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LAVON GODFREY and GARY GILBERT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

LAVON GODFREY and GARY GILBERT,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

OAKLAND PORT SERVICES CORP. d/b/a
AB TRUCKING, and DOES 1 through 20,
inclusive,

Defendants.

Case No. RG08379099

DECLARATION OF LISL R. DUNCAN
IN SUPPORT OF NOTICE OF
DECISION

Date: May 10, 2013
Time: 2:00 p.m.
Dept: 20
Judge: Robert B. Freedman

1 I, Lisl R. Duncan, hereby declare and state as follows:

2 1. I am an attorney duly licensed to practice law before all the courts in the State of
3 California, and I am an associate with Weinberg, Roger & Rosenfeld, counsel of record in this
4 matter. I have personal knowledge of the following facts, and if called to testify, I could and
5 would competently testify to each fact contained in this declaration.

6 2. I file this declaration in accordance with California Rules of Court 2.100 *et seq.*

7 3. Attached herewith as **Exhibit A** is a true and correct copy of the decision in *Mendez*
8 *v. R+L Carries, Inc.*, Case No. C 11-2478 CW issued November 19, 2012.

9 4. Plaintiff requests the Court take notice of the decision for its informational value,
10 and for identification purposes to the extent it has been referenced in correspondence, pleadings,
11 Court orders, or otherwise, in the record in this case to date.

12 Dated this 6th day of May, 2013.

13 Respectfully submitted,

14 WEINBERG, ROGER & ROSENFELD
15 A Professional Corporation

16 By: 

17 LISL R. DUNCAN
18 Attorneys for Plaintiffs

19 118212/715578

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MENDEZ, et al.

Plaintiffs,

v.

R+L CARRIERS, INC.; R&L CARRIERS
SHARED SERVICES, LLC; and DOES 1-
10,

Defendants.

No. C 11-2478 CW

ORDER DENYING
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT (DOCKET
NO. 56) AND
GRANTING IN PART
PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION
(DOCKET NO. 57)

INTRODUCTION

Plaintiffs Robert Mendez and Randy J. Martinez bring this action on behalf of themselves and all others similarly situated, alleging that their former employer, Defendants R+L Carriers, Inc., R+L Carriers Shared Services, LLC, and Does 1-10, violated various provisions of the California Labor Code and Business and Professions Code. Defendants now move for partial summary judgment. Plaintiffs oppose the motion and move for class certification, for their appointment as class representatives, and for appointment of class counsel. Both motions were heard on September 20, 2012. Having considered oral argument and all of the papers filed by the parties, the Court DENIES Defendants' motion for partial summary judgment and GRANTS in part and DENIES in part Plaintiffs' motion for class certification.

BACKGROUND

Defendants, R+L Carriers, Inc. and R+L Carriers Shared Services LLC (collectively, R+L), provide national transportation and shipping services to the public, including the transport of freight by motor vehicle. Fishpaw Decl. ¶ 3. The company has employed more than 300 truck drivers in California since it first expanded its operations into the State in 2007. Morrison Decl. ¶¶ 12-13. Currently, it operates eleven trucking terminals across California. Fishpaw Decl. ¶ 4.

R+L employs three kinds of truck drivers: (1) "linehaul drivers," who typically work at night transporting freight trailers over long distances and then returning to their starting terminal with new freight that they acquired at their turnaround point; (2) "city drivers," who typically work during the day making multiple pickups and deliveries to customer locations near their home terminal; and (3) "combo drivers," who do some city driving (i.e., local pickups and deliveries) during the day and some linehaul driving in the evenings. Copsey Decl. ¶¶ 7, 10. All city driving is paid by the hour and all linehaul driving is paid according to a specific distance-based formula.

Id. ¶¶ 2-4, 8.

On May 20, 2011, one of R+L's former combo drivers, Plaintiff Mendez, filed this putative class action against the company, alleging various violations of California labor law. Compl. ¶¶ 14-57, Docket No. 1. On December 16, 2011, three other former drivers -- two linehaul, one combo -- joined Mendez as Plaintiffs and filed a First Amended Complaint (1AC). 1AC ¶ 9, Docket No. 25. The 1AC specifically charged R+L with failing to

1 provide its drivers with meal and rest breaks, compensate them at
2 the legal minimum wage and overtime rates, pay them in a timely
3 manner, and provide them with accurate wage statements as required
4 by state law. Id. ¶¶ 27-57.

5 On July 17, 2012, Plaintiffs Mendez and Martinez moved to
6 certify a class under Rule 23(b)(3) consisting of all truck
7 drivers who were employed by R+L between May 20, 2007 and the
8 present. They also moved to be appointed class representatives
9 and to have their attorneys appointed class counsel.

10 That same day, Defendants moved for summary judgment on all
11 of Plaintiffs' claims arising under two Labor Code provisions
12 collectively known as California's "meal and rest break laws."
13 The first of these provisions, section 226.7, states that
14 employers must comply with the State Industrial Welfare
15 Commission's (IWC) rules governing meal and rest breaks. Cal.
16 Lab. Code § 226.7. This mandate includes compliance with IWC Wage
17 Order 9-2001, which requires all employers in the transportation
18 industry to provide their employees with a ten-minute rest break
19 for every four consecutive hours of work. See Cal. Code Regs.
20 tit. 8, § 11090(12)(B). The Wage Order and the statute both
21 mandate that employers "pay the employee one additional hour of
22 pay at the employee's regular rate of compensation for each work
23 day that the meal or rest period is not provided." Cal. Lab. Code
24 § 226.7(b); see also Cal. Code Regs. tit. 8, § 11090(12)(B) (using
25 language almost identical to section 226.7).

26 The second Labor Code provision, section 512, requires
27 employers to provide employees with a thirty-minute meal break for
28 every shift longer than five hours. Cal. Lab. Code § 512(a). For

1 shifts of ten hours or more, a second meal break is also required
2 although this break may be waived "by mutual consent of the
3 employer and the employee." Id. As with the rest break
4 requirement, employers must pay employees an additional hour of
5 wages if they fail to provide a required meal break. Cal. Code
6 Regs. tit. 8, § 11090(11)(D).

7 DISCUSSION

8 I. Motion for Summary Judgment

9 A. Legal Standard

10 Summary judgment is properly granted when no genuine and
11 disputed issues of material fact remain, and when, viewing the
12 evidence most favorably to the non-moving party, the movant is
13 clearly entitled to prevail as a matter of law. Fed. R. Civ.
14 P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
15 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
16 1987).

17 The moving party bears the burden of showing that there is no
18 material factual dispute. Therefore, the court must regard as
19 true the opposing party's evidence, if supported by affidavits or
20 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,
21 815 F.2d at 1289. The court must draw all reasonable inferences
22 in favor of the party against whom summary judgment is sought.
23 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
24 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952
25 F.2d 1551, 1558 (9th Cir. 1991).

26 Material facts which would preclude entry of summary judgment
27 are those which, under applicable substantive law, may affect the
28 outcome of the case. The substantive law will identify which

1 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S.
2 242, 248 (1986).

3 B. Express Preemption

4 In their motion for partial summary judgment, Defendants
5 argue that California's meal and rest break laws are expressly
6 preempted by the Federal Aviation Administration Authorization Act
7 (FAAA Act).

8 When determining the scope of preemption, courts begin with
9 the "starting presumption that Congress does not intend to
10 supplant state law." N.Y. State Conference of Blue Cross & Blue
11 Shield v. Travelers Insurance Co., 514 U.S. 645, 654-55 (1995).

12 The inclusion of an express preemption provision in a federal
13 statute implies that Congress did not intend to preempt other
14 matters. Freightliner Corp. v. Myrick, 514 U.S. 280, 288 (1995).

15 In every case, the scope of preemption ultimately turns on
16 Congressional intent. Blue Cross & Blue Shield, 514 U.S. at 655.
17 Thus, to determine whether Congress sought to preempt California's
18 meal and rest break laws, the Court must first examine the purpose
19 and history of the FAAA Act.

