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4/21/2017 11:07:27 AM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
2015-1-CV-282195  
Reviewed By:R. Walker

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

ADRIANA MAYELA ELIAS; CYNTHIA  
CAMACHO, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

PEDRO'S RESTAURANT AND CANTINA;  
GOLDEN STATE RESTAURANTS, INC.; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 2015-1-CV-282195

**ORDER GRANTING MOTION FOR  
CLASS CERTIFICATION**

A Motion for Class Certification filed in above-entitled action came on regularly for hearing on Friday, April 21, 2017, at 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding. Having carefully considered the moving, opposition and reply papers, and having listened to arguments of counsel, the Court now issues the following Order:

**I. INTRODUCTION**

This is a putative class action arising out of various alleged Labor Code violations. According to the operative Second Amended Class Action Complaint ("SAC"), which was filed on October 21, 2016, defendant Pedro's Restaurant and Cantina ("Defendant") is a small chain

1 of restaurants with locations in Santa Clara and Los Gatos, California. (SAC, ¶ 3.) Plaintiff  
2 Adriana Mayela Elias (“Elias”) worked for Defendant as a waiter and server at the Santa Clara  
3 location from May 16, 2013 to September 3, 2014. (SAC, ¶ 16.) Plaintiff Cynthia Camacho  
4 (“Camacho”) (collectively with Elias, “Plaintiffs”) worked for Defendant as a busperson at the  
5 Santa Clara location from July 2006 to July 2016. (SAC, ¶ 17.)

6 Plaintiffs allege Defendant violated the law by, inter alia: (1) failing to pay premium pay  
7 for overtime hours worked; (2) repeatedly withholding money paid as a gratuity to the  
8 employee(s) to whom the gratuity was paid, but recording the full amount as wages earned and  
9 withholding taxes based on the full amount; and (3) failing to provide meal periods and rest  
10 breaks in accordance with California law. (SAC, ¶¶ 4-7.)

11 Based on these allegations, the SAC sets forth the following class causes of action:  
12 (1) Failure to Pay Overtime; (2) Breach of Contract; (3) Minimum Wages; (4) Withholding of  
13 Wages; (5) Meal Period Violations; (6) Rest Period Violations; (7) Waiting Time Penalties;  
14 (8) Record-Keeping Violations; and (9) Unlawful Business Practices. The SAC also sets forth  
15 an individual cause of action for Wrongful Termination in Violation of Public Policy on behalf  
16 of Elias in addition to a representative cause of action pursuant to the Private Attorney General  
17 Act. Plaintiffs now move for certification of the following class: “All hourly, non-exempt  
18 employees of Pedro’s Restaurant in the State of California from June 22, 2011 through the date  
19 of trial.”

## 20 **II. LEGAL STANDARDS**

21 As explained by the California Supreme Court,

22 The certification question is essentially a procedural one that does not ask whether  
23 an action is legally or factually meritorious. A trial court ruling on a certification  
24 motion determines whether the issues which may be jointly tried, when compared  
25 with those requiring separate adjudication, are so numerous or substantial that the  
26 maintenance of a class action would be advantageous to the judicial process and  
27 to the litigants.

28 (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, internal quotation  
marks, ellipses, and citations omitted.)

1 California Code of Civil Procedure section 382 authorizes certification of a class “when  
2 the question is one of a common or general interest, of many persons, or when the parties are  
3 numerous, and it is impracticable to bring them all before the court . . . .” As interpreted by the  
4 California Supreme Court, Section 382 requires: (1) an ascertainable class; and (2) a  
5 well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
6 *Superior Court, supra*, 34 Cal.4th at p. 326.)

7 **A. Ascertainable Class**

8 “The trial court must determine whether the class is ascertainable by examining (1) the  
9 class definition, (2) the size of the class, and (3) the means of identifying class members.”  
10 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) “Class members are ‘ascertainable’ where  
11 they may be readily identified without unreasonable expense or time by reference to official  
12 records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932.)

13 **B. Community-of-Interest**

14 The “community-of-interest” requirement encompasses three factors: (1) predominant  
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
16 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*  
17 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the  
18 probability that each class member will come forward ultimately to prove his or her separate  
19 claim to a portion of the total recovery and whether the class approach would actually serve to  
20 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
21 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”  
22 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
23 381, 385.)

