

Juan Navas et al v. Fresh Venture Foods LLC et al.
Hearing Date:
Motion: Certify Class

Case No. 17CV02222
February 14, 2024

Plaintiffs have filed a motion for class certification pursuant Code of Civil Procedure section 382. Opposition was filed by FVF on November 20, 2023. Defendant Marisol Garcia Sandoval dba Central City Labor filed a joinder to the opposition and a supplemental opposition on that same date. Reply was filed on January 9, 2024. The court has considered all motion papers and a rigorously examined the record, and tentatively decides for the reasons stated below that plaintiffs' motion for class certification is DENIED. The court finds: (1) The questions of law or fact common to the class do not predominate over the questions affecting the individual members; and (2) a class action is not the superior means for adjudicating the claims because the individual issues presented by this case are unmanageable.

Factual Background

Plaintiffs Juan Navas, Martha Lopez Herrera, Benjamin Hernandez Ramos, Maria Zamora, Maria Julia Laines Diaz, and Carmelo Martinez filed a class action wage and hour complaint on May 19, 2017, against Fresh Venture Foods, LLC (FVF) and Marisol Garcia Sandoval dba Central City Labor. On September 18, 2017, Plaintiffs amended their wage and hour complaint to add a cause of action under the Private Attorneys General Act ("PAGA"). The FAC alleges: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay additional wages in lieu; (4) failure to provide rest periods or pay additional wages in lieu; (5) failure to pay wages of terminated or resigned employees; (6) failure to itemize wage statements; (7) failure to indemnify employees; (8) violation of unfair competition law; (9) PAGA claim. Plaintiffs include class action allegations in their complaint.

Proposed Classes

FVF operates an agricultural processing, cooling, and storage facility located in Santa Maria, CA. (Dodd Decl., ¶ 2.) Defendants engaged Plaintiffs and class members to work as non-exempt hourly employees. Prior to October 2017, FVF staffed certain non-exempt positions at its facility through CCL, a temp agency. (*Id.*, ¶ 3.) Since October 2017, FVF has mostly hired its own employees directly, rather than relying on agencies like CCL. (*Id.*) All six Plaintiffs are former employees of either FVF, CCL, or both. (Dodd Decl., ¶ 5.)

According to plaintiffs' declarations, class members were required to wear an assortment of special gear to protect themselves, including both latex and cloth

gloves, smocks, aprons, anti-slip shoes, eye protection, ear plugs, hardhats, etc. Because employees were processing food for human consumption, they also had to wear sanitary gear, such as hairnets and face masks. Accordingly, class members had to go through a tedious donning routine to get bundled up before even setting foot onto the work floor. Despite the time-consuming nature of this layering-up process, including decontamination procedures, Defendants failed to compensate class members for any of this time, and placed their timeclocks in locations such that clocking in (i.e., getting paid) only occurred after the donning process. Class members would arrive to the facility and swipe their ID badges to gain entrance, with those entry times being recorded in Defendants' security logs—this was their first required daily work task. Then, they would go to the locker areas and begin the elaborate process gearing up for work, beginning with changing into their work attire (i.e., latex and cloth gloves, anti-slip shoes, eye protection, ear plugs, etc.); disinfecting themselves; lining up to wait for smocks, aprons, hairnets, and masks to be distributed; donning those; and finally making their way over to the work area. Class members complain of this process taking anywhere from 15 to 30 minutes on any given day. Then, and only then, after they were fully equipped and ready to enter the refrigerated work area, were class members finally allowed to punch-in on the timeclock to begin getting paid for their daily work hours. Plaintiffs' expert analysis of the security and timekeeping data shows an average of 19.89 minutes of such unpaid time per shift.

The following are the proposed subclasses:

1. Unpaid Time Class

All non-exempt production workers¹ employed by Defendants within California from May 19, 2013 through the date of trial for whom Defendants' timekeeping records fail to pay for all time worked.

2. Meal Period Class

All non-exempt production workers employed by Defendants within California from May 19, 2013 through the date of trial who worked at least one shift greater than five hours.

3. Rest Period Class

All non-exempt production workers employed by Defendants within California from May 19, 2013 through the date of trial who worked at least 3½ hours on a shift.

¹ Although plaintiffs use "production workers" to define their subclasses, their expert analyzed class data for all non-exempt employees, not just employees working in specific departments, such as "production."

4. Reimbursement Class

All non-exempt production workers employed by Defendants within California from May 19, 2013 through the date of trial.

Plaintiffs estimate that the proposed classes amount to 1,233 production employees. (Woolfson Decl., ¶ 36.)² FVF estimates that the putative class is comprised of at least 1,895 current and former employees of FVF and/or CCL. (Taylor Decl., ¶ 11.)³

Objections to Evidence

1. Mallison Declaration

FVF objects to paragraphs 2 to 10 of the declaration of Stan Mallison on the grounds that Mr. Mallison has no personal knowledge of the facts testified to therein (Cal. Evid. Code § 702), and that he fails to lay any foundation (let alone a sufficient foundation) for his statements. (Evid. Code § 403.) FVF further objects that Mr. Mallison is not qualified to testify about the results of the expert analysis performed on behalf of his client. (Evid. Code § 720, subd. (a).)

These paragraphs describe defendant's business, the working conditions, the process of entering the facility and donning and doffing protective gear; the scheduling of meal and rest breaks; expert analysis and conclusions re the meal breaks; the process of doffing related to the meal periods; and the unreimbursed business expenses suffered by class members.

Mr. Mallison has no personal experience related to any of these matters. "[T]he testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter." (Evid. Code § 702, subd. (a).) This means witnesses can generally testify only about things they have personally seen or heard or otherwise experienced through their own senses. (Evid. Code § 702, Law Rev. Comm'n Comment.)

