

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

<p>Victor Jauregui Plaintiff/Petitioner(s) VS. Safeway INC Defendant/Respondent (s)</p>	<p>No. RG21095860 Date: 11/30/2023 Time: 3:30 PM Dept: 17 Judge: Frank Roesch  ORDER re: Hearing on Motion - Other for Class Certification; filed by Victor Jauregui (Plaintiff) filed by Victor Jauregui (Plaintiff) on 11/07/2023</p>
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The Motion for Class Certification filed by Victor Jauregui on 09/08/2023 is Granted in Part.

Plaintiff Victor Jauregui's ("Plaintiff") Motion for Class Certification is GRANTED in connection with the following classes:

- The Rounding Class
- The Meal Break Class
- The Rest Break Class
- The Regular Rate Class
- The Wage Statement Class
- Waiting Time Penalty Class
- The § 17200 Class

Plaintiff's Motion for Class Certification is DENIED in connection with the following classes:

- The Off-the-Clock Class
- The Business Expense Reimbursement Class

(Code Civ. Proc., § 382; Civ. Code, § 1781, subd. (b).)

With respect to the approved classes, Plaintiff and Counsel are appointed to represent the classes because they have shown that they are both adequate and appropriate representatives of the class.

**REQUESTS FOR JUDICIAL NOTICE**

ORDER re: Hearing on Motion - Other for Class Certification; filed by Victor Jauregui (Plaintiff) filed by Victor Jauregui (Plaintiff) on 11/07/2023

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Defendant Safeway, Inc.'s ("Defendant") Requests for Judicial Notice ("RJN") are granted as to Exhibits 1-4, which are records of this Court. (Evid. Code, § 452, subd. (d)(1).)

## OBJECTIONS TO EVIDENCE

The Court rules on Defendant's Objections to the Declaration of Victor Jauregui as follows:

1. Jauregui Decl. p. 2:9-11 – Sustained – only as to the portion that Plaintiff states why Defendant employed him or other putative class members (which states an improper conclusion without foundation). Overruled as to all other portions of Paragraph 3.
2. Jauregui Decl. p. 2:11-13 – Overruled.
3. Jauregui Decl. p. 2:14-15 – Sustained in part - only as to the use of the adjective "compliant" as it describes "rest breaks." Overruled as to all other portions of Paragraph 4.
4. Jauregui Decl. p. 2:15-17 – Overruled.
5. Jauregui Decl. p. 2:18-20 – Overruled.
6. Jauregui Decl. p. 2:20-21 – Overruled.
7. Jauregui Decl. p.2:23-26 – Overruled.
8. Jauregui Decl. p.2:27-3:1 – Overruled.
9. Jauregui Decl. p. 3:2-5 – Overruled.

The Court rules on Defendant's Objections to the Declaration of Jonathan M. Lebe as follows:

10. Lebe Decl. p.6: 19-20 – Sustained (Lack of foundation)
11. Lebe Decl. p.6:27-7:1 – Sustained (Lack of foundation)
12. Lebe Decl. p.7:6-9 – Sustained (Lack of foundation)
13. Lebe Decl. p.7:10-21 - Sustained (Lack of foundation)
14. Lebe Decl. p. 7:10-21; Exh. 10 – Overruled (Lebe does not lay foundation for how "regular rate of pay" is calculated, but does not purport to know. His statements merely appear to be an observation of no significance without additional explanation.
15. Lebe Decl. p. 9:14-15 – Sustained (Lack of foundation)
16. Lebe Decl. Exh. 12 – Sustained – Lack of Proper Authentication
17. Lebe Decl. Exh. 14 – Sustained – Lack of Proper Authentication
18. Lebe Decl. Exh. 20 – Sustained – Lack of Proper Foundation/Authentication

## BACKGROUND

By this motion, Plaintiff seeks to certify 9 separate proposed classes consisting of the following:

1. The Rounding Class: All current and former non-exempt employees of Defendant in the State of California from October 15, 2016 through the resolution of this matter.
2. The Meal Break Class: All current and former non-exempt employees of Defendant in the State of California from October 15, 2016 through the resolution of this matter.

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3. The Rest Break Class: All current and former non-exempt employees of Defendant in the State of California from October 15, 2016 through the resolution of this matter.
4. The Regular Rate Class: All current and former non-exempt employees of Defendant in the State of California from October 15, 2016 through the resolution of this matter.
5. The Off-the-Clock Class: All current and former non-exempt employees of Defendant in the State of California from January 1, 2020 to and including the date of class certification.
6. The Business Expense Reimbursement Class: All current and former non-exempt employees of Defendant in the State of California from October 15, 2016 through the resolution of this matter.
7. The Wage Statement Class: All current and former non-exempt employees of Defendant in the State of California from January 1, 2020 to the resolution of this matter.
8. Waiting Time Penalty Class: Class members who separated their employment from Defendant from January 1, 2020 through the resolution of this matter.
9. The § 17200 Class: All current and former non-exempt employees of Defendant in the State of California from January 1, 2020 to the resolution of this matter.