24 Regarding the predominance of questions of law or fact:

25 The ultimate question in every case of this type is whether . . . the issues which  
26 may be jointly tried, when compared with those requiring separate adjudication,  
27 are so numerous or substantial that the maintenance of a class action would be  
28 advantageous to the judicial process and to the litigants.

1 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104-1105, quoting  
2 *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.) Thus,

3 [E]ach member must not be required to individually litigate numerous and  
4 substantial questions to determine his right to recover following the class  
5 judgment; and the issues which may be jointly tried, when compared with those  
6 requiring separate adjudication, must be sufficiently numerous and substantial to  
7 make the class action advantageous to the judicial process and to the litigants.

8 (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.)

9 In assessing whether there is a sufficient community-of-interest, the Court must analyze  
10 both applicable law and relevant facts. For example, “if the community of interest is mainly one  
11 of law, and if the factual issues requiring separate adjudication are numerous and substantial, a  
12 class action does not subserve the judicial process or the litigants.” (*Bozaich v. State of*  
13 *California* (1973) 32 Cal.App.3d 688, 694-695.) In addition, “Class actions will not be  
14 permitted where there are diverse factual issues to be resolved, even though there may be many  
15 common questions of law. A class action cannot be maintained where each member’s right to  
16 recover depends on facts peculiar to his case.” (*Basurco v. 21<sup>st</sup> Century Ins. Co.* (2003) 108  
17 Cal.App.4th 110, 118, internal ellipses, quotation marks, citations, and brackets omitted.) On the  
18 other hand, “A class action can be maintained even if each class member must at some point  
19 individually show his or her eligibility for recovery or the amount of his or her damages, so long  
20 as each class member would not be required to litigate substantial and numerous factually unique  
21 questions to determine his or her individual right to recover.” (*Acree v. General Motors*  
22 *Acceptance Corp.* (2001) 92 Cal.App.4th 385, 397; see also *Bell v. Farmers Ins. Exchange*  
23 (2004) 115 Cal.App.4th 715, 742-743.)

### 24 **III. ANALYSIS**

#### 25 **A. Ascertainable Class**

26 Plaintiffs assert that Defendant has produced an employee list that includes 390 hourly  
27 employees who worked for Defendant during the class period as well as a class list with contact  
28 information for more than 350 hourly employees. The Court thus finds the class is both  
ascertainable and sufficiently numerous.

1           **B.       Community of Interest**

2                   **1.       Predominance of Common Issues of Law and Fact**

3           This element of class certification is the most strongly disputed by Defendant. Defendant  
4 provides arguments opposing class certification with respect to the rest break, meal break, wage  
5 statement, waiting time penalties, and unfair competition claims. Those arguments are addressed  
6 below.

7                           **a.       Rest break claim**

8           Plaintiffs allege that Defendant failed to permit Plaintiffs and putative class members to  
9 take adequate rest periods. (SAC, ¶ 60.) Plaintiffs argue that under California law and the  
10 applicable wage order Defendant was required to permit employees to take a 10-minute rest  
11 break for every four hours or major fraction thereof and that Defendant failed to give effect to  
12 the fractional language of the wage order. Plaintiffs provide evidence that employees regularly  
13 missed rest breaks and were required to get manager approval to take a break. (See Declaration  
14 of Valerie Brender in Support of Plaintiffs’ Motion for Class Certification (“Brender Decl.”),  
15 Ex. 16, ¶ 10; Ex. 17, ¶ 10; Ex. 18, ¶ 12; Ex. 19, ¶ 11; Ex. 20, ¶ 6; Ex. 21, ¶ 10; Ex. 22, ¶ 10; Ex.  
16 23, ¶ 9; Ex. 24, ¶ 7; Ex. 25, ¶ 9; Ex. 26, ¶ 6.) This raises an inference that Defendant may have  
17 had a policy that resulted in routinely missed breaks by employees.