20 1. Purpose & History of the FAAA Act

21 Congress enacted the FAAA Act in 1994 as part of its ongoing
22 effort to deregulate the interstate trucking industry. Pub. L.
23 No. 103-305, 108 Stat. 1569 (codified as amended in scattered
24 sections of 49 U.S.C.); see also Motor Carrier Act of 1980, Pub.
25 L. No. 96-296, 94 Stat. 793 (codified as amended in scattered
26 sections of 49 U.S.C.). The Act was specifically intended to
27 bring greater uniformity to state regulation of motor carriers and
28

1 to "create a completely level playing field" between air carriers
2 and motor carriers. H.R. Conf. Rep. No. 103-677 (1994), at 85.

3 In order to achieve these goals, Congress expressly sought to
4 preempt certain kinds of state regulations governing motor
5 carriers. The Act's preemption clause, which borrows much of its
6 language from the Airline Deregulation Act of 1978 (ADA),¹ states
7 in relevant part:

8 [A] State, political subdivision of a State, or
9 political authority of 2 or more States may not enact or
10 enforce a law, regulation, or other provision having the
11 force and effect of law related to a price, route, or
12 service of any motor carrier (other than a carrier
13 affiliated with a direct air carrier . . .) or any motor
14 private carrier, broker, or freight forwarder with
15 respect to the transportation of property.

16 49 U.S.C. § 14501(c)(1). As the House Conference Report for the
17 Act notes, the "[t]ypical forms of regulation" targeted by this
18 clause "include entry controls, tariff filing and price
19 regulation, and types of commodities carried." H.R. Conf. Rep.
20 No. 103-677 (1994), at 86. The Report does not specifically
21 discuss whether the Act was intended to preempt generally
22 applicable employment laws.

23 2. Legal Standard for FAAA Act Preemption

24 The Ninth Circuit recently articulated a three-part test for
25 "determining whether § 14501(c)(1) of the FAAA Act preempts State
26 action." American Trucking Ass'ns, Inc. v. City of Los Angeles,

27 ¹ Cf. 49 U.S.C. § 41713(b)(4) ("A State . . . may not enact
28 or enforce a law, regulation, or other provision having the force
and effect of law related to a price, route, or service of an air
carrier or carrier affiliated with a direct air carrier through
common controlling ownership when such carrier is transporting
property by aircraft or by motor vehicle.").

1 660 F.3d 384, 395-96 (9th Cir. 2011) (ATA V). Under the first
2 part of that test, the court must determine whether the challenged
3 state provision "relate[s] to a price, route, or service of a
4 motor carrier." 49 U.S.C. § 14501(c)(1). In making this
5 determination, the court "must examine the actual or likely effect
6 of [the] State's action" on the motor carrier industry. ATA V,
7 660 F.3d at 396. Although a provision may be preempted even if it
8 has only an "indirect" effect on motor carriers, the impact of the
9 provision must ultimately be more than "tenuous, remote, or
10 peripheral." Rowe v. N.H. Transp. Assoc., 552 U.S. 364, 370-71
11 (2008). In close cases, the critical inquiry is "whether the
12 provision, directly or indirectly, 'binds the . . . carrier to a
13 particular price, route or service and thereby interferes with
14 competitive market forces within the . . . industry.'" ATA V, 660
15 F.3d at 397 (citations omitted).

16 If the court finds that the provision does not "relate to" a
17 motor carrier's pricing, routes, or services, then the inquiry
18 ends and the provision is not preempted by the FAAA Act. Id. at
19 395. If, however, the court finds that the provision does "relate
20 to" pricing, routes, or services, it must proceed to the second
21 part of the test to determine whether the provision falls within
22 the "market participant" exception to FAAA Act preemption. Id. at
23 395, 398 ("The FAAA Act 'preempt[s] only [S]tate regulation, and
24 not actions a [S]tate takes as a market participant.'" (citations
25 omitted)). Here, the court must consider whether the challenged
26 state law was "enacted pursuant to the State's regulation of the
27 market, rather than the State's participation in the market in a
28 proprietary capacity." Id. (emphasis added). If the provision

1 was enacted pursuant to the state's participation in -- rather
2 than regulation of -- the motor carrier market, then it is not
3 preempted by the FAAA Act. Id.

4 Finally, if the provision is not shielded from preemption by
5 either of the first two parts of the test, the court must proceed
6 to the third part of the test. Id. at 395. At this stage, the
7 court must determine whether any of the express exemptions
8 codified in § 14501(c)(2) of the FAAA Act apply to the challenged
9 state law provision. Id. The most important of these is the
10 Act's "safety exemption," which specifically protects "the safety
11 regulatory authority of a State with respect to motor vehicles."
12 49 U.S.C. § 14501(c)(2)(A). State regulations passed for this
13 purpose are not preempted by the FAAA Act.

14 In sum, a state regulation will be preempted by the FAAA Act
15 only if it is "related to" motor carrier prices, routes, or
16 services and it does not fall under the market participant
17 exception or an express statutory exemption.

18 3. Analysis of FAAA Act Preemption

19 a. "Related to" Motor Carrier Prices, Routes, or 20 Services

21 Both of the Labor Code sections that Defendants contend are
22 preempted here -- sections 226.7 and 512 -- apply broadly to all
23 employers in California. Neither provision specifically refers to
24 the motor carrier industry or even remotely resembles the
25 "[t]ypical forms of regulation" that the House Conference Report
26 originally identified as targets of the FAAA Act's preemption
27 clause. See H.R. Conf. Rep. No. 103-677 (1994), at 86 (listing
28 state "entry controls, tariff filing and price regulation, and

1 [regulation of] types of commodities carried" as justifications
2 for the Act's preemption clause). Thus, these provisions do not
3 appear to "relate to" motor carrier prices, routes, or services
4 for the purposes of FAAA Act preemption. Cf. Air Transport Ass'n
5 of Am. v. City of S.F., 992 F. Supp. 1149, 1183 (N.D. Cal. 1998)
6 ("Congress did not . . . through the [ADA's preemption clause],
7 exempt the airlines from generally applicable employment laws."),
8 aff'd, 266 F.3d 1064, 1079 (9th Cir. 2001).

9 California's meal and rest break laws also differ
10 significantly from the preempted statutes and regulations that
11 Defendants identify in their motion. The two Maine statutory
12 provisions that the Supreme Court found preempted by the FAAA Act
13 in Rowe, for instance, sought to regulate tobacco through its
14 shipment and delivery processes. 552 U.S. at 368-70. One of the
15 provisions effectively required motor carriers transporting
16 tobacco products to offer a new kind of delivery service (known as
17 "recipient-verification"), id. at 368-69, while the other imposed
18 new civil penalties on carriers who transported tobacco to
19 unlicensed retailers (thereby requiring the carriers to examine
20 every package they ship and to monitor constantly which Maine
21 retailers have tobacco licenses), id. at 369. Recognizing that
22 each of these requirements had a "direct connection with motor
23 carrier services," the Rowe Court held that both were preempted by
24 the FAAA Act. Id. at 371 (citations omitted). Because
25 California's meal and rest break laws do not uniquely burden motor
26 carriers in the same way, Rowe offers little support to Defendants
27 here.
28

1 Defendants' reliance on American Trucking Association v. City
2 of Los Angeles, 559 F.3d 1046 (9th Cir. 2009) (ATA II), is
3 similarly misplaced.² In that case, the Ninth Circuit held that a
4 series of "Drayage Services Concession Agreements" between the
5 cities of Los Angeles and Long Beach and local motor carriers were
6 preempted by the FAAA Act. Id. at 1053. The court recognized
7 Concession Agreements had a direct impact on the motor carrier
8 industry because they created new rules governing the equipment,
9 licensing, and record-keeping practices of all motor carriers
10 using the ports of Long Beach and Los Angeles. See id. ("That the
11 Concession agreements relate to prices, routes or services of
12 motor carriers can hardly be doubted."). Motor carriers, in
13 short, were not simply affected indirectly by the new
14 regulations -- they were the principal object of those
15 regulations.