The anticipated class includes all of Defendant's current and former hourly non-exempt employees in the State of California (expected to be more than 110,000, including Plaintiff and the putative class). (Lebe Decl. Exhs. 1; 2.) Five of the proposed classes include current and former non-exempt employees from October 15, 2-16 through the resolution of this matter, while the remaining four proposed classes include current and former employees from January 1, 2020 either through the completion of class certification or through the resolution of this action.

Plaintiff's complaint and portions of Plaintiff's supporting declaration indicate that Plaintiff has experienced Defendant's alleged violations of the various wage orders and labor code provisions that are the subject of this lawsuit, making him an appropriate representative of the class. (Complaint; Jauregui Decl. ¶¶ 1-5.)

## Motion for Class Certification – Legal Standard

Class actions are statutorily authorized when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. (Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal.App.4th 701, 715; Code Civ. Proc., § 382.)

The community of interest requirement for class certification embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096, 1104.)

The party seeking certification has the burden to establish, among other things, that common issues predominate in the litigation. (Sav-on Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326.) The certification question is a procedural one that does not ask whether an action is legally or factually meritorious. (Benton, supra, 220 Cal.App.4th at p. 715.) Instead, a trial court ruling on a certification motion determines whether the issues which may be jointly

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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. (Ibid.; Sav-on, supra, 34 Cal.4th at p. 326.)

In determining whether common issues predominate, a court must examine the plaintiff's theory of recovery and assess whether defendant's liability can be determined by facts common to all members of the class, even if class members must individually prove their damages. (Benton, supra, 220 Cal.App.4th at p. 716.) A trial court is generally afforded great latitude in granting or denying class certification, and we normally review a ruling on certification for an abuse of discretion. (Ibid.) A trial court ruling supported by substantial evidence generally will not be disturbed unless (1) improper criteria were used or (2) erroneous legal assumptions were made. (Ibid.)

Applying the preferred practice of determining class certification independent of examining the action's merits, the California Supreme Court noted that it is sufficient for purposes of class certification that the plaintiff's theory of liability was that the defendant's uniform policy for authorizing breaks allegedly violates the law when measured against wage order requirements. (Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1034 ("Brinker").)

## DISCUSSION

Plaintiff has met his burden of establishing the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest and that the benefits from certification make proceeding as a class superior to other alternatives in connection with:

- The Rounding Class
- The Meal Break Class
- The Rest Break Class
- The Regular Rate Class
- The Wage Statement Class
- Waiting Time Penalty Class
- The § 17200 Class

(Alberts v. Aurora Behavioral Health (2015) 241 Cal.App.4th 388, 397.) These seven classes will be referenced as the "approved classes" in this order.

Plaintiff has not met these requirements in connection with:

- The Off-the-Clock Class
- The Business Expense Reimbursement Class

The Court examines each of these aspects in its analysis that follows.

### Ascertainability

A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of

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common characteristics sufficient to allow a member of that group to identify himself as having a right to recover based on the description. (Harper v. 24-Hour Fitness, Inc. (2008) 167 Cal.App.4th 966, 977.)

Here, members of the approved classes are all current and former non-exempt employees of Defendant who worked for Defendant during different periods of time. The information needed to identify members the approved classes can be ascertained from Defendant's employment records, personnel records and payroll records, which would include searchable information on the employee's name, last known contact information, dates of employment, hours worked, amounts paid and position description, sufficient to establish whether Defendant is liable for the alleged violations relevant to each of these classes.

On the other hand, the Off-the-Clock Class and Business Expense Reimbursement Class do not appear to be ascertainable absent a company-wide policy that Defendant required or encouraged its employees to perform certain tasks off-the-clock and that Defendant either authorized or required its employees to use their own personal devices and equipment to conduct business on Defendant's behalf.

With respect to the Off-the-Clock Class, without determining whether an individual was not clocked in because they 1) chose not to clock-in, 2) forgot to clock in, 3) believed clocking in after was more convenient, or 4) was prevented from clocking in by Defendant would require individualized examination into every instance in which an employee claimed that they were not fully paid for the work they performed. Without a universal policy that prevents employees from clocking in at the start of their shift, there is no practical way to ascertain the proposed Off the Clock Class.

