

Abelardo Garcia vs Point Sal Packing Inc et al (20CV03676)

Hearing Date: June 30, 2026

Nature of Proceeding: [Click or tap here to enter text.](#)

1. Motion: Class Certification;
2. Def. Motion: Strike Decl. James Toney;
3. Def. Motion: Strike Plaintiff and Putative Class Members' Declarations;
4. Def. Motion: Strike New Evidence Submitted w/ Plaintiff's Reply

Attorneys:

For plaintiff: Lavi & Ebrahimian, LLP by Joseph Lavi, Esq., Jordan Bello, Esq., Vincent C. Granberry, Esq., Elizabeth Harrier, Esq.

For defendant: Mullen & Henzell L.L.P. Rafael Gonzalez, Christina M. Behrman and Kirk & Simas by Diana H. Alcala

Tentative Ruling:

The court's rulings are as follows:

Defendant's Motion to Strike Plaintiff and Putative Class Members' Declarations is denied and objections are overruled, except as to the declaration of Isabel Venegas Perez, which is excluded. Defendant's Motion to Strike the Declaration of James Toney is denied and objections are overruled. The Motion to Strike New Evidence Submitted with Plaintiff's Reply is denied.

As for the Motion for Class Certification, the court accepts the plaintiff's proposal to narrow the classes for which class certification was originally sought and grants the motion as to the PSP Harvest Class; the PSP Meal-Period Subclass; the PSP Rest-Period Subclass, the Off-the-Clock Subclass, the Derivative Wage-Statement Subclass; and the Derivative Waiting-Time Subclass. The court finds that each class excludes employees bound by enforceable arbitration agreements or class waivers and excludes foremen, assistant foremen, crew leaders, and other time-recording or break directing supervisors. The court denies the motion as to the remaining proposed subclasses.

The parties are instructed to appear at the hearing for oral argument. The parties should be prepared to discuss next steps, particularly focusing on the November 4, 2026, 5-year deadline.

Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

Background

The operative pleading in this action is the second amended complaint filed on January 19, 2024.¹ This is a class action lawsuit alleging the following violations of the Labor Code: (1) Failure to Pay Wages for All Hours Worked at Minimum Wage; (2) Failure to Pay Overtime Wages for Daily Overtime (3) Failure to Authorize or Permit Meal Periods (4) Failure To Authorize Or Permit Rest Periods In Violation (5) Failure to Indemnify Employees for Employment-Related Losses/Expenditures (6) Failure to Timely Pay Earned Wages During Employment; (7) Failure to Provide Complete and Accurate Wage Statements; (8) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment. In addition, plaintiff alleges a cause of action for unfair business practices and one for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”).

According to the motion for class certification, the class is comprised of over 7,000 employees who worked for Point Sal Packing, Inc. (“PSP”) and Rancho Guadalupe, LLC (“RG”) from July 7, 2016, through the date of class certification. Rancho Guadalupe is a grower of fresh produce, based in the Santa Maria Valley. It harvests a variety of fruits and vegetables. Point Sal Packing is a farm labor contractor that employs workers for harvesting crops and provides RG with laborers.

Plaintiff initially proposed a class comprised of “All current and former hourly, non-exempt employees of Point Sal Packing Inc. (“PSP”) and/or Rancho Guadalupe LLC (“RG”) who worked in California at any time from July 7, 2016, through the date of class certification (the “Covered Period”)” and relevant subclasses. (Notice of Motion, p. 1.)

However, in reply, plaintiff “accepts the central premise of Defendants’ opposition: the certification request should track the proof.” He subsequently revised the definitions for the proposed class and subclasses, narrowing them to employees of PSP only. This means that defendant RG is effectively eliminated from this class action.² The court will also accept the premise that the original classes were too broad and will confine its discussion to the class and subclasses identified in the reply.

The following class and subclasses exclude employees bound by enforceable arbitration agreements or class waivers and exclude foremen, assistant foremen, crew leaders, and other time-recording or break directing supervisors. Presumably the Covered Period remains July 7, 2016, as identified in the motion, unless otherwise noted.

- (a) PSP Harvest Class: All non-exempt Point Sal Packing harvest employees in California during the Covered Period whose work time, meal periods, and breaks were recorded through the PET Tiger foreman-entry system.
- (b) PSP Meal-Period Subclass: All members of the PSP Harvest Class who worked at least one shift over five hours during the Covered Period.

¹ This action was filed on November 5, 2020. On January 13, 2025, the parties stipulated to extend the 5-year deadline for trial to November 4, 2026. (See Code Civ. Proc., § 583.310, 583.330.) No trial date has been set.

² As the new proposed class and subclasses appear to be a narrower version than that submitted in the original motion, the court finds no prejudice to defendants.

- (c) PSP Rest-Period Subclass: All members of the PSP Harvest Class who worked at least one shift of 3.5 hours or more during the Covered Period.
- (d) PSP Rounding Subclass: All non-exempt PSP employees in California during the period when PSP rounding was actually in effect and to whom the challenged rounding practice applied.
- (e) Overtime subclass: All members of the PSP Harvest Class who worked above the applicable overtime threshold in effect for the relevant period.
- (f) Off-the-Clock subclass: While no definition has been supplied, it is asserted to be a narrowed off-the-clock claim on behalf of the PSP Harvest Class, with the common question is whether Defendants' foreman-controlled PET Tiger system failed to capture all compensable start, stop, walking, and preparatory time for that class.
- (g) Reimbursement Subclass: While no definition has been supplied, plaintiff asserts the common question is whether defendants' reimbursement policy and field practices shifted the cost of necessary knives and protective gear to harvest workers.
- (h) Derivative Wage-Statement Subclass: All members of any certified wage-based PSP subclass who received one or more wage statements between July 7, 2019,³ and the date of certification.
- (i) Derivative Waiting-Time Subclass: All former members of any certified wage-based PSP subclass whose employment ended between July 7, 2017,⁴ and the date of certification.