There is no opposition to this objection. It is therefore sustained. The court should note, however, that the information in Mr. Mallison's declaration is nevertheless otherwise available in the record, meaning the objection is not material, nor does it alter the analysis.

² Woolfson is plaintiffs' testifying expert in database analysis providing analysis of timekeeping and payroll records.

³ Taylor is FVF's testifying expert who was retained to evaluate and analyze relevant timekeeping and payroll data produced by FVF..

2. Woolfson Declaration

Expert opinion evidence may provide the basis for a plaintiff's arguments regarding numerosity, ascertainability, commonality, or superiority (or a defendant's opposition thereto). (*Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1120.) To understand how that works, an example may be useful. In *ABM Overtime Cases* (2017) 19 Cal.App.5th 277, the plaintiffs alleged that ABM applied a uniform payroll policy which compensated employees according to anticipated work schedules rather than for hours actually worked, leading to uncompensated time. In particular, ABM automatically deducted meal breaks regardless whether the employee took a meal break. In support, plaintiffs submitted (among other evidence) expert declarations from Aaron Woolfson, a provider of database services who analyzed certain timekeeping and payroll data maintained by ABM with respect to its employees. Woolfson determined that, of the 1,141,903 shifts greater than five hours that failed to show any time-out/time-in entries during the scheduled workday, 1,070,517 of those shifts (94 percent) nevertheless showed an automatic 30-minute meal period deduction. Further, there was no indication in the records that premium pay was ever provided for missed meal periods. The trial court sustained objection to Woolfson's testimony in part on the apparent understanding that it was not useful in determining the predominance issue.

The appellate court reversed and acknowledged that database analysis of timekeeping and payroll records cannot be used as a means to show common practices for purposes of class certification. Ultimately, it held that class certification was appropriate: "For instance, the legality of ABM's uniform payroll policy—which assumes each employee works his or her scheduled shift and takes any legally required meal breaks absent some type of exception report—is a legal question that can be determined by reference to facts common to all class members. Certainly, the evidence provided by Woolfson that a mere 5,625 of the 1,836,083 time entries for ABM Workers he investigated (0.3 percent) contained adjustments to pay calls into question the efficacy of ABM's asserted "timesheet maintenance" procedure, as does the evidence presented by plaintiffs that ABM does not generate exception reports for missed meals periods." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 310.)

The same expert, Aaron Woolfson, has been engaged in this matter to analyze the security and timekeeping data here. He asserts that based on such analysis, there is an average of 19.89 minutes of unpaid time per shift.

Of course, "[a]n expert opinion has no value if its basis is unsound." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770.) FVF objects to Woolfson's testimony. FVF uses a timekeeping system known as Kronos. Employees clock in and out of Kronos by holding up a badge in front of a timekeeping machine. The Kronos machine records the employee's badge number

and the time that the employee clocked in or out. The Kronos system then transmits that data over the internet to an online, cloud-based server. FVF then uses an online interface to view time punches and transfer the timekeeping data to payroll. (Dodd Decl., ¶ 20.)

According to FVF, it uses Bay Alarms for security purposes to control access to its premises and grant authorized employees access to certain restricted areas. The Bay Alarms system is not connected to the Kronos timekeeping system in any way. (Dodd Decl., ¶ 23.) The Kronos system is connected to the internet to calibrate its time; the Bay Alarms system is not. (Troxel Decl., ¶ 11-12.) Based on forensic computer expert's examination of the Bay Alarms system on October 23, 2023, the Bay Alarms system was running 26 minutes behind the Kronos system clock. (Troxel Decl., ¶ 14.) FVF argues "The plain and undeniable truth is that FVF's security time data is not a reliable record of the time that putative class members arrived at FVF's facility." (Objection, p. 4, ll. 2-3.)

Whether this forms the basis for exclusion (and it very well might), Woolfson's evidence is nevertheless irrelevant to the court's determination on predominance (see below). Contrary to the role Woolfson's evidence played in the *ABM* cases, the time the employee clocked in is irrelevant to the determinations related to whether FVF had a policy that the employee must don and doff their equipment off-the-clock. For that reason, the court does not rule on this objection as it is not material for purposes of resolution.

Legal Background

"Code of Civil Procedure section 382 authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court'" (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On Drug Stores*)). "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods." (*Id.*)

"On a motion for class certification, the plaintiff has the 'burden to establish that in fact the requisites for continuation of the litigation in that format are present.'" (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 654.) In reviewing a certification order, the court considers "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. [Citations.] 'Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question.'" (*Sav-On Drug Stores, supra*, 34 Cal.4th

at p. 327.) One valid reason for denying certification is sufficient. (*Ibid*; see also *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 143.)

Public policy encourages use of the class action device to enforce California's overtime laws. (See *Sav-on Drug Stores, Inc. v. Sup.Ct. (Rocher)* (2004) 34 Cal.4th 319, 340; *Vigil v. Muir Medical Group, IPA, Inc.* (2022) 84 Cal.App.5th 197, 212.) However, in an employment case, the trial court should not grant class certification if individualized inquiries into the particular nature of job duties or other issues would predominate, even if there is evidence of common job descriptions, common classification criteria, and common policies and procedures. (*Lampe v. Queen of the Valley Med. Ctr.* (2018) 19 Cal.App.5th 832, 841-842.)