18           Defendant argues that it has a facially valid policy in its employee handbook and that  
19 the employee bulletin board posts Wage Order 5, which provides that an employer shall permit  
20 employees to take rest periods. While these assertions may be true, Defendant does not explain  
21 how litigation concerning the written policy, which applies equally to all of Defendant’s  
22 employees, would result in the litigation of numerous individual issues. Furthermore, “the  
23 mere existence of a lawful break policy will not defeat class certification in the face of actual  
24 contravening policies and practices that, as a practical matter, undermine the written policy and  
25 do not permit breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th  
26 388, 406.)

27           Defendant argues further that Plaintiffs have a theory of liability that Defendant’s  
28 managers had the discretion to deny rest breaks, that the work environment did not permit breaks

1 due to workload and staffing constraints, and that the restaurant lacked a mechanism to report  
2 missed breaks, but that Plaintiffs fail to establish managers had the discretion to deny breaks or  
3 that work schedules did not permit breaks. Defendant also contends there is no statutory  
4 requirement that an employer have a written process in place to report missed breaks. These  
5 arguments go to the merits of Plaintiffs' claims and are not relevant to class certification.  
6 (*Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at pp. 439-440 [the question of certification is  
7 essentially a procedural one that does not ask whether an action is legally or factually  
8 meritorious].)

9 As stated previously, Plaintiffs provide evidence that employees needed approval from  
10 managers to take breaks and regularly missed breaks. This is sufficient to demonstrate the  
11 possible existence of a uniform practice that can be litigated on a common basis with regard to  
12 the putative class.

13 **b. Meal break claim**

14 Plaintiffs allege they and the putative class members regularly worked in excess of five  
15 hours a day without being afforded at least a half-hour meal period during which they were  
16 relieved of all duties. (SAC, ¶ 51.) Plaintiffs allege Defendant never paid the one hour of  
17 compensation as a premium payment for missed meal periods. (SAC, ¶ 53.) Plaintiffs provide  
18 evidence that employees regularly were unable to take meal breaks and were required to get  
19 manager approval to take a meal break. (See Brender Decl., Ex. 16, ¶ 6; Ex. 17, ¶ 6; Ex. 18, ¶ 8;  
20 Ex. 19, ¶ 8; Ex. 21, ¶ 6; Ex. 22, ¶ 6; Ex. 23, ¶ 6; Ex. 25, ¶ 6.) This raises an inference that  
21 Defendant may have had a policy that resulted in routinely missed meal breaks by employees.

22 Defendant argues it has a facially-valid meal break policy in its employee handbook. As  
23 discussed in connection with the rest break claim, however, Defendant does not explain how  
24 litigation concerning the written policy, which applies equally to all of Defendant's employees,  
25 would result in the litigation of numerous individual issues. Plaintiffs have sufficiently  
26 established that common issues predominate with regard to the meal break claim.

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**c. Wage statement claim**

Defendant contends that Plaintiffs' claims regarding wage statement violations are based on three theories of liability: (1) Defendant failed to include premium wages earned for missed meal and rest periods; (2) Defendant failed to provide the correct number of hours worked on Santa Clara employees' wage statements; and (3) Defendant included tips on the paystubs of the workers directly tipped by customers without also showing amounts on the paystubs of workers who received tips from the directly-tipped employees. Defendant makes no argument that litigation of these issues will involve many individualized issues; rather, Defendant argues the merits. As stated previously, arguments that go to the merits of Plaintiffs' claims are not relevant to class certification. (*Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at pp. 439-440.)

**d. Waiting time penalties and UCL claims**

Defendant contends the claims involving waiting time penalties and the UCL claims are derivative of the other claims and therefore cannot be certified because the other claims cannot be certified. In light of the fact that the Court has found that common issues predominate with regard to the other claims, Defendant's arguments concerning the waiting time penalties and UCL claims are without merit.

\* \* \* \* \*

In sum, the Court finds that common issues predominate over individual issues for all of Plaintiffs' claims.

**2. Typicality and Adequacy of Representation**

Evaluating the "community-of-interest" element also requires the Court to consider whether the class representatives have claims or defenses typical of the class and whether they can adequately represent the class. As described in one case:

The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

1 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,  
2 brackets, and quotation marks omitted.)