Similarly, without evidence that Defendant either authorized or required employees to use their own personal devices or equipment to perform work on behalf of Defendant, and without specific requests for reimbursement from employees alerting Defendant that reimbursement was required, Defendant would have no way of knowing whether individual employees incurred expenses on Defendant's behalf, and may not have even authorized such behavior had these instances been brought to Defendant's attention. An employee's unilateral decision to use their own resources to perform work related to Defendant's business (whether it was for reasons of convenience or was done for practical reasons) does not show that these acts were either authorized or permitted by Defendant. Therefore, the Expense Reimbursement Class likewise does not appear to be ascertainable based on evidence currently before this Court.

Without more, the Off-the-Clock Class and Business Expense Reimbursement Class do not appear to be ascertainable on a class-wide basis.

Numerosity

Typically, a class action in California is sufficiently numerous if it is impractical to bring all members of the class before the Court. (Civ. Code, § 1781, subd. (b)(1); Code Civ. Proc., § 382.) Here, the proposed classes consist of all of Defendant's current and former employees in the

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State of California, estimated to be at least 110,000 members. (Lebe Decl. Exhs. 1; 2.)

In support of its Opposition, Defendant submitted 555 declarations from employees who claim that their hours were accurately calculated and that Defendant has not violated the wage orders and labor code provisions identified by Plaintiff in his complaint in connection with their employment. (Boggess Decl. Exh. 1.) However, these 555 employees only make up 0.05% of the proposed class that includes all of Defendant's employees in the State of California. Therefore, even without them, the class would be sufficiently numerous to make class certification of the approved classes appropriate.

## Community of Interest

Here, Defendant's Opposition argues that there is no community of interests between members of the approved classes because some are union members while others are not, some work in offices and others work as truck-drivers who are exempt from overtime.

Addressing Defendant's argument that Defendant's truck drivers are exempt from overtime pay, the proposed classes only include non-exempt employees, making the different situation applicable to truck drivers inapplicable to the present motion.

The fact that some workers are also part of a union does not remove their entitlement to be paid for work performed, overtime or unused meal breaks. Therefore, to the extent that any union members were subject to any of the alleged violations, they would likewise be entitled to recover and being a member of the union would not preclude them from doing so.

The only determination that the Court must make here is whether the Court will be able to determine Defendant's liability (or lack thereof) from common proof.

With respect to the approved classes, it can.

## Rounding Class, Meal Break Class, Rest Break Class, Regular Rate Class and Wage Statement Class

Both sides have referenced time sheets in their moving papers, indicating that Defendant does maintain timesheets for its employees. Because this information is available and will show when employees clocked in or out (and can be compared with that work they were paid for) this common proof will address the extent of Defendant's liability (if any) in connection with the approved classes.

## Waiting Time Penalty Class

Liability in connection with the Waiting Time Penalty Class can also be determined by comparing the date that an employee was terminated with the date they received payment of their final wages (which likewise will be reflected in Defendant's payroll data and personnel records). that indicate the last day that an employee worked for Defendant.

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## Section 17200 Class

Business and Professional Code section 17200 is broad and encompasses any unlawful business practice. Therefore, liability under this alleged violation would also be proven through Defendant's timesheets, payroll records and personnel records, making this class likewise subject to common proof.

## Off-the-Clock Class

As noted above, absent a company-wide policy that Defendant required or encouraged its employees to perform certain tasks off-the-clock, Defendant's liability for violations in connection with this class of employees would not be subject to common proof, making this class inappropriate for class certification.

Instead, under this class, an individual's unilateral failure to clock in prior to performing work would need to be examined to determine whether they were prevented from clocking in or whether they merely forgot or found it more convenient to clock in after certain tasks were already completed.

Here, Plaintiff has failed to demonstrate that there is a community of interest between class members or that Defendant's liability to this class is subject to common proof.

## Expense Reimbursement Class

Without a company-wide policy either authorizing use of individual devices or equipment, or requiring such use on Defendant's behalf, there is no way to universally evaluate Defendant's liability on a class-wide basis. Absent evidence that employees sought reimbursement pursuant to a company-wide policy that authorized use of personal devices, but were denied reimbursement upon request, there is no basis for finding Defendant liable without performing an individualized inquiry into the unique circumstances of each individual to find out who authorized such use and whether the employee followed Defendant's procedures for reimbursement prior to accusing Defendant of failing to reimburse expenses.

Here, Plaintiff has failed to demonstrate that there is a community of interest between class members or that Defendant's liability to this class is subject to common proof.