“As ‘trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification.’” (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326.) Accordingly, ‘in the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed “unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]” [citation]. Under this standard, an order based upon improper criteria or incorrect assumptions calls for reversal “‘even though there may be substantial evidence to support the court's order.’” [Citations.] Accordingly, we must examine the trial court's reasons for denying class certification’ (*Linder* [, *supra*,] 23 Cal.4th [at pp.] 435–436) and ‘ignore any unexpressed grounds that might support denial.’ (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 844.) ‘We may not reverse, however, simply because *some* of the court's reasoning was faulty, so long as *any* of the stated reasons are sufficient to justify the order. [Citation.]’ (*Ibid.*)”

Analysis

1. Is the Class Sufficiently Numerous and Ascertainable

A class is sufficiently numerous if individual joinder of all plaintiffs is impracticable, and “no set number is required as a matter of law for the maintenance of a class action.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934.) The evidence has shown that plaintiffs’ proposed classes would include between 1,233-1,895 past and present employees. Individual joinder would clearly be impractical. Therefore, class treatment would be appropriate.

An ascertainable class exists after examining “(1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” (*Global Minerals v. Superior Ct.* (2003) 113 Cal.App.4th 836, 849.) In defining an ascertainable class, “the goal is to use terminology that will convey sufficient meaning to enable persons hearing it to determine whether they are members of the

class plaintiffs wish to represent.” (*Global Minerals v. Superior Ct.*, *supra*, 113 Cal.App.4th at 858.) A class is not ascertainable when the proposed class definition is so broad that it is impossible to distinguish those class members who have viable claims from those who are not. (*Miller v. Bank of America, N.A.* (2013) 213 Cal.App.4th 1, 7-8; *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 921 [certification “can be denied for lack of ascertainability when the proposed definition is overbroad and the plaintiff offers no means by which only those class members who have claims can be identified from those who should not be included in the class”].)

Here, the purported “reimbursement class” is not limited to workers who made a necessary business expenditure – and no method has been proposed to identify who made such a purchase. Further, as to the other three proposed subclasses, the class definitions are also overbroad because the donning and doffing claims depend on each employee’s job position and required protective equipment. (See discussion below.) Because not every category of person wears the same protective gear, they do not spend the same amount of time donning or doffing. Accordingly, there is no ascertainability to fit each category.

For these reasons, the class members—and individual subclasses—although numerous, are not ascertainable.

2. Is There a Well-Defined Community of Interest?

The second requirement for certification of a class action is a well-defined community of interest among the putative class members. (*Sav-On Drug Stores*, *supra*, 34 Cal.4th at p. 326.) The ‘community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Fireside Bank*, *supra*, 40 Cal.4th at p. 1089.) “The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” (*Sav-On Drug Stores*, at p. 326.) Based on the present record, there is not a well-defined community of interest because there are not predominate questions of law or fact.

“Predominance is a comparative concept.” (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99.) It “requires a showing ‘that questions of law or fact common to the class predominate over the questions affecting the individual members.’” (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th 402, 410.) “The ‘ultimate question’ the element of predominance presents is whether ‘the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*).)

“To assess predominance, a court ‘must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.’” (*Brinker, supra*, 53 Cal.4th at p. 1024.) The legal elements of the causes of action must be considered in determining whether common issues predominate. (*Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1116.) The court “must determine whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence.” (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 537; *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 398.) “In deciding whether the common questions ‘predominate,’ courts must do three things: ‘identify the common and individual issues’; ‘consider the manageability of those issues’; and ‘taking into account the available management tools, weigh the common against the individual issues to determine which of them predominate.’” (See *Ayala, supra*, 59 Cal.4th at p. 530 [the question at the class certification stage is “whether the operative legal principles, as applied to the facts of the case, render the claims susceptible to resolution on a common basis”].) “[T]he focus in a certification dispute is on what type of questions—common or individual—are likely to arise in the action.” (*Sav-On, supra*, 34 Cal.4th at p. 327.)

a. As Applied to Wage and Hour Cases

The Cal. Supreme Court's decision in *Brinker, supra*, 53 Cal.4th 1004, is our touchstone for analyzing whether common issues of law and fact predominate in a putative class action alleging employment policies in violation of the wage and hour laws. In *Brinker*, the plaintiffs sought certification of wage and hour claims on behalf of restaurant employees, including meal break, rest break, and off-the-clock claims. They alleged, among other things, the employer had a uniform rest break policy that violated the applicable wage order by not providing a required 10-minute rest break for employees who worked a minimum of three and a half hours, but less than four hours, and a second rest break for employees who worked more than six hours, but less than eight hours. (*Brinker, supra*, 53 Cal.4th at p. 1019.)

The Cal. Supreme Court affirmed the trial court's certification of the plaintiffs' rest break subclass, explaining “[c]lasswide liability could be established through common proof” the employer's uniform rest break policy violated the wage order. (*Brinker, supra*, 53 Cal.4th at p. 1033.) In reaching this conclusion, the *Brinker* court interpreted the wage order to require a 10-minute rest break for shifts exceeding three and a half hours, 20 minutes for shifts exceeding six hours, and 30 minutes for shifts exceeding 10 hours. (*Id.* at p. 1029.)

The *Brinker* court rejected the Court of Appeal's reasoning that individual issues predominated because the employer could only be liable upon a showing an

employee missed his or her break due to the company policy: “An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.... The theory of liability—that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law—is by its nature a common question eminently suited for class treatment.” (*Brinker, supra*, 53 Cal.4th at p. 1033.) The Cal. Supreme Court observed, “Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment.” (*Ibid.*)

By contrast, the *Brinker* court concluded that the trial court erred in certifying plaintiff’s off-the-clock subclass for which there was no evidence of a common policy or common method of proof. (*Brinker, supra*, 53 Cal.4th at pp. 1051-1052.) The Cal. Supreme Court explained, “The rest period claim involved a uniform Brinker policy allegedly in conflict with the legal requirements of the Labor Code and the governing wage order. The only formal Brinker off-the-clock policy submitted disavows such work, consistent with state law. Nor has [plaintiff] presented substantial evidence of a systematic company policy to pressure or require employees to work off-the-clock As all parties agree, liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring. [Citations.] Nothing before the trial court demonstrated how this could be shown through common proof, in the absence of evidence of a uniform policy or practice. Instead, the trial court was presented with anecdotal evidence of a handful of individual instances in which employees worked off-the-clock, with or without knowledge or awareness by [the employer’s] supervisors.” (*Id.* at pp. 1051-1052.)