On Calendar

The following motions are on calendar:

- 1. Motion: Class Certification;
- 2. Defendant's Motion to Strike the Declaration of James Toney;
- 3. Defendant's Motion to Strike Plaintiff and Putative Class Members'

Declarations; and

- 4. Defendant's Motion to Strike New Evidence Submitted with Plaintiff's Reply

Evidence

Both parties submitted evidence and objections. And for good measure, defendant moved to strike the same evidence to which it objected.⁵ It is unclear why a motion to strike in addition to objections is necessary. Plaintiff argues that procedurally, a motion to strike is inappropriate because it is authorized under Code of Civil Procedure sections 435 and 436, which targets pleadings, not evidentiary declarations.⁶ They note that such practice “adds nothing but bulk and asks the Court to use a blunt instrument where targeted

³ This is the date expressly identified in the Reply. Plaintiff is directed to advise the court if this is the result of a typographical error.

⁴ This is the date expressly identified in the Reply. Plaintiff is directed to advise the court if this is the result of a typographical error.

⁵ Defendants' motion to strike the declaration of James Toney and motion to strike the declarations of plaintiff and putative class members was filed on February 17, 2026, just four days after it filed objections to the same evidence.

⁶ Code of Civil Procedure section 435 and 436 authorize motions to strike a “pleading”, which is defined as a demurrer, answer, complaint, or cross-complaint.

rulings already exist.” Defendants for their part make no response to this argument, nor do they defend the blatantly duplicative effort.

Evidence Code section 353 states: “A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record *an objection to or a motion to exclude or to strike the evidence* that was timely made and so stated as to make clear the specific ground of the objection or motion. . .” [Emphasis added.] This arguably undermines plaintiff’s procedural argument, but the court notes that the statute only requires *one or the other*. Pursuing both is duplicative and unnecessary and has made additional work for the parties and for the court.

1. Objections to Plaintiff’s Declaration Overruled

Plaintiff Garcia’s December 1, 2025, declaration, accompanying the moving papers, states “I understand that because I cannot read English or Spanish fluently, this declaration has been translated to me before signing.” (Garcia Decl., ¶ 1.) Notably, the original Spanish testimony was not provided. This, of course, has potential to undermine the declaration as plaintiff candidly admitted he did not understand the declaration in the language in which it was presented.

A witness is disqualified if he or she is “[i]ncapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him.” (Evid. Code, § 701, subd. (a).) Garcia could not “directly” express himself in his declaration because he cannot write or speak English. (Evid. Code, § 701, subd. (a); *Detrick v. Shimada* (2026) 120 Cal.App.5th 170, 177.) Nor could he certify under penalty of perjury that the contents of his English-language declaration were true and correct, as required under Code of Civil Procedure section 2015.5, because he could not read it. To establish his competence as a witness, therefore, he required “interpretation by one who can understand” him. (Evid. Code, § 701, subd. (a); *Detrick, supra*.) Garcia failed to provide evidence of this necessary intermediate step with the initial declaration.

In *Detrick*, the court found that there was an absence of foundational facts from which the trial court could determine whether the English-language declaration accurately reflected the Japanese-speaking declarant’s words. Nor did the attorney’s declaration fill the foundational gaps when it stated that the declarant reviewed the declaration with her Japanese-speaking employee and attested to each statement before signing. The *Detrick* court held this was insufficient because neither the declarant nor the attorney “identified [] the ‘Japanese-speaking employee’ or provided any information about that person’s competence to translate a document signed under penalty of perjury. Without information about the interpreter’s qualifications and his or her attestation that the translation was accurate, we still lack the necessary link providing a foundation for [the declarant’s] declaration establishing that it is trustworthy in light of her admitted inability to read or speak English.” (*Detrick, supra*, at 177.) In reaching its decision, the court examined *People v. Pantoja* (2004) 122 Cal.App.4th 1 and noted: “here there was an absence of foundational facts from which the trial court could determine whether the English-language declaration accurately reflected [declarant’s] words, including the name and qualifications of the

interpreter and the circumstances of the declaration's creation. There is not even “assurance that these were [declarant’s] words, rather than something included at the suggestion of another person” citing *Pantoja*. (*Id.*) The *Detrick* court concluded: “The declaration was neither competent nor trustworthy.” Like in *Detrick*, Garcia’s December 1, 2025 declaration was neither competent nor trustworthy.

Garcia filed a supplemental declaration on April 1, 2026, in English, explaining the origin of the December 1, 2025, declaration as follow: “Before my prior declaration was signed, I spoke with my law firm, Lavi & Ebrahimian, LLP about my work for Defendants and my experiences while working there. [¶] Those conversations were in Spanish. During those conversations, I answered questions in Spanish based on my own personal knowledge and described my own experiences working for Defendants. [¶] After my declaration was prepared in English, my law firm went over the English declaration with me in Spanish. [¶] The English declaration was broken down and explained to me in Spanish, paragraph by paragraph, so that I could understand what it said. [¶] The prior English declaration reflected my own statements and my own experiences. I adopted that declaration as my own statement when I signed it.” (Garcia Supp. Decl., ¶¶ 5-8, 13.) This explanation fails to provide the necessary foundation facts, including the name and qualifications of the interpreter of the December 1, 2025 declaration and his or her attestation that the translation was accurate. As such, Garcia’s April 1, 2026 supplemental declaration does not cure the foundational defect.⁷

Plaintiff attempts to ameliorate any defect by submitting in support of its reply the Declaration of Abelardo Garcia in Support of Motion for Class Certification, with a certified translator declaration.⁸ Pursuant to California Rules of Court, rule 3.1110(g), exhibits “written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter.” The declaration is a duplicate of that submitted on December 1, 2026. This time, it is accompanied by the declaration of a Spanish-English interpreter certified by the Judicial Council, Bosco Boksh, who states he “went over the English version” of the declaration submitted on December 1, 2025, and he (Abelardo) stated everything was true and correct.