## Predominance of Common or Individual Questions of Law and Fact, and Typicality

Common questions of law and fact predominate in the approved classes, which centrally involve an analysis of timesheets, payroll data and personnel records.

On the other hand, individual questions of law and fact predominate in connection with the Off-the-Clock Class and the Business Expense Reimbursement Class as noted above.

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## Defendant's Opposition

Defendant's Opposition correctly points out the flaws of attempting to certify the Off-the-Clock Class and the Business Expense Reimbursement Class.

However, its arguments regarding the approved classes appear to be based on the merits of Plaintiff's claims, which is inappropriate for consideration at the certification stage.

Defendant also argues that some workers are unionized while others are not. To the extent that the union is watching Defendant's treatment of its members closer than Defendant's treatment of non-union members, there may be less liability to union members in connection with some of the alleged violations, but that would not preclude union members from recovering if violations were found, and the fact that some may recover less than others does not defeat the class.

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (Brinker, supra, 53 Cal.4th at pp. 1021-1022.)

Addressing Defendant's arguments that certain truck drivers are exempt from overtime pay, this issue takes care of itself because the proposed class only extends to non-exempt employees.

Finally, with respect to the argument that some of Defendant's workers work inside of offices while others work in the stores themselves, to the extent that any officer worker was deprived of any statutorily mandated meal or rest breaks, or were not paid for overtime that were otherwise owed, there is nothing that defeats the commonality of interest between these workers and those who work on site at Defendant's stores.

Similarly, to the extent that any office workers ended their employment with Defendant but did not receive their final payment of wages on time, this would also be subject to common proof evident from Defendant's records showing the last date of that employee's employment and the date that a final check was provided to that employee.

As noted above, the Court acknowledges that Defendant obtained 555 declarations from employees who were asked to sign statements opposing class certification. (Bogges Decl. Exh. 1.) As recognized by the court in *Barriga v. 99 Cents Only Stores LLC* (2020) 51 Cal.App.5th 299, such declarations could have been obtained under coercive or abusive circumstances. (*Barriga v. 99 Cents Only Stores LLC* (2020) 51 Cal.App.5th 299, 323.) Here, however, this Court has not been asked to strike any of the 555 declarations submitted in opposition to class certification, but instead finds that they are insufficient to defeat certification because the sheer numbers of the proposed class make 555 outliers insignificant in light of the relevant factors considered.

## Standard of Review



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The decision to certify a class rests squarely within the discretion of the trial court. (*Barriga v. 99 Cents Only Stores, LLC* (2020) 51 Cal.App.5th 299, 320.) Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th at p. 326.) A trial court ruling supported by substantial evidence generally will not be disturbed unless (1) improper criteria were used or (2) erroneous legal assumptions were made. (*Id.* at pp. 326-327.) Any valid pertinent reason stated will be sufficient to uphold the order. (*Ibid.*)

## Conclusion

Here, the Court recognizes the strong public policy in California for promoting employee protections through class actions. As stated by the California Supreme Court, “Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants.” (*Sav-On Drug Stores, Inc.*, *supra*, 34 Cal.4th at p. 340.) Because it would be neither efficient nor fair to anyone, including Defendants to force multiple trials to hear the same evidence on the same alleged violations, allowing the present action to proceed as a class action is superior to requiring each of Defendant’s non-exempt employees in California to separately bring suit for a trivial amount of damages that would be wiped out (and likely exceeded) by the costs of litigation.

Based on the evidence before this Court, Plaintiff’s motion for class certification is granted as to the following proposed classes:

- The Rounding Class
- The Meal Break Class
- The Rest Break Class
- The Regular Rate Class
- The Wage Statement Class
- Waiting Time Penalty Class
- The § 17200 Class

Plaintiff’s motion for certification is denied as to the Off-the-Clock Class and The Business Expense Reimbursement Class.

With respect to the approved classes, Plaintiff is appointed as the named class representative because he has shown that his claims are typical of the approved classes, making him both an adequate and appropriate representative.

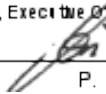
Plaintiff’s attorneys Jonathan Lebe, Shigufa Saleheen and Brielle Edborg of Lebe Law, APLC are appointed as class counsel for this litigation.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**  
Rene C. Davidson Courthouse

Dated : 11/30/2023



Frank Roesch / Judge

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 12/01/2023 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Victor Jauregui	By:  Deputy
DEFENDANT/RESPONDENT: Safeway INC	P. Bir
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: RG21095860

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Hearing on Motion - Other for Class Certification; filed by Victor Jauregui (Plaintiff) filed by Victor Jauregui (Plaintiff) on 11/07/2023 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 12/01/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



P. Bir, Deputy Clerk