16 California's meal and rest break laws, in contrast, apply to
17 all employers in California and do not "aim directly at the
18 carriage of goods." Rowe, 552 U.S. at 376. As such, these
19 provisions cannot be said to relate directly to motor carriers'
20 prices, routes, or services. See Dilts v. Penske Logistics LLC,
21 819 F. Supp. 2d 1109, 1116 (S.D. Cal. 2011) ("The preemption
22 language of the FAAA Act contained in Section 14501 does not, on
23 its face, explicitly encompass state regulation of meal and rest
24 breaks."), appeal docketed No. 12-55705 (9th Cir. Apr. 19, 2012).

25
26 ² Defendants refer to this case as "ATA I" in their motion
27 rather than "ATA II." Instead of following Defendants' naming
28 convention, the Court will refer to the case as "ATA II,"
following the convention adopted by the Ninth Circuit in ATA V,
660 F.3d at 394-95.

1 The Court must therefore focus instead on whether these provisions
2 affect carriers indirectly. See Rowe, 552 U.S. at 370 (noting
3 that preemption "may occur even if a state law's effect on rates,
4 routes or services 'is only indirect'" (citations omitted)).

5 The Ninth Circuit addressed a similar question in
6 Californians for Safe & Competitive Dump Truck Transportation v.
7 Mendonca, 152 F.3d 1184, 1185 (9th Cir. 1998). There, the court
8 held that California's Prevailing Wage Law (CPWL), Cal. Lab.
9 Code §§ 1770-80, another generally applicable provision of the
10 Labor Code, was not "related to" motor carrier rates, routes, or
11 services. 152 F.3d at 1189-90. Noting that the CPWL did not
12 "frustrate[] the purpose of deregulation by acutely interfering
13 with the forces of competition," it held that the law was not
14 preempted by the FAAA Act. Id. at 1189.

15 Although the Ninth Circuit has never specifically addressed
16 whether the FAAA Act preempts California's meal and rest break
17 laws, Defendants cite four cases from other California federal
18 district courts that have recently confronted this question:
19 Campbell v. Vitran Express, Inc., 2012 WL 2317233 (C.D. Cal.);
20 Aguiar v. Cal. Sierra Express, 2012 WL 1593202 (E.D. Cal.);
21 Esquivel v. Vistar Corp., 2012 WL 516094 (C.D. Cal.); and Dilts,
22 819 F. Supp. 2d at 1114-23. In each of these cases, the court
23 held that the FAAA Act preempts California's meal and rest break
24 laws. Plaintiffs cite an earlier decision from a state superior
25
26
27
28

1 court that reached the opposite conclusion. Cemex Wage Cases,
2 JCCP CJC-07-004520 (S.F. Super. Ct. Feb. 19, 2010).³

3 Nonetheless, the decided cases offer only limited guidance
4 here because none of them recognizes the full flexibility that
5 California's meal and rest break laws offer employers. For
6 instance, the decisions fail to address the fact that an employer
7 may comply with section 226.7's rest break requirement by simply
8 paying its employees an additional hour of wages.⁴ Cal. Lab. Code
9 § 226.7(b); Cal. Code. Regs. tit. 8, § 11090(12)(B). This option
10 allows motor carriers to satisfy the rest break requirement
11 without altering their routes or services whatsoever. Although
12 the additional wages might have a slight impact on a motor
13 carrier's prices, this impact would not be large enough to raise
14 preemption concerns. As the Ninth Circuit recognized in Mendonca,
15 generally applicable wage protections can affect a motor carrier's
16 prices without falling under the FAAA Act's preemptive scope.
17 152 F.3d at 1189 (holding that even if the CPWL raised a motor
18 carrier's prices by twenty-five percent, the effect would still be
19 considered "no more than indirect, remote, and tenuous" for the
20 purposes of determining FAAA Act preemption). The wage
21 alternative thus significantly reduces section 226.7's impact on

22 ³ Other courts have also declined to find California's meal
23 and rest break laws preempted by the FAAA Act. See Cardenas v.
24 McLane FoodService, Inc., 796 F. Supp. 2d 1246, 1254-56 (C.D.
25 Cal.); Reinhardt v. Gemini Motor Transport, 2012 WL 1435008, at
26 *5-*6 (E.D. Cal.). Those cases, however, did not treat the
preemption issue as a question of law so their reasoning is of
limited applicability here.

⁴ Aguiar and Campbell, for instance, do not mention the wage
27 alternative at all. Although Dilts and Esquivel both briefly
28 acknowledge that this option is available, each dismisses it as
not viable without explanation.

1 motor carrier prices, routes, and services and undercuts the
2 reasoning of the four cases that Defendants cite, all of which
3 assume that section 226.7 inflexibly requires motor carriers to
4 provide drivers with numerous breaks throughout the day. Cf.
5 Dilts, 819 F. Supp. 2d at 1118 ("The fairly rigid meal and break
6 requirements impact the types and lengths of routes that are
7 feasible.").

8 Because of this wage alternative, the only breaks that motor
9 carriers must actually provide to drivers are the less-frequent
10 meal breaks. And California law allows even that requirement to
11 be partially waived at the employee's discretion. Cal. Lab. Code
12 § 512(a). State regulations also permit employers to provide "on-
13 duty" meal periods when "the nature of the work" makes off-duty
14 meal periods infeasible and the employee consents. Cal. Code.
15 Regs. tit. 8, § 11090(11)(C). When combined with section 226.7's
16 wage alternative, these waivers and on-duty meal period options
17 could reduce the overall burden on motor carriers to providing a
18 single thirty-minute break during any six- to twelve-hour shift.⁵
19 The meal and rest break laws therefore offer motor carriers
20 significantly more flexibility than Defendants and other courts
21 have recognized.

22 In light of this flexibility, it is unlikely that
23 California's meal and rest break provisions would rigidly "bind"
24 motor carriers to particular rates, routes, or services.

25 ⁵ This single-break requirement would impose only minimal
26 burdens on motor carriers because -- under new federal regulations
27 that take effect in June 2013 -- drivers will be required to take
28 thirty-minute breaks anyway on shifts longer than eight hours. 49
C.F.R. § 395.3(a)(3).

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27 that take effect in June 2013 -- drivers will be required to take
28 thirty-minute breaks anyway on shifts longer than eight hours. 49
C.F.R. § 395.3(a)(3).

1 Accordingly, these provisions do not "relate to" motor carrier
2 rates, routes, or services and are not preempted by the FAAA Act.

3 b. "Market Participant" Exception and "Safety"
4 Exemption

5 Because California's meal and rest break laws have only a
6 tenuous and peripheral effect on motor carriers' prices, routes,
7 or services, the Court need not address whether these provisions
8 qualify for the "market participant" exception or "safety"
9 exemptions.

10 C. Implied Preemption

11 In addition to arguing that the meal and rest break laws are
12 expressly preempted by the FAAA Act, Defendants contend that these
13 laws are impliedly preempted by the Federal Motor Carrier Safety
14 Administration's (FMCSA) "Hours of Service" regulations, 49 C.F.R.
15 § 395.3.⁶

16 Absent explicit preemptive language, there are two types of
17 implied preemption: field preemption and conflict preemption.
18 Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000).
19 Field preemption occurs where Congress has entirely displaced
20 state law in a specific field of regulation while conflict
21 preemption occurs when state legislation "actually conflicts with
22 federal law." Pac. Gas & Elec. Co. v. State Energy Res.
23 Conservation & Dev. Comm'n, 461 U.S. 190, 204 (1983). Here,

24
25 ⁶ Defendants fail to identify any specific provisions of the
26 Code of Federal Regulations that purportedly conflict with
27 California law. The Court therefore assumes that Defendants'
28 implied preemption argument is based on 49 C.F.R. § 395.3, a
regulation entitled, "Maximum driving time for property-carrying
vehicles," which appears to be the "'Hours of Service' regulation"
that Defendants discuss in their briefs.

1 Defendants contend that California's meal and rest break
2 requirements conflict with FMCSA regulations. As with express
3 preemption, the Court's analysis begins by examining Congressional
4 intent. Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 96,
5 98 (1992).

