.

The example of Plaintiff Patton is instructive. Defendant argues that Patton at times did not take breaks not because Defendant did not permit such breaks, but rather because he wanted to earn more money. (Def.'s Mot. Summ. J.13: 18–20, ECF No. 250-1.) But in making this argument, Defendant tacitly admits that drivers who took rest breaks made less money than those who skipped rest breaks. As a result, drivers suffered a "deduction from wages" if they chose to take rest breaks. This violates the wage order. Cal. Code Regs., tit. 8 § 11090, § 12(A). Defendant therefore did not provide Plaintiffs with paid rest periods "in accordance with the applicable provisions" of the wage order. *Id.* § 12(B).

In sum, because Defendant provided meal breaks to Plaintiffs in accordance with Defendant's obligations under California law, the Court **grants** Defendant summary judgment on Plaintiffs' meal break claims. But because Defendant did not provide paid rest breaks in accordance with the wage order, the Court **denies** Defendant summary judgment on Plaintiffs' rest break claims.

3. Standing to Assert Claims Under Section 226.2

Next, Defendant argues that Plaintiffs do not have standing to assert claims under Labor Code section 226.2, because section 226.2 did not come into effect until January 2016, well after Plaintiffs worked for Defendant.

But because the Court has granted Defendant's motion to decertify the class, section 226.2 is no longer relevant to this case. Accordingly, the Court **denies as moot** Defendant's motion for summary judgment on this issue.

[6] Moreover, to the extent Defendant asserts that it builds in pay for those rest breaks into its mileage rates, the Court has already explained that Defendant cannot do so. It must separately compensate Plaintiffs for those rest breaks. (*See* Order Re: Pls.' Mot. for Partial Summ. J., ECF No. 270.)

4. Orientation Pay

Finally, Defendant moves to strike Plaintiffs' class allegations with respect to orientation pay. Plaintiffs, Defendant argues, never sought to certify a class with respect to orientation pay, so Plaintiffs should not be allowed to assert such claims on a class basis in this action.

Because the Court has granted Defendant's motion to decertify the class, however, Defendant's argument is moot. Accordingly, the Court **denies as moot** Defendant's motion for summary judgment on this issue.

V. EVIDENTIARY OBJECTIONS

To the extent the parties object to any of the evidence relied upon by the Court, those objections are overruled for purposes of these Orders.

VI. CONCLUSION

For the reasons above, the Court **GRANTS** Defendant's Motion for Decertification. The Court also **GRANTS in part** and **DENIES in part** Defendant's Motion for Partial Summary Judgment. With the exception of Ortega and Patton's meal period and waiting time penalty claims, Ortega and Patton's claims remain pending before the Court.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer _____