No. S166350

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BRINKER RESTAURANT CORPORATION, BRINKER INTERNATIONAL, INC., and BRINKER INTERNATIONAL PAYROLL COMPANY, L.P.
Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO,
Respondent.

SUPREME COURT
FILED
OCT 19 2011
Frederick K. Ohlrich Clerk
Deputy

ADAM HOHNBAUM, ILLYA HAASE, ROMEO OSORIO, AMANDA JUNE RADER and SANTANA ALVARADO,
Real Parties in Interest.

Petition for Review of a Decision of the Court of Appeal, Fourth Appellate District, Division One, Case No. D049331, Granting a Writ of Mandate to the Superior Court for the County of San Diego, Case No. GIC834348
Honorable Patricia A.Y. Cowett, Judge

SUPPLEMENTAL BRIEF RE *WAL-MART STORES, INC. v. DUKES*, 131 S.Ct. 2541 (2011) [CAL. RULES OF COURT, RULE 8.520(d)(1)]

L. Tracee Lorens (Bar No. 150138)
Wayne A. Hughes (Bar No. 48038)
LORENS & ASSOCIATES, APLC
701 "B" Street, Suite 1400
San Diego, CA 92101
Telephone: (619) 239-1233

Timothy D. Cohelan (Bar No. 60827)
Michael D. Singer (Bar No. 115301)
COHELAN KHOURY & SINGER
605 "C" Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001

Kimberly A. Kralowec (Bar No. 163158)
THE KRALOWEC LAW GROUP
188 The Embarcadero, Suite 800
San Francisco, CA 94105
Telephone: (415) 546-6800

William Turley (Bar No. 122408)
THE TURLEY LAW FIRM, APLC
555 West Beech Street, Suite 460
San Diego, CA 92101
Telephone: (619) 234-2833

[Additional counsel listed on next page]

Attorneys for Plaintiffs, Real Parties in Interest, and Petitioners

Michael Rubin (Bar No. 80618)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Miscellaneous

I. INTRODUCTION

Pursuant to Rule of Court 8.520(d)(1), Real Parties respectfully respond to Brinker's supplemental brief addressing *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541 (2011) ("Dukes Br.").

Dukes is neither binding nor relevant. Nothing in the U.S. Supreme Court's case-specific application of Federal Rule of Civil Procedure 23(b)(2) and (b)(3) ("Rule 23") in *Dukes* provides any justification for upending decades of settled jurisprudence under Code of Civil Procedure section 382 ("§382"), or the well-established principles governing California appellate review of class certification orders, as set forth in *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319 (2004).[1]

II. DISCUSSION

A. The Legal and Factual Issues in this Case Are Entirely Distinguishable From Those in *Dukes*

Dukes was a Title VII case, in which plaintiffs alleged that thousands of individual managers' subjective, multi-variable promotion decisions had a discriminatory impact on more than 1.5 million female employees. 131 S.Ct. 2541, *passim*. This case, by contrast, involves a series of meal-and-rest-break claims, each of which arises from a common

---

[1] *See also*, *e.g.*, *Fireside Bank v. Superior Court*, 40 Cal.4th 1069 (2007); *Lockheed Martin Corp. v. Superior Court*, 29 Cal.4th 1096 (2003); *Washington Mutual Bank v. Superior Court*, 24 Cal.4th 906 (2001); *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429 (2000); *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462 (1981); *Green v. Obledo*, 29 Cal.3d 126 (1981); *Blue Chip Stamps v. Superior Court*, 18 Cal.3d 381 (1976); *Occidental Land, Inc. v. Superior Court*, 18 Cal.3d 355 (1976); *City of San Jose v. Superior Court*, 12 Cal.3d 447 (1974); *Southern California Edison Co. v. Superior Court*, 7 Cal.3d 832 (1972); *Collins v. Rocha*, 7 Cal.3d 232 (1972); *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864 (1971); *Vasquez v. Superior Court*, 4 Cal.3d 800 (1971); *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 (1967).

policy or practice provable through classwide evidence, and each of which must be *separately* analyzed under *Sav-on*, 34 Cal.4th at 327, 329-30.

1.

First, this case raises several legal challenges to policies and practices that Brinker concedes are classwide. Brinker's brief sidesteps those claims, to which *Dukes* plainly has no application. The claims raise common legal challenges to concededly classwide policies. They were correctly certified for class treatment:

- Meal Period Compliance. Plaintiffs contend that California employers have an affirmative obligation to relieve workers of all duty for 30-minute unpaid meal periods. OBM33-78; RBM4-19.[2] If plaintiffs are correct that employers may not "suffer or permit" employees to work through their meal periods (except in those specific circumstances where "waiver" is expressly permitted by statute), plaintiffs will easily be able to identify and quantify all meal period violations from Brinker's daily time records. OBM114-15; RBM42. Brinker has never disputed that common questions predominate under this legal standard. *See* ABM99-118.

- Meal Period Timing. The record contains substantial evidence (as Brinker concedes in its Answer to the Amicus Curiae Brief of Rogelio Hernandez, filed 03/30/11 ("Hernandez Answer") at 10) that Brinker has adopted a common, classwide "early lunching" policy, requiring its workers to take "lunch" within an hour of arriving at work and to continue working for up to 9½ more hours without receiving premium pay mandated by Labor Code §226.7. OBM9-10, 78-82; RBM43.

---

[2] *See also* Real Parties' Supp. Br. Submitting New Authority: *Martinez v. Combs*, 49 Cal.4th 35 (2010), filed 07/22/11; Amici Curiae Br. of Former DLSE Chief Counsel Miles Locker and Former IWC Comm'r Barry Broad, filed 08/26/09, at 2-12.

Whether this classwide policy is unlawful raises a common question; and the extent of Brinker's liability for these violations can be calculated from the company's own payroll records, which document each "early" lunch and each subsequent overlength work period. OBM78-80; RBM19-20.