While it would be preferable for the parties to follow the Rules of Court with precision, especially in a case that hinges on admissible evidence, the court finds the foundation objection to be sufficiently overcome. The court overrules the objection, as defendant has cured it with the Garcia declaration attached to the Tims Declaration as Exhibit 4, which is accompanied by the declaration of a certified translator who attests to reviewing the English language declaration with Garcia and reporting it was an accurate representation of his testimony.

⁷The court acknowledges that the April 1, 2026 declaration was itself accompanied by a declaration from a certified translator. However, that does not resolve the gap in evidence created by the failure to identify the translator of the December 1, 2025 declaration.

⁸ It was ostensibly attached to the declaration of Eric Tims filed on April 1, 2026, as Exhibit 4, but was omitted from the version filed with the court. On June 1, 2026, at the court’s direction, the Tims’ declaration was again submitted with the exhibit attached.

All objections to the substance of the testimony are overruled.

2. Objections to Putative Class Member Declarations Overruled

(a) Objection to Lack of Foundation Overruled

In support of the motion, plaintiff submitted a compendium of 38 putative class member declarations.⁹ Each of these declarations describes that class member's position, whether they were provided meal breaks and/or rest breaks pursuant to policy, and where applicable, whether they were required to purchase their own protective gear or tools. Each is signed under penalty of perjury.

Defendant correctly points out that the 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.) They argue that the 38 declarations lack credibility because they are all submitted in English without a certified translation, despite the workforce being "largely" only Spanish-speaking. In support, defendant supplies evidence that perhaps some of these declarants do not speak English: "Defendants' workforce is largely Spanish-speaking. I have reviewed the names of the employees who provided declarations in support of Plaintiff's Motion for Class Certification. I am aware that at least some of these employees do not speak English." (Luna Decl. [Director of Finance and Administration for PSP, and employed by PSP since 2013], ¶ 28--emphasis in original.) None of those declarants who were alleged to speak only Spanish were identified by name.

Rather than request a targeted strike, defendant urges the court to use its authority under *Barriga* to strike all 38 declarations since there is no indication that those individuals actually understood what they were signing. Defendant argues this is appropriate as the court must assure itself that they were not obtained under coercion or threat.

While the court agrees it must be assured the declarations were not obtained by abuse, it is not convinced that the circumstance presented here makes a persuasive showing of any such abuse based on the generalized Luna declaration.¹⁰

Nor is the court persuaded otherwise by the declaration of Isabel Venegas Perez, attached as Exhibit B to the declaration of Rafael Gonzalez filed on February 17, 2026, in support of defendant's motion to strike the declaration of putative class members'

⁹ The compendium is 116 pages and does not contain electronic bookmarks, a violation of the California Rules of Court. (Calif. Rules Court, rule 3.1110(f).) Bookmarks are not only required by law, they are critical to the court's efficient navigation of electronic documents, particularly in a case such as this one, where documents are essential to an understanding of the case.

¹⁰ In reply, defendants point out that "a vast majority of the signed meal period waivers submitted with Defendant's Opposition are in Spanish," and that "the representative sample of arbitration agreements submitted with Defendant's Opposition are in Spanish." (See COE, Exhs. 2 and 5.) While this may be true, defendants have not demonstrated that the 37 declarants who submitted their declarations in English were among those who signed meal period waivers or arbitration agreements in Spanish. Even if they did, it would not permit an inference that they could *only* read Spanish. It is not dispositive.

declarations. She is one of the 38 declarants and states: “I do not speak or read English. I speak and read only Spanish. [¶] This Law Firm presented me with a document, that I did not understand because it was written in English, for me to sign. They told me that I would be left alone if I signed that page. That is why I signed it, but they continue calling me over and over.” (Perez Decl., ¶ 1, 5.) While this is certainly enough to exclude her declaration from consideration, it is insufficient to impute the same deficiency to the other 37 declarants.

The objection based on lack of foundation (i.e., that the declarations are not accompanied by a certified translation or are otherwise unreliable) is denied.

(b) Objections to Substance Overruled

All objections to the substance are overruled. California Rules of Court, rule 3.764(c)(3) expressly contemplates declarations from class representatives and other appropriate declarants, and California certification law permits the court to consider and weigh competing declarations, depositions, and record evidence in deciding whether common issues predominate. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-327, 330-331, 334—“documents, depositions, declarations, and interrogatory responses presented by the parties comprise substantial evidence that common issues of law and fact will predominate over individual issues [] overtime claims are tried as a class action.”) In employment class actions, employees typically testify about their job duties, work conditions, compensation practices, and experiences with the alleged violations. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1020—“[Plaintiff] supported the motion with 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.”)

The declarations submitted here are no different. They describe the declarants’ job duties, work conditions, meal break and time keeping, and compensation practices. All objections, based on lack of foundation or speculation and others, are overruled.

3. Objections to Declaration of James R. Toney Overruled

In support of the motion, plaintiff offers the declaration of James R. Toney, who has been retained to provide expert analysis on the meal break violation rate, the employee count for defendants, exposure related to rounding/off-the-clock time and to determine expense reimbursements exposure. Here, defendant’s object that Toney’s declaration is premised on several incorrect legal standards and therefore lacks foundation, is speculative, and constitutes an improper legal conclusion.