In the wake of *Brinker*, the Courts of Appeal have repeatedly emphasized that a trial court should focus on plaintiffs’ theory of liability, rather than the merits or defenses, in determining whether common issues predominate. (See, e.g., *Hall, supra*, 226 Cal.App.4th at p. 289 [“the court must ‘focus on the policy itself’ and address whether the plaintiff’s theory as to the illegality of the policy can be resolved on a classwide basis”]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (*Benton*) [“the proper inquiry is ‘whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment’ ”]; *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1141, 1150 (*Bradley*) [“In ruling on the predominance issue in a certification motion, the court must focus on the plaintiff’s theory of recovery and assess the nature of the legal

and factual disputes likely to be presented and determine whether individual or common issues predominate.”].)

If a plaintiff's theory is based on a common unlawful policy, evidence that some employees were treated differently does not defeat certification; rather, class members may individually have to prove their damages. (*Hall, supra*, 226 Cal.App.4th at p. 289 “[W]here the theory of liability asserts the employer's uniform policy violates California's labor laws, factual distinctions concerning whether or how employees were or were not adversely impacted by the allegedly illegal policy do not preclude certification.”); *Benton, supra*, 220 Cal.App.4th at p. 726 [“the fact that individual inquiry might be necessary to determine whether individual employees were able to take breaks despite the defendant's allegedly unlawful policy (or unlawful lack of a policy) is not a proper basis for denying certification”]; *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235 (*Faulkinbury*), disapproved on another ground by *Noel, supra*, 7 Cal.5th p. 986, fn. 15 [“[T]he employer's liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages, and ‘[t]he fact that individual [employees] may have different damages does not require denial of the class certification motion.’”].)

Significantly, in *Brinker, Hall, Benton, Faulkinbury*, and *Bradley*, the plaintiffs pleaded and presented substantial evidence of a uniform policy or practice they alleged to be unlawful. (*Brinker, supra*, 53 Cal.4th at p. 1033; see *Hall, supra*, 226 Cal.App.4th at p. 292 [employer did not dispute it did not allow its cashier/clerks to sit while they performed checkout functions at register, which plaintiffs alleged violated wage order requirement to provide suitable seating]; *Benton, supra*, 220 Cal.App.4th at pp. 707-710 [plaintiffs submitted more than 40 employee declarations and other evidence showing employer failed to adopt meal and rest break policy and employees could rarely take full breaks]; *Faulkinbury, supra*, 216 Cal.App.4th at p. 233 [evidence established employer had uniform policy of requiring all security guard employees to take paid, on-duty meal breaks]; *Bradley, supra*, 211 Cal.App.4th at p. 1150 [plaintiffs presented evidence of employer's uniform practice of failing to provide or authorize required meal and rest breaks and evidence employees did not take required breaks].)

In cases where there is a dispute as to whether there is a uniform unlawful policy it may be necessary for the trial court to weigh the evidence at the certification stage for the purpose of making the threshold determination whether there is substantial evidence of a uniform policy or practice for the purpose of determining whether common issues predominate. (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 991 (*Dailey*) [“We see nothing inappropriate in the trial court's examination of the parties' substantially conflicting evidence of [the employer's] business policies and practices and the impact those policies and practices had on the proposed class members.... We therefore infer the trial court ...

weighed the parties' conflicting evidence for the sole, entirely proper, purpose of determining whether the record sufficiently supported the existence of predominant common issues provable with classwide evidence"]; see *Brinker, supra*, 53 Cal.4th at p. 1025 ["To the extent the propriety of certification depends upon disputed threshold legal or factual questions, a court may, and indeed must, resolve them."]; *Sav-on, supra*, 34 Cal.4th at pp. 328-329 [substantial evidence supported trial court's determination common issues predominated where record contained substantial, although disputed, evidence that employer had policy and practice to deliberately misclassify workers as exempt employees].)

Even if the existence of a uniform policy is not in dispute, the trial court may consider the evidence to determine whether the defendant's liability under the policy is susceptible to common proof. (See *Brinker, supra*, 53 Cal.4th at p. 1033 ["Classwide liability could be established through common proof if [plaintiff] were able to demonstrate that [the employer] under this uniform policy refused to authorize and permit a second rest break for employees working shifts longer than six, but shorter than eight, hours."].) In these circumstances, a trial court is not deciding whether employees "were able to take breaks despite the defendant's allegedly unlawful policy" (*Benton, supra*, 220 Cal.App.4th at p. 726), but rather, whether "the evidence supports the conclusion that individual questions would predominate in the proof of liability, not just damages." (*Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 843.)

An example of how this weighing process works may be helpful. In *Dailey*, the plaintiff sought certification of a class of auto center managers and assistant managers at Sears and alleged that notwithstanding their classification as exempt employees, Sears implemented policies and procedures which had the effect of requiring them to spend the majority of their time on nonmanagerial, nonexempt work thus entitling them to meal and rest periods, and that Sears failed to provide them with uninterrupted meal and rest periods. (*Dailey, supra*, 214 Cal.App.4th at p. 981.) In support of his argument that he could prove "both the existence of Sears's uniform policies and practices and the alleged illegal effects of Sears's conduct" on a classwide basis, the plaintiff submitted class member declarations and deposition testimony purporting to demonstrate that Sears's policies caused class members to spend the majority of their time on non-exempt tasks. (*Id.* at p. 989.) Sears submitted its own declarations and deposition testimony of class members and managers to show that the alleged policies and practices either did not exist, or did not have the uniform, illegal effect of requiring class members to perform non-exempt work. (*Id.* at p. 993.) In a brief order, the trial court denied certification on the ground that individual issues predominated. (*Id.* at p. 985.)