- Rest Break Compliance and Timing. The depositions of Brinker's own executives provide substantial evidence that the company has common, classwide policies of: (a) not authorizing a rest break until after a full four hours' work, rather than a "major fraction thereof" as the Wage Orders require (OBM103; RBM32);[3] and (b) not authorizing a rest break until after the first meal period for workers subject to "early lunching" (OBM110; RBM35). Whether these classwide policies are unlawful presents another issue that should be litigated once, in a single lawsuit.

As to each of these threshold issues, the trial court correctly certified a class. Where an employer's policies are concededly classwide and the parties dispute whether those policies are lawful, class adjudication has always been available in California, and *Dukes* says nothing to the contrary.

2.

Brinker's briefing targets the second set of issues in this case, involving plaintiffs' assertion that substantial evidence supports the trial court's discretionary decision to certify plaintiffs' off-the-clock claims (for work performed while clocked out for meal periods) and plaintiffs' claims that Brinker failed to "authorize or permit" them to take paid rest breaks or to take unpaid meal periods under Brinker's proposed "make available" standard (which it has never distinguished from "authorize and permit").

---

[3] Brinker's corporate designee, Ginger Hukill, testified that Brinker's actual practice is not to "authorize or permit" workers to take "their first rest break" until "*after* their fourth hour" of work. 21PE5913:8 (emphasis added).

Brinker tries to force those claims into the *Dukes* subjective decisionmaking Title VII framework by asserting that it "gave its managers the discretion to determine the best way of providing meal and rest periods at their particular restaurants." Dukes Brief 7. There are several flaws in Brinker's approach.

First, the trial court credited plaintiffs' contrary evidence. Under *Sav-on*, 34 Cal.4th at 331, that should have been binding on the Court of Appeal. Second, California law plainly does not permit employers to let their managers independently decide not to authorize or permit timely breaks. Finally, for purposes of evaluating the appropriateness of classwide proof, there is no comparison between the complex interplay of factors that may affect individual managers' conscious and unconscious promotion decisions, as in *Dukes*, and the far more straightforward inquiry into whether plaintiff low-wage restaurant workers were in fact authorized or permitted to take certain breaks.

The trial court had ample discretion to conclude, based on substantial evidence, that Brinker's liability for these alleged violations could be established through classwide proof at trial. This evidence will establish why meal period, rest break, and off-the-clock violations are so prevalent in Brinker's restaurants (including because of chronic understaffing, payroll reduction bonus incentives for managers, and the absence of any compliance program despite Brinker's knowledge of thousands of violations and its own DLSE settlement), and will include representative witness testimony coupled with survey evidence and statistical analysis to establish the frequency and extent of the resulting violations under the governing standards. OBM 8-15, 81; RBM43-48;

24PE6502:16-24;[4] 2PE451:2-12; 1PE213:11-17; 21PE5770-5910; *see also* R. Hernandez Amicus Curiae Br., filed 02/24/11, 12-13, 21-34. That is precisely how plaintiffs presented their cases in several of the recent decisions that Brinker tries to distinguish factually. HHernandez Answer 12-14 (citing *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010); *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625 (S.D. Cal. 2010)).[5]

Addressing similar evidence in *Sav-on*, this Court explained that the existence of such common practices supported class certification under a theory that those practices resulted in "widespread de facto" violations. 34 Cal.4th at 329; *see also Delagarza v. Tesoro Refining and Marketing Co.*, 2011 WL 4017967, *5-*8 (N.D. Cal. Sept. 8, 2011) (distinguishing *Dukes* and certifying meal period claims based on common "core of salient facts," including "general policies," notwithstanding "evidence of some day-to-day variations"); *id.* at *12 ("common questions predominated even though certain class members' circumstances varied and some … practices would have to be proven by anecdotal testimony" (citing *Dilts*, 267 F.R.D. at 636-38)). So, too, did *Sav-on* explain that where a defendant has no legal compliance program in operation, as here, that likewise supports a finding that classwide issues are common:

> The predominance of the defendant's class-wide [conduct] is evidenced by the fact that there is no compliance program that's ever existed …. The class-wide policy [of doing nothing to meet its duty of compliance] does not vary from store to store, or from employee to employee.

---

[4] "Manager's bonuses are based on four (4) items [including] … lowering payroll costs …. [K]eeping labor costs down … is probably the most pressure intense part of being a Brinker manager." 24PE6502:16-24.

[5] While not a class certification decision, *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949 (2005), which Brinker cannot meaningfully distinguish, illustrates the kinds of common evidence that can be presented to establish liability classwide.

Id. at 332. Brinker's own witnesses confirmed that Brinker did *nothing* to comply with California break laws—other than adopt a paper policy—and that it did *nothing* to audit compliance with the court-ordered injunction resulting from the DLSE settlement. *E.g.*, 2PE451:2-12, 21PE5936:9-16 (testimony of Brinker designee Joseph Taylor); 18PE4840-44 (DLSE settlement).

Brinker contends that the only common evidence in this case is a paper policy that Brinker claims complies with the law. Dukes Br. 7; Hernandez Answer 3-4, 20. However, *Sav-on* already rejected the argument that an employer can avoid classwide liability simply by having a written policy pledging fealty to its legal obligations, without regard to its actual practices. 34 Cal.4th at 337. Here, too, Brinker's "idealized" but unenforced written breaks policy has "little basis in reality." *Id.* An employer's duty to comply with the law "[does] not end with the mere promulgation of a rule. There [is] some duty of enforcement." *People v. Sheffield Farms-Slawson-Decker Co.*, 121 N.E. 474, 475 (N.Y. 1918), cited in *Martinez*, 49 Cal.4th at 69.

In short, substantial evidence supports the order certifying each of plaintiffs' claims. That order was well within the trial court's discretion.

B. Nothing in *Dukes* Precludes the Use of Statistical and Survey Evidence in an Appropriate Case

This Court has explicitly approved the use of representative and statistical evidence as a method of establishing classwide liability. As explained in *Sav-on*:

> California courts and others have in a wide variety of contexts considered pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate.