1. Testimony Not Impermissible Legal Opinion

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 (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298.) In class action certification hearings, 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.) Nevertheless, expert opinion testimony is admissible only if it is sufficiently rooted in matter upon which an expert reasonably may rely and if an opinion is not speculative. (Evid. Code, §§ 801, 802.) The court acts as a gatekeeper and may exclude expert opinions that are based on assumptions of fact without evidentiary support, that rely on speculative reasoning, or that involve an impermissible analytical gap between the data and the conclusions reached. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771-772.) These principles apply to expert evidence submitted in connection with class certification proceedings. (*Apple, supra*, at 1119.)

Moreover, there are limits to expert testimony, such as the prohibition against admission of an expert's opinion on a question of law. (*People v. Jo* (2017) 15 Cal.App.5th 1128, 1177—expert testimony allowed when she offered an overview of Penal Code section 278.7, but she expressed no opinion as to whether section 278.7 applied to the particular facts of the case; *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1178; see *Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841 [“The manner in which the law should apply to particular facts is a legal question and is not subject to expert opinion”].)

Here, defendants argue that Toney's entire declaration is based on his own interpretation of what he believes constitutes a “violation” of law. The court rejects this argument. As plaintiff points out, Toney very specifically testified that he wasn't offering a legal opinion. Instead, Toney used the word “violations” to describe an analytical framework. For example, in his declaration, Toney states he was provided data to perform “Analysis of time records to determine the meal break violation rate.” (Toney Decl., ¶ 1.) In his description of his methodology as to the meal break analysis, he states; “Once all violations are noted, a subsequent calculation is performed. A net violation rate is calculated which allows for a maximum of one violation per shift.” (*Id.* at ¶ 9.) His testimony continues along this line. It is clear to the court that Toney is not testifying about what qualifies as a legal violation. Instead, he is using that term as a shorthand label for a data category. Defendants identify no specific paragraph of the Toney declaration as violating the prohibition against legal conclusions. The court thus overrules this objection.

2. Objection Based on Speculation

Defendants argue that Toney's meal period analysis should be excluded because he treats exact 30-minute meals as violations, even though he admitted this is legally compliant. (See Lab. Code, § 512, subd. (a); Wage Order 14.) However, Toney explained the methodology behind this was that a high concentration of entries showing meal breaks of exactly 30 minutes in length “appears to indicate a system or process is driving the meal break entries.” (Toney Decl., ¶ 12.) Defendants argue that even understanding this nuance, the methodology fails because Toney admitted in deposition that nothing in his declaration actually says that a system or process fully existed here. However, the evidence of a system is present in the record: a foreman-controlled system for recording breaks. This is explored in other evidence. The fact that Toney did not have the specifics of the system or process does not render his opinion that one existed based on the pattern of the evidence speculative. The objection is overruled.

Nor does the admission that he excluded meal period waivers from his calculations undermine the admissibility of the evidence. The existence of such waivers is properly the subject of competing evidence. All evidence can thus be weighed by the court in making its determination.

3. Objections Based on Incorrect Assumptions Overruled

Rest breaks of hourly-paid employees are not required to be recorded or separately compensated. (Wage Order No. 14.) In contrast, Labor Code Section 226.2 mandates that piece-rate employees be separately compensated for their rest-breaks at an amount not less than the applicable minimum wage. (Lab. Code § 226.2(a)(3)(A) (setting the compensation rate at the “higher of” the applicable minimum wage or “[a]n average hourly rate”).)

Defendants argue that Toney’s rest break analysis is inadmissible because it includes all shifts without recorded rest breaks as violations. In other words, it does not distinguish between those shifts that hourly shifts and therefore did not require rest breaks be recorded and those that are piece rate shifts for which a rest break must be recorded. This, according to defendants, skews Toney’s conclusions as to how many violations occurred. They argue that as a result, his declaration is based on wrong assumptions and incomplete and erroneous analysis, and his declaration should consequently be stricken.

The court disagrees. To the extent there are other inferences to be drawn from the evidence, the court can hear and weigh them. The court overrules this objection.

Similarly, defendants argue that Toney’s “rounding” analysis is based on improper and wrong assumptions. The court likewise rejects this argument and overrules the objection.

Legal Standards

“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.*)

These requirements are commonly articulated as four primary elements:

- Numerosity — The proposed class is numerous in size. (*Hendershot v. Ready to Roll Transportation, Inc* (2014) 228 Cal.App.4th 1213, 1222.)
- Ascertainability — A class is ascertainable when it is defined “in terms of objective characteristics and common transactional facts” that make “the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980, citing *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915 (*Hicks*)).
- Community of Common Interest — Common questions of law or fact predominate, and class representatives have claims or defenses typical of the class and can

adequately represent the class. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 (*Richmond*).)

- Superiority — Proceeding with the case as a class action is superior to other methods of adjudication. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089.)

“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.)

The key questions concern whether common issues predominate, and whether the litigation of individual issues “can be managed fairly and efficiently.” (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28–29.) California's "community of interest" requirement consists of three elements: "(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." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Thus, before reaching questions of typicality, adequacy, or the weight to be afforded expert testimony, the court must first identify the legal theory at issue and determine whether liability can be established through evidence common to the proposed class. (See *Brinker, supra*, 53 Cal.4th at pp. 1021, 1025; *Sav-On, supra*, 34 Cal.4th at pp. 326-327.)

“Predominance is a comparative concept.” (*Medraza 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; *Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1116—legal elements of the causes of action must be considered in determining whether common issues predominate.) 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.)

“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.)