On appeal, the plaintiff argued that the trial court had improperly "focused on the merits" of his claims, asserting that he did not need to prove that uniform policies and procedures actually existed, but only that if they existed, liability could

be established on a classwide basis. (*Id.* at p. 990.) The *Dailey* court rejected plaintiff's argument, finding that “[c]ritically, if the parties' evidence is conflicting on the issue of whether common or individual questions predominate (as it often is and as it was here), the trial court is permitted to credit one party's evidence over the other's in determining whether the requirements for class certification have been met—and doing so is not . . . an improper evaluation of the merits of the case.” (*Id.* at p. 991.) The *Dailey* court concluded that the trial court properly exercised its discretion when it “credited Sears's evidence indicating that highly individualized inquiries would dominate resolution of the key issues in this case.” (*Id.* at pp. 991–92.)

b. How are Common Issues Proved

“Plaintiffs' burden on moving for class certification ... is not merely to show that some common issues exist, but, rather, to place substantial evidence in the record that common issues predominate.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1108.) Substantial evidence is evidence that “is not ‘qualified, tentative and conclusionary’ [citation] but, rather, ‘of ponderable legal significance ... reasonable in nature, credible, and of solid value.’ ” (*Sav-On Drug Stores, supra*, 34 Cal.4th at p. 329.)

California courts consider “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.” (*Sav-On Drug Stores, supra*, 34 Cal.4th at p. 333.)

Proof of uniform policies “are of the sort routinely, and properly, found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at p. 1025, 1033; see also *Faulkinbury v. Boyd Associates* (2013) 216 Cal.App.4th 220, 233 [plaintiff's theory of recovery for meal period violations was based on employer's uniform policy, the lawfulness of which could be determined on a classwide basis] (*Boyd.*.) The policies may be express written policies, as in *Brinker* or undisputed practices, as in *Boyd*. (*Boyd, supra*, 216 Cal.App.4th at 237.) Moreover, having no policy can be used as common proof of a uniform policy that may violate California wage and hour laws. (*Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725-726; *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1149-1150 [no “material distinction” between an “express meal and break policy” and the “lack of a policy . . .” [emphasis in original].])

Proof of structural barriers to compliance with uniform policies is also available, such as scheduling policies, work requirements and procedures, payroll records, and class member declarations, to show that a uniform environment existed in which class members felt pressured to forgo their meal and rest breaks.

(Cabraser, California Class Actions and Coordinated Proceedings (2d ed.) § 19.01 [3] (Matthew Bender 2021).)

The trial court has “discretion to credit plaintiffs' evidence on [commonality and predominance] over defendant's, and [the reviewing court has] no authority to substitute [its] own judgment for the trial court's respecting this or any other conflict in the evidence.” (*Sav-on, supra*, 34 Cal.4th at p. 331; see *Mora v. Big Lots Stores, Inc.* (2011) 194 Cal.App.4th 496, 512 (*Mora*).)

c. Analysis

i. 1st Cause of Action: Failure to Pay Minimum Wages

California law requires employers to pay employees for all hours worked, and the Industrial Wage Commission (IWC) wage orders largely define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (See Cal. Code Regs., tit. 8, § 11040, subd. 2(K); *Morillion v. Royal Packing Company* (2000) 22 Cal.4th 575, 581 (*Morillion*) [all 15 wage orders contain same definition of hours worked, with exception of two which include additional language].)

Plaintiffs allege that FVF did not pay them minimum wages. Specifically, plaintiffs allege that the Unpaid Time Class were “required to work “off the clock” by, for example, arriving early to get into the facilities, don their protective gear before clocking in for the beginning of their shift and then doff their protective gear and exiting the facilities after clocking out — this process was also applicable for meal periods.” (First Amended Complaint (FAC), ¶ 42.)⁴ Plaintiffs ultimately assert that the question whether the unpaid time between security swipes and time clock punch-ins is a common one for the class. (See Motion, p. 14, ll. 5-6.)⁵ Plaintiffs argue that the common proof of FVF’s wage and hour violations can be found in their electronic timekeeping records, written wage and hour policies, class member

⁴ The parties raise no question whether time spent “donning and doffing” protective gear is compensable. In any event, the law seems clear. (See *IBP, Inc. v. Alvarez* (2005) 546 U.S. 21, 30 [“[A]ctivities, such as the donning and doffing of specialized protective gear, that are ‘performed either before or after the regular work shift, on or off the production line, are compensable under the portal-to-portal provisions of the Fair Labor Standards Act if those activities are an integral and indispensable part of the principal activities for which covered workmen are employed and are not specifically excluded by Section 4(a)(1).’ ”].)

⁵ The Proposed Definition of Unpaid Time Class is as follows: “All non-exempt production workers employed by Defendants within California from May 19, 2013 through the date of trial for whom Defendants’ timekeeping records fail to pay for all time worked.” This definition will also capture putative class members who do not don and doff protective equipment and thus is arguably overbroad in any event.

declarations, and testimony from FVF's "person most qualified" (PMQ or PMK)⁶ witnesses.