34 Cal.4th at 333. This holding is well-grounded in California law, having been recognized in *Lockheed*, 20 Cal.4th at 1096; *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 750 (2004); *Reyes v. Board of Supervisors*, 196 Cal.App.3d 1263, 1279 (1987); and *Stephens v. Montgomery Ward & Co.*, 193 Cal.App.3d 411, 421 (1987); and confirmed in many post-*Sav-on* decisions such as *Alch v. Superior Court*, 165 Cal.App.4th 1412, 1428 (2008); *Capitol People First v. Department of Developmental Services*,155 Cal.App.4th 676, 692-96 (2007); and *Estrada v. FedEx Ground Package System, Inc.*, 154 Cal.App.4th 1, 13-14 (2007).

For several reasons, *Dukes* does not compel a different result—especially in this case, where the proffered expert survey and statistical evidence was only a *part* of plaintiffs' showing that common questions predominate. *See* Part II.A.2, *supra*.

First, nothing in *Dukes* supports Brinker's assertion that expert survey and statistical proof is now categorically precluded in federal court class actions. *See* Dukes Br. 8. Although the U.S. Supreme Court found inadequate the particular statistical evidence presented (regression analyses designed to identify the gender impacts of subjective promotion decisions), it cited approvingly the use of statistical and anecdotal evidence to establish liability and fix damages in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), thus confirming that statistical and representative testimony may still be used in an appropriate case under Rule 23. 131 S.Ct. at 2552-56.[6]

Second, the *Dukes* "trial by formula" dicta was limited to the narrow question of whether back pay was "incidental" to injunctive relief under

---

[6] Courts accept such evidence because, when properly crafted by a qualified expert, surveys can capture reliable answers to any relevant question, including whether breaks were "waived." RBM46-47.

Rule 23(b)(2)—a subsection with no precise counterpart in §382. *Id*. at 2557. That discussion in *Dukes* arose in the unique context of a Title VII defendant's efforts to challenge individual class member claims in a special procedure that Title VII permits in pattern-and-practice discrimination cases. *Id*. at 2560-61 (citing 42 U.S.C. §2000e-5(g)(2)(A); *Teamsters*, 431 U.S. at 361). That discussion therefore has no bearing on this case.

In arguing otherwise, Brinker simply misreads *Dukes*, just as the district court misread *Dukes* in the unpublished decision, *Cruz v. Dollar Tree Stores, Inc.*, 2011 WL 2682967 (N.D. Cal. Jul. 8, 2011), which Brinker also cites. Many other courts, correctly reading *Dukes*, have had little difficulty granting class certification of wage and hour claims similar to those presented here. *See*, *e.g.*, *Delagarza*, 2011 WL 4017967; *Nguyen v. Baxter Healthcare Corp.*, No. 8:10-cv-01463-CJC-SS (N.D. Cal. filed Aug. 26, 2011) (copy attached); *Ugas v. H&R Block Enterprises, LLC*, 2011 WL 3439219 (C.D. Cal. Aug. 4, 2011); *Smith v. Ceva Logistics U.S., Inc.*, 2011 WL 3204682 (C.D. Cal. Jul. 25, 2011); *Ramos v. SimplexGrinnell LP*, ___ F.Supp.2d ___, 2011 WL 2471584 (E.D. N.Y. Jun. 21, 2011).

C. California Class Action Law is Governed by Code of Civil Procedure Section 382, Not Rule 23.

Even if *Dukes* were not readily distinguishable, it would still not be controlling. Whatever new standards *Dukes* may have announced for federal courts under Rule 23, this case involves California claims, in a California court, that were certified under the well-settled standards of §382. Rule 23 is a detailed, multi-part rule that requires specific procedures having no counterpart in §382, and the California Legislature has not amended §382 in response to Rule 23 or its revisions.

This Court is not bound by new U.S. Supreme Court cases construing Rule 23 any more than it is bound by cases construing other

federal rules or regulations that are not controlling under the Supremacy Clause. Historically, this Court has never hesitated to reject federal case law in favor of providing greater protections to California workers and consumers when appropriate to further the Legislature's intent.[7] Because state class certification procedures can and do differ widely from federal procedures, as the U.S. Supreme Court recognized in *Smith v. Bayer Corp.*, 131 S.Ct. 2368, 2377-78 (2011), decided just six days before *Dukes*, federal class certification cases are considered only "in the absence of controlling California authority," and then as "constructional aids" at best, *Southern California Edison*, 7 Cal.3d at 839.[8]

California class action jurisprudence has always been especially solicitous of the class action process. Unlike federal law, California has a

---

[7] *See Ramirez v. Yosemite Water Co.,* 20 Cal.4th 785, 798 (1999) ("where the language or intent of state and federal labor laws substantially differ, reliance on federal regulations or interpretations to construe state regulations is misplaced"); *see also Martinez*, 49 Cal.4th at 66 (rejecting federal definitions of "employ" and "employer" in favor of IWC definitions in effect since 1916 and 1947); *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal.4th 1028, 1057-59 (2005) (rejecting limitation on continuing violation doctrine for retaliation claims announced in *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 105 (2002) because adopting the federal rule "would mark a significant departure from the reasoning and underlying policy rationale of our previous cases"); *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 568, 570 (2004) (rejecting "catalyst" fee-shifting restriction of *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dept. of Health & Human Res.*, 532 U.S. 598 (2001), noting that "United States Supreme Court interpretation of federal statutes does not bind us to similarly interpret similar state statutes"); *Ketchum v. Moses*, 24 Cal.4th 1122, 1131, 1137 (2001) (rejecting limitation on fees multipliers in *City of Burlington v. Dague*, 505 U.S. 557, 567 (1992)); *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 592 (2000) (rejecting less protective federal "travel time" standard: "we decline to import any federal standard, which expressly eliminates substantial protections to employees, by implication").

[8] *Accord Green*, 29 Cal.3d at 145; *La Sala*, 5 Cal.3d at 872; *Vasquez*, 4 Cal.3d at 822; *Daar*, 67 Cal.2d at 709.