Analysis

For reference, Rancho Grande is the grower. (Luna Decl., ¶ 2.)¹¹ Point Sal Packing, Inc. (PSP) is a farm labor contractor that employed workers for harvesting crops. It contracted with RG. (Luna Decl., ¶2.) Harvesting operations take place at 17 different ranches located between the towns of Santa Maria and Guadalupe, California. (Luna Decl., ¶ 2.) Defendants have employed non-exempt employees in at least 23 different positions during the putative class period. (Luna Decl., ¶ 3.)

To support class certification, plaintiff has produced 37 declarations (after exclusion of the declaration of Isabel Venegas Perez) from putative class members, of which the majority were harvesters (26). Other jobs performed by plaintiff’s declarants include packers, tractor drivers, butler, quality inspector, foreman, and grass cleaner. In addition, plaintiff has produced the declaration of James R. Toney, who provides expert consulting services for wage and hour class actions. He was retained to provide an analysis of the meal break violation rate, the percentage of shifts that required at least one rest break, the employee count for both PSP and RG, and the exposure related to rounding/off-the-clock time and reimbursements. In addition, plaintiff submits excerpts of the deposition of Veronica Luna, defendants’ PMK, pages from the defendants’ employee handbooks, and sample time card entries.

Defendants produced 80 declarations of putative class members, at least 50 of which were harvesters. Other jobs performed by defendants’ declarants include office/admin, shop/maintenance; transport (truck driver, forklift operator, dust control driver); irrigation;

¹¹ The declarant, Veronica Luna, is the Director of Finance and Administration for Point Sal Packing, Inc. and Rancho Guadalupe, LLC.

quality inspector, butler, grass cleaner, safety assistant. In addition, they submit the declaration of Lindsay Petite, to provide expert testimony and analysis regarding their time and pay records. Finally, they submit the declaration of Veronica Luna, Director of Finance and Administration for PSP and RG.

1. Predominance

(a) Meal Breaks (3rd Cause of Action)

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 without providing the employee with a second meal period of not less than 30 minutes” (Lab. Code § 512.) As explained in *Brinker*, to comply with the obligation, the employer must afford an “off-duty” meal break, absent an employee waiver or agreement. (*Brinker*, *supra*, 53 Cal.4th at p. 1039.) The employer properly provides an off-duty break “if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” (*Id.* at p. 1040.) Thus, the employer “may not undermine a formal policy of providing meal breaks by pressuring [its] employees to perform their duties in ways that omit breaks.” (*Ibid.*) Nonetheless, an employer is not obliged to police the breaks or ensure that no work is performed during them. (*Brinker*, *supra*, 53 Cal.4th at p. 1040.) Work by an employee during a break does not, by itself, breach the employer's obligation to provide the break. (*Ibid.*) Nor does “[p]roof an employer had knowledge of employees working through meal periods....” (*Ibid.*)

When an employer fails to discharge its duty regarding meal breaks, section 226.7 requires the employer to compensate employees with “premium” pay (*Brinker*, *supra*, 53 Cal.4th at p. 1039.) It provides: “(b) An employer shall not require any employee to work during any meal or rest period mandated pursuant to an applicable ... order of the Industrial Welfare Commission [¶] (c) If an employer fails to provide an employee a meal ... period in accordance with a[n] ... applicable order of the [IWC] order ..., the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal ... period is not provided.”

Plaintiff seeks to certify a meal period subclass consisting of “All members of the PSP Harvest Class who worked at least one shift over five hours during the Covered Period.” The PSP Harvest Class consists of “All non-exempt Point Sal Packing harvest employees in California during the Covered Period whose work time, meal periods, and breaks were recorded through the PET Tiger foreman-entry system.”

Plaintiff asserts that Meal Period Subclass did not receive compliant meal breaks. He argues that a companywide policy supporting noncompliant breaks can be inferred from the defendants’ records, which show that harvest crew overwhelmingly record exactly 30-minute breaks. Plaintiff asserts this is “not the product of thousands of individual workers independently choosing to take precisely the same length of meal; they are the fingerprint of a centralized, process-driven entry system.”

This system is described as follows: meal breaks are tracked on tablets; the crew foreman enters the start of lunch and the end of lunch; these entries form the basis of defendants' official meal period records. The putative class members testify that supervisors routinely interrupted lunches to assign tasks, demanded employees eat faster, or ordered them back to work early. Some foremen used the meal period to travel between fields. Some workers assert they were pressured not to take compliant meal breaks and promised premiums (which never materialized) to skip the break altogether. Plaintiff reports that this practice results in a pattern for PSP, 94.7% of meals on shifts over five hours were recorded as exactly 30 minutes. (Toney Decl., ¶¶ 10-13.) The net violation rate was reported to be 8.8%. (*Id.*) Toney concludes: "When these exact 30-minute meals are considered a violation, the violation rate is 95.7%." (*Id.*)

In short, plaintiff asserts that defendants' policy of fixed 30-minute meal break entries, coupled with foreman-controlled logging of the meal periods taken, masked short and late, missed, and interrupted meals throughout the class period. Plaintiff asserts that the time he and other putative class members take for their meal periods is being rounded, and that practice is illegal. The meal periods must be full and timely whenever they are required, and even a minor infringement of the meal period triggers the premium pay obligation. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 68.) Accordingly, "employers cannot engage in the practice of rounding time punches—that is, adjusting the hours that an employee has actually worked to the nearest preset time increment—in the meal period context." (*Id.* at 61.) "The practice of rounding time punches for meal periods is inconsistent with the purpose of the Labor Code provisions and the IWC wage order." (*Id.* at 68.)