There is no express written policy offered to support plaintiffs' position. Instead, they offer the declarations of all six proposed class representatives and six putative class members, all of whom state (with some variation) that they were required to swipe their ID badges to gain entrance; they would then go to the locker area and don their work attire (which varied based on position); disinfected themselves; lined up to wait for smocks, aprons, hairnets, and masks to be distributed; donned those; and finally made their way over to the work area. After they were fully equipped and ready to enter the refrigerated work area, employees would punch-in on the timeclock. According to the declarations, this process took anywhere from 15 to 30 minutes on any given day. (Mallison Decl., Exhs. 3-12, and 14-15.)⁷ According to the declarants, the machines which were used to clock-in and out, were located inside the production area - an area they were allowed to access only after putting on our protective gear when arriving for their shifts. (Mallison Decl., Exhs. 3-12, and 14-15, ¶ 8, 9, or 10.) In addition, Aaron Woolfson, plaintiffs' expert, analyzed the security and timekeeping data and concludes there is an average of 19.89 minutes of unpaid time per shift. (Woolfson Decl., ¶ 38, attached to Mallison Decl. as Exh. 1.)

FVF argues that there is no such policy or practice and even if there was, common issues do not predominate because some of its employees do not need to wear protective gear and for those who do, the gear varies based on position. In any event, the amount of time it takes putative class members to don and doff work equipment is widely variable. FVF submits evidence that its written policies expressly state non-exempt employees are required to clock in before performing any work, and to clock out only after they have stopped working. (Employee Handbook (2013), App. Ex. 1, p. 13; Employee Handbook (2016) Ex. 2, p. 23). Both policies are largely the same and read as follows:

⁶ A deposition can be taken of any entity—corporation, partnership, governmental agency, etc.—by examining an officer or agent designated to testify on its behalf. (Code Civ. Proc. § 2025.010.) These are often referred to as person most knowledgeable (PMK) or person most qualified (PMQ) depositions.

⁷ All of plaintiffs' evidence is attached to the declaration of plaintiffs' attorney, Stan Mallison. It is 488 pages long and incorrectly bookmarked. Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit. (Calif. Rules Court, rule 3.1110(f).) Bookmarks are not only required by law, they are critical to efficient navigation of electronic documents, particularly in a case such as this one, where documents are essential to an understanding of the case.

TIMECARDS

Every non-exempt (hourly) employee has the responsibility to record every shift worked (time and time out) and meal period taken on the employee timecard. Each timecard must show the exact time worked, the meal periods taken, and include the employee's signature. You may not begin working until you have "clocked in." Working "off the clock" for any reason is considered a violation of Company policy and will subject you to discipline. It is the employee's responsibility to make sure the information on the time card is correct. Falsifying your timecard in any way is dishonest and may lead to immediate termination.

This policy is helpful as far as it goes, but it does not expressly address whether "donning and doffing" or the unpaid time between security swipes and time clock punch-ins is considered "working." FVF submits evidence that it always instructs employees to always clock in prior to donning equipment and that it has installed numerous timeclocks throughout its facility to ensure that non-exempt employees can easily clock in before performing any work tasks, including donning or doffing. (Dodd Decl., ¶ 21.) FVF also submits evidence from 34 current and former employees, all of whom deny donning and doffing while off the clock. (Defense Exhibits 97-125, 127-131.) They all state to the effect: "I know that I am not expected or required to spend any time putting on or taking off protective clothing or equipment while I am not clocked in." (*Id.*)⁸ Twelve of the declarants state: "The time clocks are located at a place where I can easily clock in before I put on my protective equipment and where I can easily clock out after removing it." (*Id.*) FVF submits evidence that employees working in many areas of the FVF facility – including the warehouse, shipping/receiving, maintenance, and admin/HR work

⁸ Plaintiffs urge the court to consider these declarations with a "grain of salt." Precertification statements by potential class members "must be carefully scrutinized for actual or threatened abuse," and courts have discretion to strike or discount statements that "were obtained under coercive or potentially abusive circumstances." (*Barriga v. 99 Cents Only Stores LLC* (2020) 51 Cal. App. 5th 299, 307-308.) Some federal district courts have "concluded an ongoing employer-employee relationship between the class opponent and putative class members is inherently conducive to coercive influence." (*Barriga, supra*, 51 Cal.App.5th at p. 326.) But "the mere existence of a potentially or inherently coercive relationship is insufficient to support an order" striking employee declarations or "severely discounting the weight to be given those declarations." (*Id.* at p. 327.) On the other hand, "a compelling showing that the employees were misled or that the declarations were not freely and voluntarily given will suffice." (*Ibid.*) Here, each declarant avers that the declaration was "given voluntarily and I have not been promised any benefit in exchange for my testimony, coerced or threatened in any way in exchange for the testimony in this declaration." Plaintiffs speculate that the declarations were given during work hours, thus suggesting that class members were paid for their testimony or at least enjoyed the break from their work, thus effectively undermining their credibility. They argue these declarations should therefore be afforded very little weight, if any. However, plaintiffs provide no *evidence* of coercion or improper incentives. Notably, plaintiffs did not move to strike these declarations, which was how the issue was framed in *Barriga*. Absent evidence suggesting coercion or abuse and in light of the declarants' affirmative denials of such, the court declines plaintiffs' invitation to discount their value.

areas – are not subject to specialized safety or sanitation requirements or protocols. (Dodd Decl., ¶ 14; Defendants Exh. 111, ¶ 7; 116, ¶ 8.)

In *Brinker*, the plaintiff also moved to certify an “off the clock” class. There, plaintiff contended that Brinker required employees to perform work while clocked out during their meal periods; they were neither relieved of all duty nor afforded an uninterrupted 30 minutes and were not compensated. Plaintiff’s evidence included numerous declarations from proposed class members asserting that Brinker had failed to provide individuals with meal and rest breaks or provided breaks at allegedly improper times during the course of an employee’s work shift. He also submitted survey evidence of ongoing meal and rest break violations. Brinker submitted evidence that it did not suffer or permit off-the-clock work, and any such off-the-clock work would require individualized employee-by-employee proof. Brinker submitted hundreds of declarations in support of its opposition to class certification.