"'public policy which encourages the use of the class action device.'" *Sav-on*, 34 Cal.4th at 340 (quoting *Richmond*, 29 Cal.3d at 473). That policy "rests on considerations of necessity and convenience, adopted to prevent a failure of justice." *Daar*, 67 Cal.2d at 704. Consistent with that policy, this Court has been vigilant to protect against the exculpatory consequences of depriving employees of their right to prosecute their commonly held wage-and-hour claims on a class action basis. *See*, *e.g.*, *Gentry v. Superior Court*, 42 Cal.4th 443, 457 (2007).

III. CONCLUSION

For the reasons discussed above and in plaintiffs' prior briefing, substantial evidence supports the trial court's finding that common questions predominated with respect to each of plaintiffs' claims (including their injunctive relief claim, which Brinker has largely ignored). Consequently, the Court of Appeal's judgment should be reversed and the trial court's class certification order affirmed.

Dated: October 19, 2011

Respectfully submitted,

LORENS & ASSOCIATES, APLC
L. Tracee Lorens

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec

COHELAN KHOURY & SINGER
Michael D. Singer

THE TURLEY LAW FIRM, APLC
William Turley

ALTSHULER BERZON LLP
Michael Rubin

By _____
Kimberly A. Kralowec

Attorneys for Plaintiffs, Real Parties in Interest and Petitioners Adam Hohnbaum et al.

CERTIFICATE OF COMPLIANCE
WITH WORD COUNT REQUIREMENT

Pursuant to Rule of Court 8.520(d)(2), the undersigned hereby certifies that the computer program used to generate this brief indicates that the brief does not exceed 2,800 words, including footnotes.

Dated: October 19, 2011

Kimberly A. Kralowec

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ANNA NGUYEN, an individual, on behalf of herself and all others similarly situated, **Plaintiff,** **vs.** **BAXTER HEALTHCARE CORPORATION, a Delaware Corporation; and DOES 1 through 50, inclusive,** **Defendants.**	**Case No.: SACV 10-01436-CJC(SSx)** **ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION AND BACKGROUND

Plaintiff Anna Nguyen brought this action on behalf of herself other non-exempt manufacturing employees against her former employer, Defendant Baxter Healthcare Corporation ("Baxter") and its subsidiaries or affiliated companies ("Does 1 through 50") (collectively "Defendants"), alleging that Baxter violated California wage and hour and

unfair competition laws during a period beginning August 24, 2006 and continuing to the present.

First, she claims that Defendants violated California Labor Code Sections 226.7 and 512, as well as IWC Wage Order 1 by failing to provide a first meal period within the first five hours of an eight hour shift, or to provide compensation in lieu thereof. *See* Pl.'s 2d. Am. Comp. at 11. She claims that Defendants violated the same provisions by failing to provide a second meal period when employees worked for ten hours and by failing to provide compensation in lieu thereof. *See id.* As part of that claim she asserts that up until 2008, Defendants failed to accurately record when employees were given meal periods. *See id.*

Ms. Nguyen also claims that Defendants violated Labor Code Sections 226, 1174, and 1175 by failing to include information required by Section 226(a) on employee wage statements.[1] *See id.* at 14. Last, Ms. Nguyen claims that Baxter's Labor Code violations amount to a violation of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, et seq. *See* Pl.'s 2d Am. Compl. at 15. Ms. Nguyen, a former employee at Baxter's production facility in Irvine, California, seeks to represent a class of persons employed as non-exempt manufacturing employees at the same facility. Before the Court is Ms. Nguyen's Motion for Class Certification. For the reasons explained below, Ms. Nguyen's motion is GRANTED.[2]

---

[1] The wage statements provided to Baxter's non-exempt manufacturing employees failed "to include the shift differential hourly rate of pay, the total hours worked at the shift differential rate, compensation in lieu of untimely meal periods or non-provided second meal periods, the employer's address or the pay period start date on the wage statements provided to its non-exempt manufacturing employees." Pl.'s Mem. Supp. Mot. Class Certification at 6.

[2] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for August 29, 2011, at 1:30 p.m. is hereby vacated and off calendar.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 23(a) sets forth four requirements for maintenance of a class action. Under that rule, a class may only be certified if: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

In addition, the party seeking certification must show that the action falls within one of the three types of classes outlined in the subsections of Rule 23(b). In this case, Ms. Nguyen seeks certification pursuant to 23(b)(3), Pl.'s Mem. Supp. Mot. Class Certification at 7, which allows certification of cases in which "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

On this motion for class certification, Ms. Nguyen bears the burden of demonstrating that she has met the four requirements of Rule 23(a) as well as the predominance and superiority requirements of Rule 23(b)(3). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001), *amended by* 273 F.3d 1266 (9th Cir. 2001). And this Court may only certify the class if it is "'satisfied, after a rigorous analysis, that'" she has. *Wal-Mart Stores, Inc.*, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (quoting *General Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 161 (1982)); *see also Hanon v. Dataproducts Corp.*, 976 F.2d 497, 509 (9th Cir. 1992). Ms. Nguyen has not done so unless she has provided the Court with a sufficient basis to form a reasonable judgment on each Rule 23 requirement. *See Blackie v. Barrack*, 524 F.2d 891, 900–01 (9th Cir. 1975).

Although the district court generally accepts the allegations in a plaintiff's complaint as true, the certification decision "'generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'" *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2552 (quoting *Falcon*, 457 U.S. at 160). Conversely, the district court may not analyze any portion of the merits of a plaintiff's claims that do not overlap with the Rule 23 requirements. *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 594 (9th Cir. 2010) (en banc) ("[D]istrict courts retain wide discretion in class certification decisions . . . ."), *rev'd on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541). Ultimately, the decision to certify a class is left to the discretion of the district court. *See Desai v. Deutsche Bank Secs. Ltd.*, 573 F.3d 931, 937 (9th Cir. 2009); *Dukes*, 603 F.3d at 594.