6 1. Purpose & History of FMCSA's "Hours of Service"
7 Regulations

8 Congress created the FMCSA as part of the Motor Carrier
9 Safety Improvement Act of 1999, §§ 101-07, Pub. L. No. 106-159,
10 113 Stat. 1748, and housed it within the Department of
11 Transportation. The agency was created, in part, as a response to
12 what Congress then viewed as the Department's failure to pass
13 adequate rules regulating motor carrier drivers' "hours of
14 service." Id. § 3(3). The FMCSA subsequently promulgated rules
15 governing the number of hours that these drivers may work, how
16 much time they must be given between shifts, and when they must be
17 given rest breaks. 49 C.F.R. §§ 395.1-395.3. As noted above, a
18 new rule, set to take effect in June 2013, will require motor
19 carriers to provide drivers with at least one thirty-minute break
20 for any shift over eight hours in length. Id. § 395.3(a)(3).
21 Nowhere does this or any other FMCSA rule state that motor
22 carriers are exempt from complying with generally applicable state
23 employment laws that require employers to provide meal and rest
24 breaks.

25 2. Preemptive Scope of FMCSA's "Hours of Service"
26 Regulations

27 California's meal and rest break provisions do not impede or
28 undermine the FMCSA's effort to enforce any of its "Hours of
Service" regulations. The provisions are not only consistent with

1 the FMCSA's regulations but also entirely compatible with the
2 federal legislation that gave rise to those regulations. See 49
3 U.S.C. § 31502(b) (authorizing the Secretary of Transportation to
4 establish maximum hours-of-service standards for motor carrier
5 drivers).

6 What's more, the FMCSA itself has explicitly rejected
7 Defendants' preemption argument. Federal law empowers the agency
8 "to declare [any] incompatible State law or regulation pertaining
9 to commercial motor vehicle safety unenforceable in interstate
10 commerce." 49 C.F.R. § 355.25(c); see also 49 U.S.C. § 31141(a)
11 ("A State may not enforce a State law or regulation on commercial
12 motor vehicle safety that the Secretary of Transportation decides
13 under this section may not be enforced."). In 2008, the FMCSA
14 used this authority to deny a petition by several motor carriers
15 who asked the agency to find California's meal and rest break laws
16 preempted. Petition for Preemption of California Regulations on
17 Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers,
18 73 Fed. Reg. 79,204 (FMCSA Dec. 18, 2008). The agency roundly
19 rejected the motor carriers' "far-reaching argument that FMCSA can
20 and should preempt the California statutes and rules on wages,
21 hours, and working conditions which prevent carriers from
22 maximizing their employees' driving and on-duty time." Id. at
23 79,206.

24 Because Defendants cannot identify any legitimate conflict
25 with federal law -- and fail to cite even a single case to bolster
26 their argument -- the Court finds that California's meal and rest
27 break laws are not preempted by the FMCSA regulations.

28

II. Motion for Class Certification

A. Defendants' Statewide Policies & Practices

Plaintiffs argue that Defendants employ several uniform statewide policies and practices that render the issues in this case appropriate for class treatment. Specifically, Plaintiffs point to Defendants' meal and rest break practices, their "breakdown" pay policy, the formula that they use to calculate linehaul drivers' pay, and the timekeeping system they use to log city drivers' hours. Each of these policies is detailed below.

1. Meal and Rest Break Policy

Since 2007, Defendants have issued a handbook to all of their California employees describing the company's formal policy for providing meal and rest breaks to employees. Fishpaw Dep. 15:19-16:10; Henderson Decl., Ex. 1. Although Defendants distribute this handbook to every California driver, they do not expect or require drivers to abide by the handbook's official meal and rest break policy because, in practice, drivers' schedules make it difficult to adhere to the policy. Fishpaw Dep. 102:17-103:1, 222:13-223:20. Instead, drivers follow the informal break policies set by dispatchers and managers at every terminal. Fernandez Dep. 79:1-:11; Fishpaw Dep. 222:13-223:20, 224:4-:10; Hill Dep. 68:19-69:14, 151:17-152:9.

While Plaintiffs acknowledge that Defendants do not impose their official, uniform break policy on drivers, they argue that Defendants nevertheless follow several unwritten policies that effectively discourage drivers across the State from taking breaks. They have submitted declarations from dozens of drivers at various terminals to show that city drivers often feel

1 pressured to skip breaks because of their busy delivery schedules.
2 Childs Decl. ¶ 16; Johnson Decl. ¶ 17; Tantzen Decl. ¶ 6. They
3 also highlight Defendants' scoring system for ranking city drivers
4 based on the number of pickups and deliveries they make each week.
5 Fishpaw Dep. 240:3-243:25. Taken together, Plaintiffs argue,
6 these and other informal practices amount to a statewide policy of
7 discouraging both city and linehaul drivers from taking breaks.

8 2. Linehaul Driver Pay Formula

9 Defendants use a special distance-based formula, known as
10 "piece-rate compensation," to pay their drivers for every linehaul
11 assignment they complete. Henderson Decl., Ex. 8; Copsey
12 Decl. ¶ 8. Under that formula, the driver's total estimated
13 driving distance is first divided by fifty miles per hour in order
14 to calculate the rough number of hours a driver spent on the road.
15 Henderson Decl., Ex. 8; Copsey Decl. ¶ 8. One hour is then added
16 to that figure to account for any non-driving work that the driver
17 may have performed during the trip, such as transferring freight
18 or waiting for another trailer. Henderson Decl., Ex. 8; Copsey
19 Decl. ¶ 8. Finally, that number is multiplied by the individual
20 driver's hourly rate -- which is typically assigned to a driver
21 based on seniority -- to calculate the driver's total compensation
22 for that trip.⁷ Henderson Decl., Ex. 8; Copsey Decl. ¶ 8.

23 If a driver believes that this formula has failed to
24 compensate him or her for a particular trip, he or she may submit
25 "notes and additional documentation" to request additional pay.
26

27 ⁷ The formula can be represented numerically as follows:
28 Linehaul Pay =
28 (([Estimated Distance] ÷ 50 mph) + 1 hour) x [Hourly Rate].

1 Copsey Decl. ¶ 12. Those notes must then be reviewed by a
2 supervisor and by Defendants' national payroll department to
3 determine whether the driver is entitled to additional pay. Id.;
4 Fishpaw Dep. 149:15-:22. The parties dispute whether or not
5 drivers are fully aware of this "extra pay" policy. Fishpaw Dep.
6 149:15-:22.

7 3. "Breakdown" Pay Policy

8 When a linehaul driver's truck breaks down during a trip, the
9 driver is not compensated for the first two hours that he or she
10 is delayed during that breakdown. Copsey Decl. ¶ 11. Rather, if
11 the breakdown lasts less than two hours, the driver is paid
12 according to the standard linehaul pay formula without any
13 adjustment. Id. If the breakdown lasts more than two hours,
14 however, the driver is paid at the hourly rate for whatever
15 additional time is required to repair the breakdown. Id.

16 4. Rounding System for City Driving

17 Unlike linehaul drivers, city drivers are paid by the hour.
18 Fishpaw Dep. 65:14-66:23. To calculate the number of hours worked
19 by a city driver, Defendants use a timekeeping system that
20 sometimes rounds a driver's pay to the nearest hour. Henderson
21 Decl., Ex. 11. If a driver clocks in seven minutes or less ahead
22 of schedule, for instance, the system will automatically round his
23 or her start time up to the scheduled start time (thus, deducting
24 the additional seven minutes or less that the driver would have
25 logged had there been no rounding). Id. In addition to the daily
26 rounding, at the end of every week, the system rounds the driver's
27 total number of hours worked to the nearest quarter hour. Id.

1 B. Legal Standard for Class Certification

2 Plaintiffs seeking to represent a class must satisfy the
3 threshold requirements of Rule 23(a) as well as the requirements
4 for certification under one of the subsections of Rule 23(b).
5 Rule 23(a) provides that a case is appropriate for certification
6 as a class action if

7 (1) the class is so numerous that joinder of all
8 members is impracticable;

9 (2) there are questions of law or fact common to the
10 class;

11 (3) the claims or defenses of the representative
12 parties are typical of the claims or defenses of the
class; and

13 (4) the representative parties will fairly and
14 adequately protect the interests of the class.