The Cal. Supreme Court observed:

“Unlike for the rest period claim and subclass, for this claim neither a common policy nor a common method of proof is apparent. The rest period claim involved a uniform Brinker policy allegedly in conflict with the legal requirements of the Labor Code and the governing wage order. The only formal Brinker off-the-clock policy submitted disavows such work, consistent with state law. Nor has [plaintiff] presented substantial evidence of a systematic company policy to pressure or require employees to work off-the-clock, a distinction that differentiates this case from those he relies upon in which off-the-clock classes have been certified. [Citations omitted.]

Moreover, that employees are clocked out creates a presumption they are doing no work, a presumption [plaintiff] and the putative class members have the burden to rebut. As all parties agree, liability is contingent on proof Brinker knew or should have known off-the-clock work was occurring. (*Morillion v. Royal Packing Co.*, *supra*, 22 Cal.4th at p. 585, 94 Cal.Rptr.2d 3, 995 P.2d 139; see, e.g., *White v. Starbucks Corp.* (N.D.Cal.2007) 497 F.Supp.2d 1080, 1083–1085 [granting the defense summary judgment on an off-the-clock claim in the absence of proof the employer knew or should have known of the employee’s work].) Nothing before the trial court demonstrated how this could be shown through common proof, in the absence of evidence of a uniform policy or practice. Instead, the trial court was presented with anecdotal evidence of a handful of individual instances in which employees worked off-the-clock, with or without knowledge or awareness by Brinker supervisors. On a record such as this, where no substantial evidence points to a uniform, companywide policy, proof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked

off the clock, how long they worked, and whether Brinker knew or should have known of their work.”

(*Brinker, supra*, 53 Cal.4th at 1051-1052—affirming decertification order.)

In short, absent a written or express policy, the individualized assessment necessary to ascertain whether there is liability—that is, any employees who were told to work ‘off-the-clock’—would not be susceptible to common proof. Despite testimony from several employees that FVF required off-the-clock donning and doffing, another body of testimony from putative class members describes on-the-clock donning and doffing.⁹ Plaintiffs’ evidence does not indicate who told them they had to don their protective equipment before they clocked in or doff after they clocked out or whether any such directive could be derived from a companywide policy. Although plaintiffs suggest that they were only able to clock in after they had donned their protective gear due to the location of the timeclocks, there is again another body of testimony that suggests that is not the case. Aside from the lack of a common policy, there are individualized inquiries related to the donning and doffing itself. (See *Robbins v. Phillips 66 Company* (N.D. Cal. 2022) 343 F.R.D. 126, 132 [Phillips also persuasively critiques Plaintiffs’ inability to determine donning on a classwide basis. How much time did each employee spend donning PPE, which varied by position and unit?¹⁰ How often did they don off the clock? No standardized records are available to help answer these questions. Finding answers would require many individualized inquiries.”].) Not all employees are required to wear the same protective equipment. Dressing and removing the equipment took place in different locations at different times, required more time of one employee than another, and employees became more efficient over time. To the extent Woolfson’s evidence is intended to provide an inference that the employees arrived early to don their protective equipment, the court rejects it as it is too speculative.

For these reasons and based on the entire record, the plaintiffs have not carried their burden to show the predominance of common questions.

ii. 3rd Cause of Action: Failure to Provide Meal Periods or Compensation in Lieu

In California, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . .” (IWC Wage Order No. 7 §11(A); see also Lab. Code § 226.7.) Also, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day

⁹ Plaintiff Laines’s declaration (offered by plaintiffs) is contradicted by her deposition testimony in which she testified “[s]ometimes I would [clock in before putting on equipment] and sometimes not until I had my equipment on.” (Defense App. Ex. 91, 58:12-18.)

¹⁰ This answer varied even among the putative class member declarations submitted by plaintiff.

without providing the employee with a second meal period of not less than 30 minutes” (Lab. Code § 512.) In order to satisfy its obligation to “provide” meal periods, an employer must (1) “relieve[] its employees of all duty,” (2) “relinquish control over their activities,” (3) “permit[] them a reasonable opportunity to take an uninterrupted 30-minute break,” and (4) must not “impede or discourage employees from” taking an uninterrupted 30-minute break. (*Brinker, supra*, 53 Cal.4th at 1040.)

Plaintiffs argue that the requirement to don and doff protective gear during meal breaks is a plain and unambiguous violation of the class members rights to be relieved of duty for a full, uninterrupted 30-minutes. The claim suffers from the same issues identified above. There are conflicting reports from the putative class members regarding whether they were required to clock out before or after taking off protective gear. (Compare Mallison Decl., Exhs. 3-12, and 14-15—plaintiffs and putative class members declare they were required to clock out for meal periods before taking off protective gear; Defense Exhibits 97-125, 127-131—putative class members who wear protective gear declare they remove all protective clothing and equipment before clocking out for lunch.) In any event, the same individualized assessment identified above remain an issue for this subclass. For those reasons, the plaintiffs have not carried their burden to show the predominance of common questions.

iii. 4th Cause of Action: Failure to Provide Rest Periods or Compensation in Lieu

California Labor Code section 226.7(b) and IWC Order No. 7 provide that non-exempt employees must be provided with a ten-minute rest period for every four hours, or major fraction thereof, worked, with the exception that a rest period need not be provided if the total number of hours worked is less than three and a half hours. Here, plaintiffs’ argue that defendants’ donning and doffing requirements encroached on class members’ rest break time in the same manner as it did with their meal periods. They argue that although class members were provided 15-minutes of rest break time, that extra five minutes did not afford sufficient time to doff all that protective gear, walk to the rest break area, and then repeat the entire process in reverse.