III. DISCUSSION

A. Proposed Class and Sub-Classes

Ms. Nguyen seeks to divide her class into four sub-classes. These sub-classes reflect each of Ms. Nguyen's claims. They are:

> (1) All Non-Exempt Manufacturing Employees at Defendant's Irvine, California facility who received a 30 minute uninterrupted meal period more than five hours after the start of their work shifts and did not receive compensation of one hours pay in lieu thereof during the statutory period. ("Late meal Period Class");
>
> (2) All Non-Exempt Manufacturing Employees at Defendant's Irvine California facility who worked shifts of greater than ten hours and did not receive a second 30 minute uninterrupted meal period and did not receive compensation of one hours pay in lieu thereof during the statutory period. ("Second Meal Period Class");
>
> (3) All Non-Exempt Manufacturing Employees at Defendant's Irvine California facility who were not provided accurate itemized wage statements

> reflecting the shift differential hourly rate of pay; the total hours worked at the shift differential rate, compensation in lieu of untimely meal periods or non-provided second meal periods, the employer's address, or the pay period start dates during the statutory period. (Labor Code sec. 226 Class"); and
>
> (4) All Non-Exempt Manufacturing Employees at Defendant's Irvine, California facility who were subjected to Defendant's unlawful, unfair or fraudulent business acts or practices in the form of Labor Code violations regarding meal periods, second meal periods, and/or inaccurate itemized wage statements during the statutory period. ("Business and Professions Code sec. 17200 Class").

Pl.'s Mem. Supp. Mot. Class Certification at 2.

B. Rule 23(a) Requirements

Rule 23(a) has four requirements: numerosity, commonality, typicality, and adequacy. Each requirement is addressed below. Because the evidence and discussion for the two meal break sub-classes is the same, the Court will address the two sub-classes together.

1. Numerosity

Numerosity is satisfied where "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Ms. Nguyen seeks to certify a class consisting of 270–280 employees at Baxter's Irvine facility. Although Baxter contests other Rule 23 requirements, it does not genuinely dispute that Ms. Nguyen's proposed class satisfies the numerosity requirement. The numerosity requirement is met here, because it would be impracticable to join all of the members of the class.

2. Commonality

To satisfy the commonality requirement, the plaintiff must establish that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." *Wal-Mart Stores, Inc.* 131 S. Ct. at 2551. The "claims must depend on a common contention" and "[t]hat common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The commonality requirement overlaps with, but, is less rigorous than Rule 23(b)(3)'s predominance requirement. *Id.*

Ms. Nguyen's complaint and the putative class member's claims depend on a common contention, namely that Baxter employed uniform policies with respect to the meal breaks and wages of their non-exempt manufacturing employees at their Irvine facility. Specifically, with respect to the class's claims regarding meal breaks, Ms. Nguyen has shown that Baxter treated these workers uniformly. Employees on a production line went to lunch at the same time, as determined by the lead or supervisor. (Bosalet Dep. at 41.) Baxter used software which automatically deducted one 30 minute meal break per shift from all employees' time, without regard to whether a first meal break was late or missed, or whether a second meal break was required on a shift of more than 10 hours. (*Id.* at 40). Baxter has never paid out extra pay for a late or missed meal during the class period. (*Id.*) The written policy provided to the class members regarding meal breaks, which Ms. Nguyen asserts lacks required information until April 3, 2010,

was identical for all of the class members. (*Id.* at 45–53, 63–69; Pl. Ex. 4 at BAX000446–447; Pl. Ex. 5 at BAX000448.) This policy was uniform, was provided to new hires, and provided in online format to employees via an on-site learning center. (Bosalet Dep. at 64-69.) Unlike *Wal-Mart*, there appears no basis for finding that any of these actions were taken on an individual case-by-case basis, nor is the putative class so large and disparate that it was subject to a wide variety of supervisory practices which would require separate analysis. The record shows that Baxter employees at this facility were treated with sufficient uniformity to satisfy the commonality requirement for the meal break sub-classes.

With respect to wage statement subclass's claim, the Court finds that the commonality requirement is satisfied because the wage statements were identical for the class. (Bosalet Dep. 149.) If Ms. Nguyen's wage statement lacked required information and caused her to have to look to outside information and perform calculations to see if she was paid correctly, *see* Pl.'s Rep. Supp. Mot. Class Certification at 12 (showing that because the wage statements lacked the shift differential pay rate and the pay period beginning date, employees could not determine if they had been paid accurately based on the wage statement alone), every other class member's did as well. While it is true that to bring a suit under 226(e), an injury is required to recover damages, "a very modest showing will suffice". *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1306–07 (Cal. Ct. App. 2010) (citing *Wang v. Chinese Daily News, Inc.*, 435 F. Supp. 2d 1042 (C.D. Cal. 2006); *Elliot v. Spherion P. Work., LLC*, 572 F. Supp. 2d 1169 (C.D. Cal 2008)). In fact, in *Jaimez*, the court found that there was a sufficient showing to satisfy commonality and predominance even when "there [did] not appear to be any evidence in the record of [the plaintiff's] injury resulting from inaccurate paystubs." *Id.* While Ms. Nguyen will have to show an actual injury resulting from the noncompliant wage statments to prevail on the merits, her showing that any injury or injuries, if they occurred, were common to all class members will suffice. Ms. Nguyen asserts an injury

sufficient to satisfy the 226(e) showing, and that, because of the uniform wage statements, any injury is common. She satisfies the commonality requirement for this sub-class.

Finally, because the class's UCL claims derive from the conduct alleged in the other three sub-classes' claims, the commonality requirement is similarly satisfied for this sub-class as well. Ms. Nguyen, thus, satisfies the requirements for commonality for all four sub-classes.

3. Typicality

Ms. Nguyen's claims are sufficiently typical to satisfy Rule 23(a)(3). Under the requirement's "permissive standards," claims are typical if they are "reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Ms. Nguyen is a non-exempt manufacturing employees at Baxter's Irvine facility, as are all the other members of the putative class. As discussed in the commonality section, she was subject to all of the same policies, and suffered the same injuries of each sub-class.