Defendants confirm the existence of this system and describe it as follows: For Harvesters, Point Sal Packing uses an electronic time and production tracking system called PET Tiger. Each crew's Foreman is responsible for keeping track of the time worked by the persons on that crew. Each Harvester has his or her own badge, which Foremen scan at the start of each shift for attendance. (Luna Decl., ¶ 12.) Using the tablet, Foremen manually enter work and break and lunch events for the crew based on actual start and end times of the work performed each day. (*Id.*) Each harvesting crew works closely together as a group. (Luna Decl. ¶ 18.) For each meal period and rest break, field work operations cease for the crew, and all workers on the crew take the time off for their meal period or rest break together as a crew. (*Id.*) Each Foreman generally has discretion to manage with respect to their crew and is responsible for making sure that the crew's meal period is provided no later than the end of the fifth hour of work and that employees are provided at least 30 minutes. (*Id.*) Each Foreman is also responsible for timing of rest breaks in accordance with Defendants' policies. (*Id.*)

Aside from Harvesters, all other non-exempt employees keep track of their own start and end times for the workday and start and end times for each meal period. (*Id.* at ¶ 14.) Employees working in jobs other than Harvester work more autonomously and do not always take meal and rest breaks as a group. (*Id.* at ¶ 20.)

Time entries are reviewed by Office/Payroll employees daily and/or weekly to verify that meal breaks are timely being taken, as well as 15-minute breaks if being tracked for piece-rate employees. (*Id.* at ¶ 13.)

Defendants argue that throughout the class period, it is undisputed that it has maintained a lawful written meal period policy. Defendants submit their written policy regarding meal breaks, which is expressed in the Employee Handbook and which appears to be compliant with the law and describes the appropriate conditions for a waiver of the meal break.

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 an express uniform rest break policy that violated the applicable wage order. (*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.) The *Brinker* court held: “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.*) Finally, the Court held that whether individual employees actually missed or waived breaks did not defeat predominance. (*Brinker, supra*, 53 Cal.4th at p. 1032.)

Post-*Brinker* cases have supported this latter point. 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.”].)¹²

¹² *Martinez-Sanchez v. Anthony Vineyards, Inc.* (E.D.Cal. 2021) 2021 WL 5371425, cited by defendants, is distinguishable. In *Martinez-Sanchez*, the court observed: “Plaintiffs are not alleging that Defendants failed to provide 30-minute meal breaks or that the meal periods were interrupted. Instead, Plaintiffs contend that employees were required to walk to a suitable break area that could be a substantial distance from where they

Here, the parties have characterized this as whether the practice of foreman-controlled time-keeping, which defendant concedes exists, is a predominantly common issue (plaintiff's characterization), or riddled with individual inquiries into individual supervisors' conduct and employee experience with missed meals (defendants' characterization). This case is distinguishable from those commonly cited in class action decisions, as defendants' have an express policy and it is legally compliant. The question thus becomes whether the missed meal periods were caused by a centralized timekeeping system as designed by defendants or by violations attributable to individual supervisors. The answer unavoidably seems to be both, as the foreman-controlled timekeeping allows for supervisor violations if the supervisor is without proper oversight.

As such, this case does not neatly fit the mold of the oft-cited cases from California class certification jurisprudence. The latter framing (e.g., that the foreman-controlled time-keeping is a flawed system that impacts all employees) qualifies as a common question, capable of resolution on a classwide basis. The latter framing (e.g., that the violations are the result of individual supervisors, acting outside of the company policies) is problematic as it suggests that individualized inquiries, instead of common proof, drive the result.

For the court to be persuaded to adopt the latter framing and find it appropriate for classwide treatment, there must be some evidence, per *Brinker*, that the company was aware that individual supervisors sometimes direct employees to work through their meal period. According to Luna, defendants prohibit Foreman and any other supervisors from deviating from its written policies when it comes to meal and rest periods. Defendants would issue discipline to anyone found to be in violation. Employees are required to report any meal period or rest period violations. Defendants have a policy and practice of disciplining employees for failing to adhere to their meal period policies. (Luna Decl., ¶ 22.) However, Luna also concedes that Foreman have discretion to manage with respect to their crew. (Luna Decl., ¶ 18.) Luna states that employees are required to report any meal period or rest period violations. (Luna Decl., ¶¶ 22, 23.) In addition, Foremen are trained at the beginning of every season on timekeeping. (Luna Decl., ¶ 23.)

However, there is no evidence that any material audits are being conducted. Shifting responsibility to the employees to report missed meal or rest periods is ineffective due to the nature of the power imbalance. Reviewing entries to verify that meal and rest breaks are

are working. [] There is no issue regarding whether employees were required to work during the meal period break. [] The theory of Plaintiffs' meal break claim is, according to the certification motion, that time spent walking to break areas cuts into the 30-minute meal period and is unpaid." (*Id.* at *17.) Based on that understanding, the court held that "there are important individualized questions with respect to the meal break claim, namely, where employees chose to take their meal break, whether it was an appropriate distance away from the vines they were working on harvesting or a greater distance away. Considering that employees were permitted to take meal breaks where they chose, and without evidence demonstrating that every employee was required to walk to a specific area for every meal period, Plaintiffs have not demonstrated that employees were uniformly subject to walking to break areas that cut into the 30-minute meal period. (*Id.* at *18.) That is not the case here, where there are allegations and declarations that contend employees were required to work or walk to the next work location on their meal break. To the extent *Martinez-Sanchez* is cited for the proposition that individualized questions predominate over any common questions, the court is not persuaded.

timely being taken (Luna Decl., ¶ 13) is ineffective because it doesn't address the real issue—whether employees are being instructed to work for part or all of their break. Thus, this practice appears to be both present and implicitly adopted by the employers here. As such, it is appropriate for classwide treatment.