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

16 Plaintiffs must also establish that one of the subsections of
17 Rule 23(b) is met. In the instant case, Plaintiffs seek
18 certification under subsection (b)(3), which permits certification
19 where common questions of law and fact "predominate over any
20 questions affecting only individual members" and class resolution
21 is "superior to other available methods for the fair and efficient
22 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).
23 These requirements are intended "to cover cases 'in which a class
24 action would achieve economies of time, effort, and
25 expense . . . without sacrificing procedural fairness or bringing
26 about other undesirable results.'" Amchem Prods., Inc. v.
27 Windsor, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ.
28 P. 23(b)(3) Adv. Comm. Notes to 1966 Amendment).

Plaintiffs seeking class certification bear the burden of demonstrating that each element of Rule 23 is satisfied; a district court may certify a class only if it determines that the plaintiffs have borne their burden. Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1308 (9th Cir. 1977). In general, the court must take the substantive allegations of the complaint as true. Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975). However, the court must conduct a "'rigorous analysis,'" which may require it "'to probe behind the pleadings before coming to rest on the certification question.'" Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011) (quoting Falcon, 457 U.S. at 160-61). "Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim. That cannot be helped." Dukes, 131 S. Ct. at 2551. To satisfy itself that class certification is proper, the court may consider material beyond the pleadings and require supplemental evidentiary submissions by the parties. Blackie, 524 F.2d at 901 n.17. "When resolving such factual disputes in the context of a motion for class certification, district courts must consider 'the persuasiveness of the evidence presented.'" Aburto v. Verizon Cal., Inc., 2012 WL 10381, at *2 (C.D. Cal.) (quoting Ellis v. Costco Wholesale Corp., 657 F.3d 970, 982 (9th Cir. 2011)). Ultimately, it is in the district court's discretion whether a class should be certified. Molski v. Gleich, 318 F.3d 937, 946 (9th Cir. 2003); Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144, 152 (N.D. Cal. 1991).

1 C. Rule 23(a) Prerequisites

2 1. Numerosity

3 Plaintiffs seek to certify a class of at least 345 current
4 and former R+L drivers. Morrison Decl. ¶¶ 12-13. Defendants do
5 not dispute that Plaintiffs have satisfied the numerosity
6 requirement. Accordingly, the Court finds that Plaintiffs have
7 satisfied this prerequisite.

8 2. Commonality

9 Rule 23 contains two related commonality provisions. Rule
10 23(a)(2) requires that there be "questions of law or fact common
11 to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(b)(3), in turn,
12 requires that such common questions predominate over individual
13 ones.

14 The Ninth Circuit has explained that Rule 23(a)(2) does not
15 preclude class certification if fewer than all questions of law or
16 fact are common to the class:

17 The commonality preconditions of Rule 23(a)(2) are less
18 rigorous than the companion requirements of Rule
19 23(b)(3). Indeed, Rule 23(a)(2) has been construed
20 permissively. All questions of fact and law need not be
21 common to satisfy the rule. The existence of shared
22 legal issues with divergent factual predicates is
23 sufficient, as is a common core of salient facts coupled
24 with disparate legal remedies within the class.

25 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

26 Here, Plaintiffs have identified several common questions of
27 law and fact. These include: whether Defendants' linehaul pay
28 formula undercompensates linehaul drivers, whether Defendants'
timekeeping system undercompensates city drivers, whether
Defendants' breakdown policy complies with state law, and whether

1 the wage statements Defendants issue to drivers are accurate. All
2 of these questions require an inquiry into specific policies and
3 practices that affect Defendants' drivers across California.
4 Courts have granted class certification to answer questions
5 similar to these in other cases. See, e.g., Dilts v. Penske
6 Logistics LLC, 267 F.R.D. 625, 632-33 (S.D. Cal. 2010) (finding
7 that common questions about trucking company's statewide pay
8 policies and employment practices were amenable to class
9 treatment).

10 Rather than dispute that these questions are amenable to
11 class treatment, Defendants argue that Plaintiffs cannot satisfy
12 the commonality requirement because they fail to provide
13 sufficient evidentiary support for their allegations. This
14 argument ignores the ample evidentiary record that Plaintiffs have
15 assembled to support their claims here. Specifically, Plaintiffs
16 provide numerous declarations and deposition transcripts to show
17 that several of Defendants' statewide policies and practices
18 uniformly affect all members of the putative class. See, e.g.,
19 Henderson Decl., Ex. 8 (outlining linehaul pay formula), Ex. 11
20 (describing timekeeping policies); see also Pls.' Appendix of
21 Declarations from Putative Class Members 20-126 ("Pls.' App.")
22 (providing declarations from over forty former drivers recounting
23 similar work experiences).

24 The detailed nature of Plaintiffs' claims distinguishes this
25 case from Dukes, which Defendants cite for the proposition that
26 commonality requires a heightened evidentiary showing by the
27 plaintiff. Whereas "Dukes involved the allegation that the
28 company's lack of centralized pay policy was unlawful

1 [h]ere, by contrast, Plaintiffs allege a specific set of
2 [unlawful] practices." Delagarza v. Tesoro Refining & Marketing
3 Co., 2011 WL 4017967, at *8 (N.D. Cal.) (finding commonality
4 because plaintiff-employees identified a particular employment
5 policy that "applie[d] to all the members of the class"). Given
6 the specificity of Plaintiffs' allegations and the weight of their
7 supporting evidence, the Court finds that Plaintiffs have
8 satisfied the commonality prerequisite.

9 3. Typicality

10 Rule 23(a)(3)'s typicality requirement provides that a "class
11 representative must be part of the class and possess the same
12 interest and suffer the same injury as the class members."
13 Falcon, 457 U.S. at 156 (quoting E. Tex. Motor Freight Sys., Inc.
14 v. Rodriguez, 431 U.S. 395, 403 (1977)) (internal quotation marks
15 omitted). The purpose of the requirement is "to assure that the
16 interest of the named representative aligns with the interests of
17 the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th
18 Cir. 1992). Rule 23(a)(3) is satisfied where the named plaintiffs
19 have the same or similar injury as the unnamed class members, the
20 action is based on conduct which is not unique to the named
21 plaintiffs, and other class members have been injured by the same
22 course of conduct. Id. Class certification is inappropriate,
23 however, "where a putative class representative is subject to
24 unique defenses which threaten to become the focus of the
25 litigation." Id. (quoting Gary Plastic Packaging Corp. v. Merrill
26 Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 176, 180 (2d Cir.
27 1990)).
28

1 In this case, as noted above, Plaintiffs Mendez and Martinez
2 allege injuries based on a variety of Defendants' statewide
3 employment practices. Any injuries that Mendez and Martinez
4 suffered as a result of these formal policies and practices would
5 likely be typical of those suffered by Defendants' other
6 California drivers, all of whom were subject to the same policies
7 and practices. Defendants do not identify any unique defenses
8 they might raise to Plaintiffs' claims based on these official
9 statewide policies.

10 Defendants do, however, identify possible defenses to
11 Plaintiffs' meal and rest break claims. Defendants note that they
12 have no formal, statewide policy for providing truck drivers with
13 timely meal and rest breaks and that, as a result, break policies
14 can vary from terminal to terminal. Mendez and Martinez were,
15 therefore, potentially subject to unique break policies set by the
16 dispatchers and managers at their respective terminals. This type
17 of variation in location-specific workplace policies can sometimes
18 serve as a barrier to certification in large employment class
19 actions by casting doubt on the representativeness of the named
20 plaintiff's injuries. See, e.g., Doninger, 564 F.2d at 1311
21 ("Since different affirmative action programs, and thus possibly
22 different patterns and practices, exist in each establishment,
23 appellants would have considerable difficulty in adequately
24 representing class members from the other three . . .
25 establishments [in a Title VII suit]."). Thus, in order to
26 satisfy the typicality prerequisite for their meal and rest break
27 claims, Plaintiffs must show that Defendants' informal break
28 policies are consistent across different terminals.