Baxter asserts that Ms. Nguyen is not typical because she never had a late first meal break, and that she only worked two shifts of more than 10 hours. *See* Def.'s Opp'n Mot. Class Certification at 16–17. Baxter's first contention is not supported by the evidence. To support its assertion they cite to a portion of Ms. Nguyen's deposition where she provided the times when her shifts "normally" began, ended, and broke for meals and rest. (Nguyen Dep. at 31–36.) Ms. Nguyen's testimony gave a general description of her work routine. It does not establish that she received a meal break at the same time every day without exception or that she never received a late meal break.

Baxter next asserts that Ms. Nguyen is atypical because she only worked two ten-hour shifts. Def.'s Opp. Mot. Class Certification at 17. Missing from this assertion is a claim that Ms. Nguyen was given the appropriate meal breaks, or compensation on these shifts. Without such a showing, Baxter does not prove that Ms. Nguyen did not suffer the injury she asserts on behalf of this sub-class. Because Ms. Nguyen has shown that she was the same type of employee, was subject to the same policies, and suffered the same types of injuries as the members of each sub-class, she has satisfied the typicality requirement.

4. Adequacy

Under Rule 23(a)(4)'s adequacy requirement, Ms. Nguyen must establish that she "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In determining whether a proposed class representative will fairly and adequately protect the interests of the class, the Court asks two questions. First, do the proposed class representative and her counsel "have any conflicts of interest with other class members"? *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (citing *Hanlon*, 150 F.3d at 1020). Second, will the proposed class representative and her counsel "prosecute the action vigorously on behalf of the class?" *Id.* The competency of counsel is relevant to whether the class representative and her counsel will vigorously prosecute the action. *Hanlon*, 150 F.3d at 1021.

Ms. Nguyen satisfies the first prong of the adequacy inquiry because there is no evidence of conflicts of interest, and the parties do not dispute that there are conflicts. Ms. Nguyen satisfies the second prong because she has shown that she is an adequate plaintiff and she is represented by competent counsel. Ms. Nguyen is an adequate plaintiff because she has demonstrated a desire and willingness to pursue this action through participation in this suit, submission of a declaration and sitting through

deposition. Ms. Nguyen's counsel, James R. Hawkins, is an experienced wage an hour class action attorney, having participated in at least 23 wage and hour class actions suits as lead or co-lead counsel since 2002. (Hawkins Decl. at 2–8.)

Baxter challenges Ms. Nguyen's adequacy as a plaintiff for two reasons: that she does not want to be a class representative, and that she does not have sufficient knowledge to make her a competent class representative. Baxter asserts that Ms. Nguyen has shown that she does not want to be the class representative, because when asked, "You don't want to be representing all of the other current and former employees?," she answered, "That's correct, I don't." (Nguyen Dep. at 103.) However, later in the same deposition, Ms. Nguyen repeatedly affirms, and articulates on her own a desire to represent those similarly situated to her who want her to represent them. (*Id.* at 114–20.) She describes wanting to stand for those similar to her who are afraid to act themselves. (*Id.*) One answer in her deposition testimony notwithstanding, the evidence shows that Ms. Nguyen is willing and able to represent the class. She has participated in the suit up to this point, and provided both declarations and deposition testimony that show her desire to represent others similarly situated.

Baxter claims that, because Ms. Nguyen, in her deposition, indicated that she was unaware of activity outside of her production line and did not know whether others had problems with their wage statements, Ms. Nguyen has insufficient knowledge to make her an adequate representative. Def. Opp'n Mot. Class Certification at 17–18. To satisfy the adequacy requirement, no such knowledge is required of the class representative. To be sufficiently knowledgeable, a plaintiff must "understand[her] duties and [be] currently willing and able to perform them. The Rule does not require more." *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Ms. Nguyen's testimony cited above indicates that she understands

the nature of a class action suit, and her responsibilities as representative. Ms. Nguyen is, therefore, an adequate plaintiff.

Baxter finally claims that Ms. Nguyen's counsel is inadequate because of an alleged ethical violation. Baxter asserts that Ms. Nguyen's counsel contacted a prospective class member on the telephone and pretended to represent Baxter. Def. Opp. Mot. Class Certification at 18–19. However, the testimony offered to support the claim of unethical conduct does not establish that this occurred. Ha Tran testified that she does not remember who called her with enough certainty to establish it was Ms. Nguyen's counsel, (*See* Tran Dep. at 12, 44–48), and Ms. Nguyen's counsel denies ever making any such representations, *see* Pl.'s Reply Supp. Mot. Class Certification at 19. Ms. Nguyen and her counsel are adequate, and this requirement is satisfied.

C. Rule 23(b)(3) Requirements

Ms. Nguyen also seeks class certification on the basis that she satisfies the requirements of Rule 23(b)(3). Accordingly, she must satisfy the predominance and superiority requirements of that subsection.

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). It is similar to the commonality requirement of Rule 23(a)(3). *Id.* at 623 n.18. But predominance is a more rigorous requirement than the Rule 23(a)(3) commonality prerequisite. *Hanlon*, 150 F.3d at 1019. The "main concern in the predominance inquiry . . . [is] the balance between individual and common

issues." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir. 2009).

In this case, common issues underlying Ms. Nguyen's claims predominate. As discussed previously, the central issues raised concern policies and practices at a single facility applied with uniformly to all employees in the putative class. The evidence set forth in the commonality requirement section also sufficiently demonstrates that these common issues predominate. The only individualized determination apparent to the Court is, if Ms. Nguyen is able to prove that the claims are valid, on what occasions, if any, these injuries occurred to the class members, which is an issue of damages. However, "[t]he amount of damages is invariably an individual question and does not defeat class action treatment." *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975).