3 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to  
4 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of  
5 the class.” (*McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450.) The fact that a class  
6 representative does not personally incur all of the damages suffered by each different class  
7 member does not necessarily preclude the representative from providing adequate representation  
8 to the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 238.)

9 Defendant argues that Plaintiffs have conflicts of interest with the putative class members  
10 that render them atypical and inadequate class representatives. Defendant argues first that the  
11 two named plaintiffs themselves have a conflict because Elias claims Defendant incorrectly  
12 included tipped amounts as wages for tax reporting purposes when she distributed a portion of  
13 those tips to colleagues, such as Camacho. Camacho does not allege she reported these tips as  
14 taxable income to Defendant or the IRS, so Defendant contends Elias seeks relief that is  
15 antagonistic to those workers who received tips from directly-tipped employees. As argued by  
16 Plaintiffs, however, there is no tax issue in this case. Elias’s pursuit of the tipping-related claim  
17 will have no impact on Camacho’s claims. The Court notes, however, that only Elias and other  
18 directly-tipped employees seek to maintain a claim related to distribution of tips to other  
19 employees. Consequently, the Court finds that a sub-class of directly-tipped employees should  
20 be added solely for the wage statement claim relating to this claim, as set forth at the end of this  
21 Order.

22 Defendant argues that Plaintiffs’ own testimony contradicts the theories of liability  
23 because Elias and Camacho testified they saw other employees taking breaks. The fact that  
24 Plaintiffs may have seen other employees take breaks at some point is insufficient for finding  
25 Plaintiffs’ interests are antagonistic to the class.

26 Accordingly, the Court finds that Plaintiffs have met the typicality and adequacy of  
27 representation requirements.

28



1                   **3. Substantial Benefits of Class Litigation**

2                   “[A] class action should not be certified unless substantial benefits accrue both to  
3 litigants and the courts. . . .” (*Basurco v. 21<sup>st</sup> Century Ins.*, *supra*, 108 Cal.App.4th at p. 120,  
4 internal quotation marks omitted.) The question is whether a class action would be superior to  
5 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of  
6 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a  
7 class action is proper where it provides small claimants with a method of obtaining redress and  
8 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.  
9 120-121, internal quotation marks omitted.)

10                  This case includes a large number of individuals. It would be inefficient for the Court to  
11 hear and decide the same issues separately and repeatedly for each class member. Further, class  
12 members would have less incentive to file suit if each class member had to bear the cost of  
13 maintaining an action individually. The Court finds, and it is undisputed by Defendant, that the  
14 requirement there be substantial benefits to class litigation has been met.

15                   **4. Manageability**

16                  As a final argument, Defendant asserts that Plaintiffs have failed to show that the  
17 proposed class action is manageable. Defendant contends its liability is predominantly  
18 predicated on fact-specific questions regarding rest breaks, meal breaks, tipping, uncompensated  
19 work time, and unfair competition that would necessarily require a mini-trial for each individual  
20 class member to determine liability. However, Defendant fails to provide any specific examples  
21 to support this argument. Moreover, the Court has already found that common issues  
22 predominate over individual issues, and those common issues will be the focus of the litigation.  
23 The Court thus finds that manageability is not a serious concern.


24 **IV. DISPOSITION**

25                  Accordingly, for the reasons discussed, Plaintiffs’ motion for class certification is  
26 GRANTED with two modifications. The SAC defines the class as: “All hourly, non-exempt  
27 employees of Pedro’s Restaurant in the State of California from June 22, 2011 through the date  
28 of trial.” This class definition needs to be narrowed by establishing two subclasses. First, the

1 wage statement claim made under Labor Code section 226 that is based on the improper  
2 reporting of tips is limited to a subclass defined as: "All members of the proposed hourly non-  
3 exempt employee class who directly received tips from Pedro's customers." Second, the wage  
4 statement claim made under Labor Code section 226 that is based on reporting an inaccurate  
5 number of hours worked is limited to a subclass defined as: "All members of the proposed  
6 hourly non-exempt employee class who worked at Pedro's Restaurant in Santa Clara,  
7 California."

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Dated: April 21, 2017

  
Thomas E. Kuhnle  
Judge of the Superior Court