1 Plaintiffs have made this showing with respect to city
2 drivers. They offer declarations from more than thirty former
3 city drivers who recount facing similar pressures to skip breaks
4 despite working with different dispatchers at various terminals
5 across California. Pls.' App. 20-185. These declarations support
6 Plaintiffs' claims that Defendants have a common practice of
7 overloading city drivers' schedules to such an extent that drivers
8 are ultimately discouraged from taking breaks. Id. Plaintiffs
9 also highlight Defendants' system for ranking city drivers by
10 delivery speed as further evidence that these drivers are
11 pressured to skip breaks. Fishpaw Dep. 240:3-243:25. Even if
12 these practices do not represent Defendants' official company
13 policy, Plaintiffs have shown that they are prevalent enough among
14 different terminals to satisfy Rule 23's typicality prerequisite
15 for city drivers. See Pina v. Con-Way Freight, Inc., 2012 WL
16 1278301, at *5 (N.D. Cal.) (finding Rule 23(a) typicality
17 satisfied because "the proposed representatives claim to have been
18 subjected to the same illegal practices regarding meal and break
19 periods as the proposed class" of truck drivers even though class
20 members worked at different facilities).

21 Plaintiffs have not, however, made this showing with respect
22 to linehaul drivers. Unlike city drivers, linehaul drivers are
23 not closely monitored by dispatchers during their runs nor are
24 they subject to any kind of ranking system. See Mantz Decl. ¶ 9.
25 Moreover, because linehaul drivers typically stop less frequently
26 during runs than city drivers, they do not face the same
27 challenges in finding a time or place to take a break. Id. These
28 critical differences between city driving and linehaul driving

1 require Plaintiffs to differentiate more clearly between the
2 policies and practices that discourage each group of drivers from
3 taking breaks. Instead, however, Plaintiffs' evidence and
4 allegations focus almost exclusively on the practices that
5 discourage city drivers from taking breaks -- specifically,
6 overloaded delivery schedules and delivery-speed rankings.

7 Although Plaintiffs offer some evidence that linehaul drivers
8 are discouraged from taking breaks, that evidence is ultimately
9 unpersuasive. Plaintiffs rely primarily on an analysis of
10 nineteen daily driver logs that purport to show how rarely
11 Defendants' linehaul drivers take breaks. See Nutten
12 Decl. ¶¶ 3-4. But the analysis fails to establish that these
13 nineteen drivers constitute a representative cross-section of all
14 linehaul drivers in California or that these drivers were forced
15 to skip breaks for similar reasons. Even more problematically,
16 the analysis never establishes that the logs are supposed to
17 document linehaul drivers' meal and rest breaks in the first
18 place. It is not clear whether these driver logs actually provide
19 reliable evidence of missed breaks at all,⁸ which is why courts in
20

21 ⁸ For instance, Plaintiffs' argument that the logs are
22 supposed to document meal breaks relies on a California motor
23 vehicle regulation that requires linehaul drivers to record "off
24 duty" time, "sleeper berth[s]," and non-driving time for every
25 trip. See Cal. Code Regs. tit. 13, § 1213(l). But the regulation
26 does not require drivers to record meal breaks. Even the sample
27 driver log included in the regulation lacks a designated space to
28 record meal or rest breaks. If anything, the sample log suggests
that a driver's "lunch" break should simply be recorded as generic
"off duty" time. See id. Because Plaintiffs' analysis does not
provide a comprehensive accounting of drivers' off-duty
time -- and fails to provide copies of the actual driver logs
themselves -- the analysis cannot establish that the driver logs
provide reliable documentation of missed meal breaks.

1 other cases have expressly rejected driver logs as proof of Rule
2 23 typicality. See, e.g., Jasper v. C.R. England, No. 08-cv-
3 05266, Docket No. 98, at 5-6 (C.D. Cal. 2011) (concluding that
4 "[w]ith regard to Plaintiffs' missed rest break claims,
5 the absence of log entries showing rest breaks means nothing"
6 because drivers are not required to document these breaks on their
7 logs). Without stronger evidence that Defendants actively
8 discourage linehaul drivers across California from taking breaks,
9 Plaintiffs cannot show that their linehaul driving experiences
10 were typical.

11 The Court therefore finds that Plaintiff Martinez, whose work
12 for Defendants consisted solely of linehaul driving, does not
13 satisfy the typicality prerequisite with respect to Plaintiffs'
14 meal and rest break claims. Plaintiffs have not shown that
15 Martinez was subject to the same meal and rest break practices as
16 linehaul drivers at other terminals. Plaintiff Mendez, on the
17 other hand, satisfies the typicality requirement for these claims
18 since his work involved city driving. For all of Plaintiffs'
19 other claims -- which are based on Defendants' linehaul pay
20 formula, timekeeping practices, breakdown policy, and other
21 statewide policies -- Martinez and Mendez have both satisfied the
22 typicality prerequisite.

23 4. Adequacy

24 Rule 23(a)(4) establishes as a prerequisite for class
25 certification that "the representative parties will fairly and
26 adequately protect the interests of the class." Fed. R. Civ. P.
27 23(a)(4).
28

1 Defendants argue that Plaintiff Mendez is unfit to serve as
2 class representative because he has "serious and unique
3 credibility issues." Opp. 9. Specifically, Defendants assert
4 that Mendez's deposition testimony -- which includes statements
5 that he was regularly denied meal and rest breaks -- conflicts
6 with Defendants' GPS records showing that he made frequent stops
7 during his delivery runs.

8 In rare circumstances, a plaintiff's lack of credibility may
9 undermine his or her adequacy as a class representative. However,
10 "[f]or an assault on the class representative's credibility to
11 succeed, the party mounting the assault must demonstrate that
12 there exists admissible evidence so severely undermining
13 plaintiff's credibility that a fact finder might reasonably focus
14 on plaintiff's credibility, to the detriment of the absent class
15 members' claims." Dubin v. Miller, 132 F.R.D. 269, 272 (D. Colo.
16 1990). This standard is difficult to satisfy. See, e.g., Cruz v.
17 Dollar Stores, Inc., 2009 WL 1458032, at *7 (N.D. Cal.) (finding
18 that "inconsistency between [plaintiff's] deposition testimony and
19 statements in a declaration is not sufficient to impugn [his]
20 credibility" as a class representative).

21 Here, Defendants have not shown that Mendez's credibility
22 will impede his representation of the class. In fact, Defendants'
23 GPS analysis of Mendez's delivery runs, by its own terms, cannot
24 definitively show that he engaged in non-work-related activity
25 during truck stops or that he was actually relieved of duty during
26 every stop. Levine Decl., Ex. 1, at 4 (conceding that "the GPS
27 data cannot answer any question about the detailed activities of
28 Mr. Mendez during [vehicle stops]"). Because Defendants offer no

1 other evidence to impugn Mendez's credibility, their efforts to
2 disqualify him as a representative fail.

3 So, too, must Defendants' argument that Plaintiff Martinez is
4 unfit to serve as class representative. Defendants' assertion
5 that Martinez lacks the capacity to understand his claims in this
6 lawsuit is contradicted by the very record they cite in support of
7 that assertion. Indeed, the same excerpt of Martinez's deposition
8 that Defendants cite as evidence of his inadequacy ultimately
9 confirms that he understands the substance of his claims in this
10 suit: Martinez was asked multiple times if he understood the
11 allegations in the complaint and, each time, he affirmed that he
12 did. Martinez Dep. 28:18-:20, 29:9-:10.

13 The only barrier to Rule 23(a) adequacy in this case is
14 Plaintiff Martinez's inability to represent a statewide class of
15 linehaul drivers on their meal and rest break claims for lack of
16 typicality. For all other claims in this suit, Plaintiffs Mendez
17 and Martinez are adequate class representatives.⁹

18
19
20 ⁹ Defendants also argue that Mendez and Martinez are unfit to
21 represent a class that includes Defendants' current drivers
22 because they are no longer employed by Defendants. Courts in this
23 district have specifically rejected that argument on multiple
24 occasions. Krzesniak v. Cendant Corp., 2007 WL 1795703, at *11
25 (N.D. Cal.) ("Far from being inadequate class representatives,
26 plaintiffs whose relationships with the defendant have been
27 terminated may be more forceful advocates because they will be
28 free from pressure and reprisals by the defendant." (citations
omitted)); Rosenburg v. Int'l Bus. Machines Corp., 2006 WL
1627108, at *10 (N.D. Cal.) ("It was persuaded by 'several cases
[that] not only are former employees adequate representatives of
current employees in class actions seeking at least in part
declaratory and/or injunctive relief, but . . . that former
employees provide superior representation in bringing claims
against the employer.'" (citations omitted)).