Baxter, asserts that individual issues predominate with respect to the 226 Class, because only Ms. Nguyen asserts an injury from the noncompliant wage statements. Baxter's argument regarding this class fails for the same reason that it failed for the commonality requirement. Ms. Nguyen has sufficiently shown that common issues predominate for this class because, by Baxter's own admission, all of the class members' wage statements were identical. Patti Ann Bosalet, Baxter's "Person Most Knowledgeable" had to perform fairly complicated calculations to properly analyze Ms. Nguyen's wage statement. (*See* Bosalet Dep. at 149–58.) The only individualized determination required would be the extent of the injury suffered by each class member. That would be an issue of damages, which, again, does not defeat class action treatment. *See Blackie*, 525 F.2d at 905.

2. Superiority

Ms. Nguyen must also demonstrate that a class action would be a superior method of resolving this controversy. A class action may be superior "[w]here classwide litigation of common issues will reduce litigation costs and promote grater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). It is also superior when "no realistic alternative" to a class action "exists." *Id.* at 1234–35. In deciding whether a class action would be a superior method for resolving the controversy, the Court considers factors including: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation and of the claims in the particular forum, and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D).

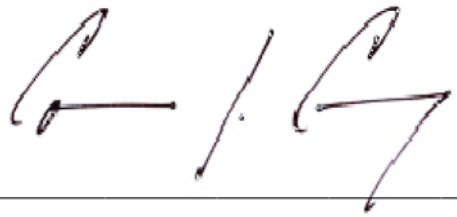
These factors favor classwide resolution of Ms. Nguyen claims. Class action litigation is certainly more efficient than litigating hundreds of nearly-identical claims. More important, given the nature of the class members' employment and the damages at issue for each plaintiff, individual litigation is not a realistic alternative, nor is there an alternative means of resolution outside the court. The class members in this instance would likely not have means to pursue individual, nearly identical claims given the amount of damages at stake for each plaintiff. There does not appear to be any other litigation related to this suit. The claims all allegedly occurred within the district and venue of this forum. Finally, because of the uniformity discussed previously, and the lack of individualized analysis required, it appears that the majority of the evidence in this case, other than proof of damages for each class member, will be common to all class members, and can largely occur from an examination of Baxter's records. Therefore,

there are not significant suit management difficulties. Ms. Nguyen has shown that class action is a superior method for resolving this controversy.

CONCLUSION

For the foregoing reasons, Ms. Nguyen's motion for class certification is GRANTED.

DATED: August 26, 2011



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 188 The Embarcadero, Suite 800, San Francisco, California 94105, whose principal attorney is a member of the State Bar of California and of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. SUPPLEMENTAL BRIEF RE *WAL-MART STORES, INC. V. DUKES*, 121 S.Ct. 2541 (2011); and
2. PROOF OF SERVICE.

☑ **By Mail**: I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited that same envelope with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

Counsel for Defendants and Petitioners Brinker Restaurant Corp. et al.	Karen J. Kubin, Esq. Morrison & Foerster, LLP 425 Market Street San Francisco, CA 94105

Counsel for Defendants and Petitioners Brinker Restaurant Corp. et al.	Rex S. Heinke, Esq. Joanna R. Shargel, Esq. Akin Gump Strauss Hauer & Feld LLP 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3012 Laura M. Franze, Esq. Hunton & Williams, LLP 550 South Hope Street, Suite 2000 Los Angeles, CA 90071-2627 M. Brett Burns, Esq. Hunton & Williams, LLP 575 Market Street, Suite 3700 San Francisco, CA 94105 Susan J. Sandidge, Esq. Hunton & Williams, LLP 1445 Ross Avenue, Suite 3700 Dallas, TX 75202
Trial Court Judge [Case No. GIC834348]	Hon. David B. Oberholtzer San Diego County Superior Court Hall of Justice, Department 67 330 W. Broadway San Diego, CA 92101
Court of Appeal [Case No. D049331]	Clerk of the Court California Court of Appeal Fourth Appellate District Davis Symphony Towers 750 B Street, Suite 300 San Diego, CA 92101

Counsel for Alameda County Central Labor Council, Bricklayers & Allied Craftworkers Local Union No. 3, California Conference of Machinists, Communications Workers of America, Contra Costa County Central Labor Council, Northern California Carpenters Regional Council, South Bay Central Labor Council, and United Food & Commercial Workers International Union Local 5, Amici curiae	David A. Rosenfeld William A. Sokol Theodore Franklin Patricia M. Gates Weinberg, Roger & Rosenfeld 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501-1091
Counsel for American Staffing Association, California Building Industry Association, California Hotel & Lodging Association, California Professional Association of Specialty Contractors, Western Growers Association, Contain-a-Way, Inc., National Association of Manufacturers, National Council of Chain Restaurants, National Retail Federation, and USA Waste of California, Inc., Amici curiae	Richard H. Rahm Littler Mendelson 650 California Street, 20th Floor San Francisco, CA 94108-2693 Julia A. Dunne Lena K. Sims Littler Mendelson 501 W. Broadway, Suite 900 San Diego, CA 92101-3577 Allan G. King Littler Mendelson 2001 Ross Avenue, Suite 1500, Lock Box 116 Dallas, TX 75201-2931
Counsel for American Trucking Association, Inc. and California Trucking Association, Amici curiae	Donald M. Falk Mayer Brown, LLP 3000 El Camino Real 2 Palo Alto Square, Suite 300 Palo Alto, CA 94306