But the court is not done, for it must also consider whether the individual issues raised by this practice or the defenses asserted by defendants, such as whether individual putative class members waived their breaks, is manageable. (*Brinker, supra*, 53 Cal.4th at 1052-1054 (Werdegar, concurring opn.); *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28-29.) Plaintiffs trial plan states that it intends to prove the predominant common issues through defendants' own document, records, and witness testimony, including testimony from supervisors, as well as use of a survey, which will be used by experts to perform a damages analysis. The survey has been described in detail in the declaration of expert Laura Steiner.¹³ It has been summarized for the court in plaintiff's Response to Defendants' Opposition to Trial Plan. The court is satisfied that the issues can be managed.

The court grants the motion to certify a meal period class under the revised definition produced in plaintiff's reply.

(b) Rest Breaks (4th Cause of Action)

California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. (Lab. Code, § 226.7; Wage Order 14 at §12.) Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker, supra*, 53 Cal.4th at 1029; Labor Code section 226.7; Wage Order 14 at §12.) The rest period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest periods." (*Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.) That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. (*Id.*)

Here, for harvest crews, rest breaks were entered by foremen in the same tablet system used for meals. As noted above, "Foremen manually enter work and break and lunch events for the crew." (Luna Decl., ¶ 12.) As above, there is an inordinate percentage of rest breaks uniformly recorded as exactly 15 minutes. (Toney Decl., ¶ 24.) According to the records, approximately 57% of shifts missed at least one required rest. (Toney Decl., ¶¶ 22-24.) Declarations from 37 putative class members confirm that some were denied a second rest

¹³ Defendants object to the submission of this declaration in reply, which is contrary to the usual prohibition on submission of new evidence in reply. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 241.) Here, however, plaintiff's Proposed Class Action Trial Plan contemplated survey evidence: "Plaintiff will require further contact with participating certified Class Members and updated Class Member contact information given that the prior class list produced by Defendants only extended to approximately 2024, and sufficient communication with certified Class Members, *including through expert survey methods*, will be required to prepare for trial due to Defendants' alleged recordkeeping issues." (Proposed Trial Plan, p. 1, ll. 22-26, emphasis added.) It also suggested that the calculation of monetary relief is distinctly manageable using surveys and sampling. (*Id.* at p. 5, ll. 4-5.) The Steiner Declaration simply elaborates on the intended survey method. To the extent defendants have not yet deposed her, they should, of course, be afforded the opportunity to do so. The motion to strike the evidence is denied.

break on shifts over six hours, and others were denied all three required rest breaks. Supervisors pressured employees, telling them there was too much work to do. At least four declarants confirmed they never waived their right to rest periods.

In *Brinker*, the Cal. Supreme 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.)

Here, in contrast, the putative class members testify they were pressed into service by their supervisors, rather than by their own choice. Those same supervisors were then charged with recording the putative class members' rest breaks under the same time-keeping system as asserted above.

The court finds that, in keeping with the above ruling, authorizing their Foremen to both record the rest and meal periods without adequate oversight of whether those periods were being granted as off duty time is capable of classwide treatment. Thus, for the same reasons as the court determine the meal period class could be certified, the court finds the rest period class can also be certified.

(c) Rounding Subclasses¹⁴

California law requires employers to pay employees for all hours worked, including all time they are "suffered or permitted to work," and allows recovery of unpaid minimum and overtime wages. (Wage Order 14, § 2(G); Lab. Code, §§ 510, 1194.) According to plaintiff, PSP's time-keeping system records the precise minute employees clock in and out but, from July 2016 through 2017, rounded the time to the nearest-five-minute to all shifts, which Plaintiff's expert estimates resulted in roughly 183 hours of unpaid hours worked.

Plaintiff contends that whether these uniform rounding and pre-rounded time-entry practices comply with California's "all hours worked" requirement is a common question for subclass. He asserts that Luna admitted PSP used rounding for a period of time and that the raw punch data is archived, citing the Luna deposition.

However, the rounding claim was not asserted in the SAC. As noted above: "To assess predominance, a court 'must examine the issues framed by the pleadings and the law

¹⁴ This would replace the initially proposed unpaid minimum wage and unpaid overtime subclasses.

applicable to the causes of action alleged.’ ” (*Brinker, supra*, 53 Cal.4th at p. 1024; *Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1116—legal elements of the causes of action must be considered in determining whether common issues predominate.) The court cannot do that under these facts. The original motion raised this theory as a corollary to the unpaid minimum wage subclass and unpaid overtime subclass. The allegations in support of the failure to pay minimum wages (1st cause of action) alleges the following practices and procedures:

- Failing to separately compensate Plaintiff and similarly situated hourly nonexempt employees for their second, non-productive rest breaks at least at the minimum wage rate for shifts greater than 6 hours, but less than 8 hours; and
- Automatically deducting 30 minutes from Plaintiff’s and similarly situated employees’ daily hours worked and attributing that time to a meal break despite that Defendants routinely failed to provide meal breaks that were 30 minutes and/or duty free.

(SAC, ¶ 16.)

The overtime wages cause of action (2nd cause of action) likewise does not identify the alleged rounding practices as a violation.

The court denies the request to certify a class for plaintiff’s rounding claim for these reasons.

(d) Overtime Subclass

Plaintiff initially sought to certify an overtime class consisting of members who worked at least one shift over 8 hours and/or worked more than 40 hours in a workweek during the Covered Period.

In opposition, defendants point out that law did not include overtime pay for agricultural workers prior to 2019. The Legislature rectified this: “It is the intent of the Legislature to enact the Phase-In Overtime for Agricultural Workers Act of 2016 to provide any person employed in an agricultural occupation in California, as defined in Order No. 14-2001 of the Industrial Welfare Commission (revised 07-2014) with an opportunity to earn overtime compensation under the same standards as millions of other Californians.” (Lab. Code, § 858, subd. (d).) Labor Code section 860 provides the scheduled phase-in as follows:

Effective date for employers with 26 or more employees:	Effective date for employers with 25 or fewer employees:	Overtime (1.5x regular rate of pay) required after the following hours per day / hours per workweek:
Jan. 1, 2019	Jan. 1, 2022	9.5 / 55
Jan. 1, 2020	Jan. 1, 2023	9 / 50
Jan. 1, 2021	Jan. 1, 2024	8.5 / 45
Jan. 1, 2022*	Jan. 1, 2025*	8 / 40

(See Lab. Code, § 860; IWC Wage Order 14-2001, § 3.)