D. Rule 23(b) Requirements

1. Predominance

"The predominance inquiry of Rule 23(b)(3) asks whether proposed classes are sufficiently cohesive to warrant adjudication by representation. The focus is on the relationship between the common and individual issues." In re Wells Fargo Home Mortgage Overtime Pay Litig., 571 F.3d 953, 957 (9th Cir. 2009) (internal quotation marks and citations omitted). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis.'" Hanlon, 150 F.3d at 1022 (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1777 (2d ed. 1986)). A court must make "some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate" In re New Motor Vehicles Canadian Export Antitrust Litig., 522 F.3d 6, 20 (1st Cir. 2008) (citation and internal quotation marks omitted).

Here, Plaintiffs assert six class claims against Defendants: violations of California's meal and rest break laws, minimum wage and overtime violations, unlawful withholding of wages, failure to pay employees in a timely manner, failure to provide accurate and itemized wage statements, and unfair business practices. The following sections address whether common questions of law and fact predominate over individual ones with respect to each claim.

a. Meal and Rest Break Violations under Sections 226.7 and 512 of the California Labor Code

Sections 226.7 and 512 of the Labor Code require employers to provide their employees with ten-minute rest breaks and thirty-minute meal breaks at specified intervals of time. As noted above, Defendants do not have a uniform statewide policy for providing meal and rest breaks to drivers. Thus, in order to satisfy the predominance prerequisite for their meal and rest break claims, Plaintiffs must demonstrate that Defendants' unwritten policies and practices effectively discourage drivers across the State from taking breaks. Although Plaintiffs have presented sufficient evidence to make this showing for city drivers, they have failed to make the same showing for linehaul drivers.

This Court has found that when a plaintiff's claims are based on "allegations of an unwritten practice, as opposed to a written policy," the putative class members will often "have to prove individual elements in order to show [the defendant]'s liability." Mateo, 2009 WL 3561539, at *6; see also Washington v. Joe's Crab Shack, 271 F.R.D. 629, 640 (N.D. Cal. 2010) (finding individual issues predominated when the plaintiff contended that the defendant's "restaurants in California followed a common unwritten policy of denying meal and rest breaks"); Wren v. RGIS Inventory Specialists, 256 F.R.D. 180, 208-09 (N.D. Cal. 2009) ("Because the Court finds that employees must be offered, but need not be forced to take a meal break, the Court also concludes that many individualized inquiries will be necessary . . . to determine the reason meal breaks were missed and whether they were waived.").

1 In order to overcome this barrier to predominance, the plaintiff
2 must allege specific facts, supported by evidence, to show that
3 the defendant's "informal policies of discouraging the taking of
4 breaks would likely be susceptible to common proof." Pina, 2012
5 WL 1278301, at *7.

6 For example, in Pina, the court certified a class of city
7 drivers alleging meal and rest break violations after the named
8 plaintiffs "submitted evidence that the drivers observed by
9 Plaintiff [] sought the permission of their supervisor before
10 taking a meal break, and that such permission was given only after
11 a shift's deliveries were completed." Id.; accord. Dilts, 267
12 F.R.D. at 638 (certifying a class of truck drivers alleging meal
13 and rest break violations even though the "majority of Plaintiff's
14 evidence as to this question is anecdotal, consisting of the
15 declarations of driver/installers"). The plaintiffs' evidence
16 there consisted primarily of declarations from drivers describing
17 the pressures they faced to skip meals and rest breaks. 2012 WL
18 1278301, at *7. Because Plaintiffs' evidence is similarly
19 specific and persuasive here, they have demonstrated that the city
20 drivers' meal and rest break claims can be proven principally
21 through common proof. See Pina, 2012 WL 1278301, at *7 ("If
22 Plaintiffs succeed in demonstrating that such a practice is
23 common, the need for further inquiry into individual decisions
24 would be unnecessary. Accordingly, the Court finds that common
25 issues of law and fact predominate"). Thus, Plaintiffs
26 have satisfied Rule 23(b)(3)'s predominance requirement with
27 respect to city drivers' meal and rest break claims.
28

1 Plaintiffs do not, however, satisfy this requirement with
2 respect to linehaul drivers' meal and rest break claims. As noted
3 above, Plaintiffs fail to present sufficient evidence to establish
4 that Defendants employed a common set of unwritten policies and
5 practices that discouraged linehaul drivers from taking breaks.
6 This means that linehaul drivers' meal and rest break claims would
7 require individual inquiries into the informal break policies at
8 all eleven of Defendants' terminals in California. Accordingly,
9 Plaintiffs can only satisfy the predominance requirement on their
10 meal and rest break claims for a subclass of city drivers.

11 b. Minimum Wage and Overtime Violations under
12 Sections 216, 1194, 1194.2, and 1197 of the
Labor Code

13 Section 1197 of the Labor Code establishes California's
14 minimum wage. Section 1194 creates a cause of action for
15 employees to recover unpaid wages from an employer who fails to
16 pay them at the legal minimum wage or overtime rate. Section
17 1194.2 allows the employee to recover liquidated damages for such
18 a violation and section 216 makes it a misdemeanor for any
19 employer to withhold wages willfully from an employee after the
20 employee has demanded those wages.

21 Here, Plaintiffs allege that Defendants' policies for paying
22 truck drivers violate these Labor Code provisions. In particular,
23 they contend that Defendants' linehaul pay formula, timekeeping
24 system, and breakdown policy ultimately deprive the putative class
25 members of their lawfully owed compensation. Because these
26 policies apply to every one of Defendants' drivers in California,
27 Plaintiffs' wage-and-hour claims inherently raise many legal and
28

1 factual questions common to all putative class members. These
2 questions can be answered principally through common evidence.

3 For instance, Plaintiffs' allegations about Defendants'
4 timekeeping system will require proof that Defendants' rounding
5 practices distort city drivers' working hours to such an extent
6 that they ultimately violate California's minimum wage and
7 overtime laws. This will entail common fact-finding to determine
8 the formula Defendants use to calculate city drivers' hourly pay
9 and whether that formula leads to underpayment. It will also
10 likely require adjudication of the various legal questions that
11 Defendants raise in their brief, including whether federal
12 regulations expressly permit employers to use rounding systems
13 like theirs. See Opp. 22-25. These issues are relevant to every
14 class member's wage-and-hour claims and can easily be addressed in
15 a class action.

16 Similarly, Defendants' linehaul pay formula and breakdown
17 policy -- both of which affect every linehaul driver in the
18 State -- also raise many common questions. These include whether
19 the linehaul pay formula misrepresents linehaul drivers' working
20 hours, whether the formula adequately compensates drivers for non-
21 driving time, whether the breakdown policy exacerbates any
22 inaccuracies in the linehaul formula, and other questions. Here
23 again, Defendants raise additional legal questions -- such as
24 whether California law recognizes the "lawfulness of piece-rate
25 compensation for drivers" -- that are also relevant to all
26 putative class members. Opp. 22-25. When combined, the various
27 common questions that Defendants' pay policies raise will likely
28 predominate over individual questions.

1 Defendants nevertheless argue that individual questions
2 inevitably predominate over individual ones in wage-and-hour class
3 actions like this one. They rely on two decisions from courts in
4 this district for support: Washington, 271 F.R.D. at 640, and
5 Cornn v. United Parcel Service, Inc., 2005 WL 2072091, at *5 (N.D.
6 Cal.). Neither of these cases is analogous.

7 The plaintiffs in Washington were denied class certification
8 because they failed to show that the defendant's unwritten break
9 policies were consistent across multiple locations. 271 F.R.D. at
10 640. Here, in contrast, Plaintiffs' wage-and-hour claims are
11 based on concrete, uniform pay policies that apply equally to
12 drivers across the State. This kind of evidence -- that is, proof
13 of a defendant's uniform pay policy -- is often sufficient to
14 satisfy the predominance prerequisite in cases where a plaintiff-
15 employee alleges underpayment. See, e.g., Chavez v. Lumber
16 Liquidators, Inc., 2012 WL 1004850, at *6 (N.D. Cal.) (certifying
17 a class of employees alleging overtime violations based on the
18 plaintiff's evidence that he was subject to a "uniform practice
19 for calculating overtime pay").