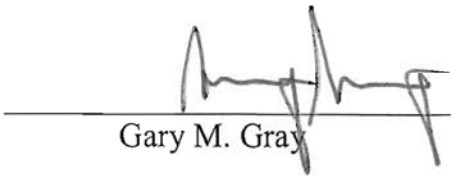
Counsel for Asian Law Caucus, Asian Pacific American Legal Center, Employment Law Center, Equal Rights Advocates, Impact Fund, Lawyers' Committee for Civil Rights, Legal Aid Society, Mexican American Legal Defense & Educational Fund, Public Advocates, and Women's Employment Rights Clinic of Golden Gate University, Amici curiae	Brad S. Seligman The Impact Fund 125 University Avenue, Suite 102 Berkeley, CA 94710
Counsel for Asian Pacific American Legal Center of Southern California, Bet Tzedek Legal Services, California Rural Legal Assistance Foundation, Centro Legal de la Raza, Employment Law Center Maintenance Cooperation Trust Fund, National Employment Law Project, Stanford Community Law Clinic, and Wage Justice Center, Amici curiae	Kevin Kish Bet Tzedek Legal Services 3435 Wilshire Blvd., Suite 470 Los Angeles, CA 90010 Clare Pastore USC Gould School of Law 699 Exposition Blvd. Los Angeles, CA 90089
Counsel for Associated General Contractors of California, Inc., Amicus curiae	John S. Miller, Jr. Dwayne P. McKenzie Cox, Castle & Nicholson, LLP 2049 Century Park East, Ste., 2800 Los Angeles, CA 90067-3284
Counsel for Association of Corporate Counsel, Sacramento Chapter/Association of Corporate Counsel, San Diego Chapter/Association of Corporate Counsel, San Francisco Bay Area Chapter/Assn. of Corporate Counsel, and Southern California Chapter/Association of Corporate Counsel, Amici curiae	Robert M. Pattison Joel P. Kelly JoAnna L. Brooks Timothy C. Travelstead Jackson Lewis LLP 199 Fremont Street, 10th Floor San Francisco, CA 94105-2249

Counsel for State Labor Commissioner Angela Bradstreet and Division of Labor Standards Enforcement, Amici curiae	Robert Raymond Roginson Department of Industrial Relations Division of Labor Standards Enforcement 455 Golden Gate Avenue, 9th Floor San Francisco, CA 94102
Barry Broad, Amicus curiae	Barry Broad Broad & Gusman LLP 1127 11th Street, Suite 501 Sacramento, CA 95814
Counsel for Morry Brookler, Amicus curiae	Ian Herzog Susan E. Abitanta Law Offices of Ian Herzog 233 Wilshire Boulevard, Suite 550 Santa Monica, CA 90401
Counsel for California Automative Business Coalition, Amicus curiae	Robin Lee Unander Law Office of Robin Lee Unander 924 Anacapa Street, Suite 21 Santa Barbara, CA 93101
Counsel for California Chamber of Commerce and Chamber of Commerce of the United State of America, Amici curiae	Theodore Boutrous Julian W. Poon Gibson Dunn & Crutcher, LLP 333 South Grand Avenue Los Angeles, CA 90071-3197
Chamber of Commerce of the United States of America, Amicus Curiae	Robin S. Conrad National Chamber Litigation Center, Inc. 1615 H Street, NW Washington, DC 20062
Counsel for California Employment Law Council, Amicus curiae	Paul Grossman Paul W. Cane, Jr. Katherine C. Huibonhoa Paul Hastings Janofsky & Walker LLP 55 Second Street, 24th Floor San Francisco, CA 94105

Counsel for California Employment Lawyers Association and Consumer Attorneys of California, Amici curiae	Bryan Jeffrey Schwartz Bryan Schwartz Law 180 Grand Avenue, Suite 1550 Oakland, CA 94612 David M. Arbogast Arbogast & Berns, LLP 19510 Ventura Blvd., Suite 200 Tarzana, CA 91356-2969
Counsel for California Hospital Association, California Restaurant Association, California Retailers Association, Employers Group, National Federation of Independent Business, Amici curiae	Richard Simmons Guylyn R. Cummins Sheppard Mullin Richter & Hampton, LLP 501 W. Broadway, 19th Floor San Diego, CA 92101-3598
Counsel for California Labor Federation, AFL-CIO, Amicus curiae	Charles P. Scully, II Donald C. Carroll Carroll & Scully, Inc. 300 Montgomery Street, Suite 735 San Francisco, CA 94104
Counsel for Childrens Hospital Los Angeles, Amicus curiae	Christine T. Hoeffner Ballard Rosenberg Gopler & Savitt, LLP 500 North Brand Boulevard, 20th floor Glendale, CA 91203-9946 Lawrence Foust Senior Vice President/General Counsel 4650 Sunset Blvd., Mailstop #5 Los Angeles, CA 90027
Counsel for Chinese Daily News, Inc., Amicus curiae	Yi-Chin Ho Michael M. Berger Benjamin Gross Shatz Andrew L Satenberg Manatt Philps & Phillips LLP 11355 West Olympic Blvd. Los Angeles, CA 90064-1631

Counsel for Civil Justice Association of California, Amicus curiae	Fred J. Hiestand Attorney at Law 2001 "P" Street, Suite 110 Sacramento, CA 95811-5232
Counsel for Employment Law Center, La Raza Centro Legal, Legal Aid Society, Southern California Coalition for Occupational Safety & Health, Watsonville Law Center, Worksafe Law Center, Amici curiae	Michael L. Smith Lora Jo Foo Danielle A. Lucido Worksafe Law Center 171 12th Street, 3rd Floor Oakland, CA 94607
Locker, Miles E., Amicus curiae	Miles E. Locker Locker Folberg LLP 235 Montgomery Street, Suite 835 San Francisco, CA 94104
Counsel for Gilbert Salazar and Saad Shammas, Amici curiae	Timothy G. Williams Pope Berger & Williams, LLP 3555 5th Avenue, 3rd Floor San Diego, CA 92103
Counsel for San Diego Regional Chamber of Commerce, Amicus curiae	Lee Burdick Higgs, Fletcher & Mack LLP 401 West "A" Street, Suite 2600 San Diego, CA 92101
Counsel for Technet, Amicus curiae	Fred W. Alvarez Michael D. Schlemmer Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304
Counsel for Rogelio Hernandez, Amicus curiae	Michael Rubin James Michael Finberg Eve Hedy Cervantez Danielle Evelyn Leonard Altshuler Berzon LLP 177 Post Street, Suite 300 San Francisco, CA 94108

Executed October 19, 2011 at San Francisco, California.



Gary M. Gray