For the same reasons cited above, the plaintiffs have not carried their burden to show the predominance of common questions.

iv. 7th Cause of Action: Failure to Indemnify Employees for All Necessary Expenditures

Labor Code section 2802 (a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in

direct consequence of the discharge of his or her duties...” A class action may be based on an employer's failure to reimburse these “necessary expenditures.” (*Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 12—claim that shipper improperly classified 209 delivery truck drivers as independent contractors whom it failed to reimburse for work-related expenses properly brought as class action; see *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 576 (claims by outside sales reps who were not reimbursed for automobile expenses); but see *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1344-1345—class certification denied on ground that common questions did not predominate where plaintiffs claimed employer required them to purchase employer's merchandise and travel between employer's retail locations without mileage reimbursement.)

Plaintiffs argue there are common factual question as to whether the basic working conditions at the sole facility which defendants maintained required class members to obtain protective gear and equipment (e.g., latex and cloth gloves, smocks, anti-slip shoes, eye protection, ear plugs, hairnets, etc.), whether FVF required class members to shoulder the burden to incur such expenses themselves, and whether FVF ultimately provided reimbursement for same.

Plaintiffs have not put forth any evidence that FVF has an express uniform policy or practice that leads to a non-compliant failure to reimburse. Plaintiffs and putative class members assert that they have incurred unreimbursed business expenses. (See Mallison Decl., Ex. 3, Carrillo Decl. ¶ 8; Ex. 4, Esquivel Decl. ¶ 8; Ex. 5, Gonzales Decl. ¶ 8; Ex. 6, Hernandez Decl. ¶ 8; Ex. 7, Lopez Decl. ¶ 8; Ex. 8, Martinez Decl. ¶ 9; Ex. 10, Navas Decl. ¶ 8; Ex. 11, Ordaz Decl. ¶ 8; Ex. 12, Zamora Decl. ¶ 9; Ex. 15, Contreras Decl.) Other putative class members, however, either testify that they did not incur any expenses (Defendant's App. Ex. 98, ¶ 4; App. Ex. 121, ¶ 17; App. Ex. 122, ¶ 13; App. Ex. 123, ¶ 13; App. Ex. 124, ¶ 16; App. Ex. 129, ¶ 11; App. Ex. 130, ¶ 13;), or were reimbursed for expenses they did incur. (App. Ex. 125, ¶ 16; App. Ex. 131, ¶ 12.)

Employees were required to wear non-slip shoes to work. (See Ex. 2, Dodd Depo. at 71:18-20.) This is not a violation of California law. (*Townley v. BJ's Restaurants, Inc.* (2019) 37 Cal.App.5th 179, 185 [cost of required black, slip-resistant, close-toed shoes “does not qualify as a ‘necessary expenditure’” under Labor Code section 2802 where shoes are generally usable outside of work].) Employees required to wear non-slip shoes at FVF can either use non-slip boots or overshoes provided by FVF, or wear their own non-slip shoes. (Dodd Decl., ¶ 17.)

In *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1357-58, the court declined to certify reimbursement claims, finding that resolving those claims “would require individualized inquiries to address numerous issues including: (1) what, if anything, the manager told the employee regarding reimbursement; (2) whether

each ... expense was necessary and a direct consequence of the discharge of the employee's job duties; (3) whether the employee sought reimbursement of that expense in compliance with the procedures set forth in [the] reimbursement policy; and (4) whether the employee was in fact reimbursed for that expense.” The same is true here. The plaintiffs have not carried their burden to show the predominance of common questions.

In conclusion, this case involves highly individualized inquiries that would dominate resolution of the key issues in the case. Common issues of law and fact do not predominate in this matter.

3. Superiority

In addition to demonstrating there is a sufficiently numerous, ascertainable class and a well-defined community of interest, plaintiffs seeking class certification must demonstrate that certification will provide substantial benefits to the litigants and the court, that is, that proceeding as a class is superior to other methods. (*Fireside Bank, supra*, 40 Cal.4th at p. 1089.)

As discussed earlier, determining plaintiffs’ claim will necessarily require individualized inquiries. In *Duran v. U.S. Natl. Bank* (2014) 59 Cal.4th 1, 27, the Supreme Court made it clear that a trial court ruling on class certification must consider how the determination of factual and legal issues can be effectively managed: “[A] misclassification claim has the potential to raise numerous individual questions that may be difficult, or even impossible, to litigate on a classwide basis. Class certification is appropriate only if these individual questions can be managed with an appropriate trial plan.” (Accord, *Dailey v. Sears, supra* 214 Cal.App.4th at 989 (party moving for class certification must establish how the determination of factual and legal issues “could be accomplished efficiently and manageably within a class setting”).

“Most cases will have both individual and common issues, and much of the trial judge's work at the certification stage is to determine which predominate. Generally, the analysis requires a highly practical evaluation of whether the individual issues can reasonably be managed at trial. A carefully drafted trial management plan may be essential to convincing the trial judge that the case can be certified. Counter plans from defendants may convince the judge to the contrary.” (Weil & Brown, Civ. Proc. Before Trial (The Rutter Group 2023) ¶ 14:98a.) No such trial plan was presented here.

A class action is not a superior method of resolving inherently individualized claims. (*Newell v. State Farm General Insurance Company* (2004) 118 Cal.App.4th 1094, 1101.) Plaintiffs have not shown that a class action is a superior method of resolving the disputes in this case. The factual and legal differences among class members are so substantial that case management of a class action would be

extraordinarily difficult, and the issues in the case are more conducive to individual litigation.

Conclusion

Plaintiff has failed to demonstrate a well-defined community of interest and that a class action would be superior to other methods of litigation. The motion for class certification is denied.