20 Cornn is inapposite for similar reasons. In that case, the
21 court refused to certify a class of truck drivers who alleged
22 inaccurate timekeeping practices because the defendant-employer
23 offered evidence that the putative class members' punching-in
24 routines varied so widely as to make certification inappropriate.
25 2005 WL 2072091, at *5 (noting that there was "no common practice"
26 among delivery drivers with respect to punching in for shifts).
27 Because the court could not assume that every driver began work
28 immediately after punching in, the defendant's timekeeping records

1 could not serve as common proof for every driver in the proposed
2 class. Id. Defendants in this case, however, have not shown that
3 their timekeeping records -- or any of their other records
4 relating to statewide pay policies -- suffer from the same
5 probative shortcomings as those in Cornn.

6 Thus, in light of the numerous common questions raised by
7 Defendants' timekeeping practices, linehaul pay formula, and
8 breakdown policy, Plaintiffs have satisfied Rule 23(b)(3)'s
9 predominance requirement with respect to their wage-and-hour
10 claims.

11 c. Penalties under Section 203 of the Labor Code

12 Section 203 of the Labor Code imposes monetary penalties on
13 employers who unlawfully withhold wages from employees who are
14 discharged or who quit. These penalties are paid directly to the
15 employee. Cal. Lab. Code § 203(a).

16 Here, Plaintiffs allege that Defendants failed to compensate
17 fully drivers who quit or were terminated. This claim is largely
18 duplicative of Plaintiffs' underlying wage-and-hour claims and, as
19 such, can be proven with essentially the same sources of common
20 evidence. The various legal and factual questions that must be
21 answered to determine Defendants' liability for wage-and-hour
22 violations coincide, in large part, with the legal and factual
23 questions that must be answered to determine their liability under
24 section 203. Cf. Pina, 2012 WL 1278301, *9 (finding that because
25 the defendants' liability for section 203 penalties overlapped
26 sufficiently with their liability for other wage-related
27 violations, "it will follow necessarily that class members who
28 terminated their employment were owed additional wages as [sic]

1 the time of termination"). Because these common questions
2 predominate over individual ones with respect to Plaintiffs' wage-
3 and-hour claims, they also predominate with respect to Plaintiffs'
4 section 203 claim.¹⁰

5 d. Violation of Section 204 of the Labor Code

6 Section 204 of the Labor Code requires employers to pay their
7 employees on a regular basis and in a timely manner.
8 Specifically, it requires employers to pay their employees bi-
9 monthly and to ensure that employees are compensated within two to
10 four weeks of performing any labor. Cal. Lab. Code §§ 204(a)
11 & (d).

12 Here, Plaintiffs' section 204 claim -- much like their
13 section 203 claim -- is essentially derivative of their other
14 wage-related claims and will likely rely on the same sources of
15 common proof. In short, if Plaintiffs can demonstrate that
16 Defendants failed to compensate them fully, then they can easily
17 show that Defendants also failed to pay them in a timely manner.
18 Because common questions predominate with respect to Plaintiffs'
19 other wage-and-hour claims, they also predominate with respect to
20 Plaintiffs' section 204 claim.

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24 ¹⁰ Any individual questions that must be answered to calculate
25 section 203 damages -- regarding the timing of when certain
26 employees quit or were terminated -- would impose only marginal
27 burdens on the Court. See Lemus v. H&R Block Enter., LLC, 2010 WL
28 5069695, *5 (N.D. Cal.) (granting class certification on several
wage-and-hour claims and concluding that payroll records would
make "[c]alculation of damages relating thereto, including
penalties under section 203 . . . straight forward and readily
done").

e. Failure to Provide Accurate, Itemized Wage Statements under Section 226 of the Labor Code

Section 226 of the Labor Code requires that employers provide every employee with a written wage statement that lists, in relevant part:

(1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Cal. Lab. Code § 226(a). If an employer knowingly and intentionally fails to provide these itemized statements to an employee, it must pay the employee damages as set forth in the statute. Id. § 226(e).

Here, Plaintiffs allege that Defendants knowingly failed to provide itemized wage statements to drivers in violation of section 226. They have provided evidence showing that Defendants provide wage statements to all drivers, Fishpaw Dep. 166:3-:23, thus laying the foundation for several common questions of law and fact. These include: whether the wage statements issued to drivers include every item required by California law, whether Defendants knowingly or intentionally omitted any information from these wage statements, and whether and how linehaul drivers' wage statements differ from those of city drivers. Defendants' section 226 liability is also predicated upon their liability for the various other wage-related violations Plaintiffs allege, all of which raise additional common questions. Taken together, these questions predominate over individual questions.

f. Unfair Business Practices under the Business and Professions Code

Section 17200 of the Business and Professions Code, also known as California's Unfair Competition Law (UCL), prohibits certain "unlawful, unfair or fraudulent business act[s] or practice[s]." Cal. Bus. & Prof. Code § 17200. Plaintiffs allege that Defendants have violated the UCL by committing various Labor Code violations. 1AC ¶¶ 55-57. Thus, the many common questions raised by Plaintiffs' various Labor Code claims are also directly relevant to establishing Defendants' liability under the UCL. Because these questions predominate with respect to those other claims -- and because Defendants do not identify any element of this claim requiring an individualized inquiry -- Plaintiffs satisfy the predominance prerequisite with respect to their UCL claim, as well.

2. Superiority

"Rule 23(b)(3) also requires that class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy.'" Hanlon, 150 F.3d at 1023 (quoting Fed. R. Civ. P. 23(b)(3)). "If each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not 'superior.'" Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1192 (9th Cir. 2001).

In this case, Plaintiffs satisfy the superiority prerequisite for all of their claims except for the linehaul drivers' meal and rest break claims. The risks, small recovery, and relatively high costs of litigation here make it unlikely that individual drivers

1 will pursue claims against Defendants independently. A class
2 action, however, "would offer those with small claims the
3 opportunity for meaningful redress." Sullivan v. Kelly Services,
4 Inc., 268 F.R.D. 356, 365 (N.D. Cal. 2010). In addition, a class
5 action would more efficiently resolve the numerous legal and
6 factual questions relevant to every driver's claims against
7 Defendants. Accordingly, the class action is superior to
8 individual litigation in this case.

9 CONCLUSION

10 For the reasons set forth above, the Court DENIES Defendants'
11 motion for partial summary judgment (Docket No. 56). Plaintiffs'
12 motion for class certification is GRANTED in part and DENIED in
13 part (Docket No. 57).

14 For all of Plaintiffs' claims other than their first cause of
15 action, the Court certifies a class of: all truck drivers employed
16 by Defendants in California between May 2007 and May 2011.
17 Plaintiffs Mendez and Martinez are appointed representatives of
18 the class.

19 For Plaintiffs' first cause of action (i.e., their meal and
20 rest break claims), the Court certifies a subclass of: all truck
21 drivers employed by Defendants in California between May 2007 and
22 May 2011 who performed city driving. Plaintiff Mendez is
23 appointed representative of this sub-class.

24 Plaintiffs' counsel is appointed class counsel. Plaintiffs'
25 evidentiary objections to James Fishpaw's declaration and
26 deposition testimony are overruled as moot. Plaintiffs'
27 supplemental briefs regarding additional authority (Docket Nos. 62
28

1 & 64) are stricken for failing to comply with Civil Local
2 Rule 7-3(d)(2).

3 IT IS SO ORDERED.

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5 Dated: 11/19/2012


CLAUDIA WILKEN
United States District Judge

United States District Court
For the Northern District of California

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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On May 6, 2013, I served the following documents in the manner described below:

DECLARATION OF LISL DUNCAN IN SUPPORT OF MENDEZ CASE

- ☒ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Los Angeles, California.
- ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.
- ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- ☐ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system on _____ from _____@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Guy A. Bryant, Esq.
Bryant & Brown
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guybryant@bryantbrownlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 6, 2013, at Los Angeles, California.



Melanie Garion