For purposes of this motion, the court will assume that PSP employed more than 25 employees. (Luna Decl., ¶¶ 3-11.) As defendants point out, evidence from putative class members who attest they were not paid for overtime for hours in excess of 8 hours in a day in 2019 or before is irrelevant as overtime pay was not triggered.

In reply, plaintiff seeks to narrow this class to “only those members of the PSP Harvest Class who worked above the applicable daily or weekly overtime threshold in effect for the relevant period.” There is virtually no discussion in the reply of how the evidence presented supports the parameters of the law. Plaintiff had every opportunity to do so from the outset. The court will not comb the record for plaintiff. “Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide. On the record in this case, the trial court was justified in declining to look beyond that failure.” (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.*, (2011) 197 Cal. App. 4th 927, 934.)

Accordingly, the court denies the motion to certify the overtime subclass.

(e) Off-the-Clock Subclass

This is a corollary of the meal break subclass, as the common question is identified as whether Defendants' foreman-controlled PET Tiger system failed to capture all compensable start, stop, walking, and preparatory time for that class. The court will certify this subclass for the same reasons it certified the meal and rest period subclasses.

(f) Reimbursement Subclass

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, or of his or her obedience to the directions of the employer...” Here, thirty of the putative class members stated that they were required to purchase work-related tools or equipment and were not reimbursed. Moreover, expert analysis shows there were only 33 reimbursement payments made during the class period. (Toney Decl., ¶ 32.)

Plaintiff asserts there is a common question is whether defendants’ reimbursement policy and field practices shifted the cost of necessary knives and protective gear to harvest workers. He states he was told by his foreman that “If you want to work, you have to buy it.” He was also told by his foreman that the company would not reimburse for the equipment that he purchased.

“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.) This evidence is

not substantial enough to warrant certification of a subclass based on a common policy. It is undisputed that defendants have a written reimbursement policy. While some putative class members stated they understood they had to buy the equipment to retain their jobs, none of them stated they were instructed to purchase the equipment by their supervisor, or that the supervisor told them they would not be reimbursed. The declarations focus on the employer's failure to provide or reimburse for required equipment, but do not address the declarants' knowledge or lack thereof regarding reimbursement rights. None stated they requested reimbursement but were denied. This is insufficient to establish the existence of a companywide policy.

The motion to certify the reimbursement subclass is denied as a result.

(g) Derivative Wage Statement and Waiting Time Subclasses

Plaintiff seeks one derivative wage statement subclass and one derivative waiting time subclass tied to any certified wage-based PSP subclass. These derivative subclasses apply only to the extent the certified predicate claim establishes unpaid wages or premiums. The court grants certification of these subclasses.

2. Typicality and Adequacy

Although the questions whether a plaintiff has claims typical of the class and will be able to adequately represent the class members are related, they are not synonymous. The typicality requirement's purpose is to assure that the interest of the named representative aligns with the interests of the class. Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Defendants assert that plaintiff is not a typical representative, because he was only employed for a year and because none of the declarations they submitted reflect experiences similar to those alleged in the complaint. However, that's not the proper scope. Plaintiff is typical of the narrowed class and subclasses he seeks to certify.

The adequacy inquiry serves to uncover conflicts of interest between named parties and the class they seek to represent (*Capitol People First v. State Dept. of Developmental Services* (2007)) [155 Cal.App.4th 676.] To assure adequate representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. (*Id.*) Here, defendants pointed out that plaintiff proposed a class that includes the Foremen who recorded time worked and timed meal and rest breaks. They argue this created an inherent conflict of interest. Plaintiff's narrowed class carves out Foremen from the class membership. Any conflict is thus ameliorated.

The court finds plaintiff to be both a typical and adequate representative.

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.)

Defendants argue that “due to variability among the broad putative classes and the nature of Plaintiff’s claims and theories, there is no way to establish liability based on common proof. Nor is there any way to effectively manage the highly individualized evidence that would be necessary to resolve the claims at trial – each putative class member’s experience will need to be individually adjudicated.” (Opposition, p. 37, ll. 13-17.)

“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 2026) ¶ 14:98a.)

The court has considered the individualized nature of the claims and discussed plaintiff’s trial plan above, in reviewing the meal plan subclass. The court finds that the class action model is superior to other methods of proceeding.

Summary of Rulings

Defendant’s Motion to Strike Plaintiff and Putative Class Members’ Declarations is denied and objections are overruled, except as to the declaration of Isabel Venegas Perez, which is excluded.

Defendant’s Motion to Strike the Declaration of James Toney is denied and objections are overruled.

The Motion to Strike New Evidence Submitted with Plaintiff’s Reply is denied.

As for the Motion for Class Certification, the court accepts the plaintiff’s proposal to narrow the classes for which class certification was originally sought and grants the motion as to the PSP Harvest Class; the PSP Meal-Period Subclass; the PSP Rest-Period Subclass, the Off-the-Clock Subclass, the Derivative Wage-Statement Subclass; and the Derivative Waiting-Time Subclass. The court finds that each class excludes employees bound by enforceable arbitration agreements or class waivers and exclude foremen, assistant foremen, crew leaders, and other time-recording or break directing supervisors.

The court denies the motion as to the remaining proposed subclasses.