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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Wackenhut Wage And Hour Cases	Case No.: JCCP4545 **ORDER GRANTING CLASS CERTIFICATION**

INTRODUCTION

Plaintiffs, on behalf of themselves and all other similarly situated, move to certify a class of all non-exempt Security Officers employed by the Wackenhut Corporation (hereafter "Wackenhut") since January 7, 2001 to the present. In the operative Coordinated Complaint, plaintiffs allege that Wackenhut violated the Labor Code by failing to provide off-duty meal periods, by failing to authorize and permit off-duty rest breaks, and by providing inadequate wage statements. Wackenhut opposes the motion. The matter was heard on December 22, 2009. Having considered oral argument and all of the papers filed by the parties, the Court grants plaintiffs' motion. The class to be certified is defined as: "all non-exempt Security Officers employed by Wackenhut in California during the Class Period of January 7, 2001 to the present."

BACKGROUND

Wackenhut provides security-related services. In California it employs thousands of individuals as security officers assigned to hundreds of clients in a wide range of unrelated industries, including banks, oil refineries, warehouses, medical clinics, government agencies and offices, schools, retail centers, industrial facilities, etc. At these worksites, Wackenhut employees are responsible for the protection, safeguarding and security of assets, personnel, customers and/or visitors.

LEGAL STANDARD

Code of Civil Procedure § 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." Civ. Proc. Code § 382. "To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, citing *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470 and *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809. "The community of interest requirement involves 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.'" [Citation.] *Linder*, *supra*, 23 Cal.4th at p. 345.

"A trial court ruling on a certification motion determines '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.' [Citation.]" *Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal.4th 319, 326. "The relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions . . ." *Id.* at p. 339, fn. 10.

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Sav-On Drug, supra*, 34 Cal.4th at 326, quoting *Linder, supra*, 23 Cal.4th at pp. 439-440. By the same token, "the trial court must evaluate whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment." *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531. 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*, *supra*, 34 Cal.4th at p. 333. "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." *Linder, supra*, 23 Cal.4th at p. 435.

DISCUSSION

A. Common Questions of Law and Fact Predominate over Individual Issues.

1. Predominant Common Legal and Factual Issues Exist regarding Meal Period Claims.

California Code of Regulations, title 8, § 11040 (Industrial Welfare Commission Order No. 4-2001 Regulating Wages, Hours, and Working Conditions in Professional, Technical, Clerical, Mechanical, and Similar Occupations) provides:

> 11. Meal Periods
>
> (A) No 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, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meals period shall be considered an "on duty" meal period and counted as time worked. **An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.**
>
> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Substantial evidence shows common questions exist and predominate as to whether Wackenhut uniformly failed to comply with statutory requirements as to on-duty meal periods. In particular, as discussed below, there are common questions regarding (1) whether the duties uniformly performed by the putative class members come within the "nature of the work" exception so as to permit on-duty meal periods, (2) whether Wackenhut can avoid its obligation to provide off-duty meal periods simply because of its clients' demands that the Security Officers be provided only on-duty meal periods, and (3) the validity of on-duty meal agreements signed by putative class members.

Plaintiffs' theories of recovery contemplate that Wackenhut failed to comply with IWC Order No. 4-2001 because (a) the employees do not fall within the "nature of the work" exception so as to permit on-duty meal periods because Security Officers can be relieved of their duties for 30-minute meal periods, and (b) the written agreement between the parties was invalid because it failed to contain a revocability clause.

As to whether the employees fall within the "nature of the work" exception, evidence purports to show a uniform practice on behalf of the Wackenhut Corporation, affecting all employees equally, of allowing clients to determine whether meal periods will be on-duty or off-duty, as opposed to Wackenhut performing an analysis of whether the "nature of the work" at each site prevents an employee from being relieved of their duties for 30-minute meal periods. Ex. O (Fisher decl., p. 26:24-29:4); Ex. M (Chang decl., p. 12:13-22:6); Ex. AQ (Dodough, p. 144:19-146:24). As demonstrated by the depositions of Michael Goodboe, Senior Vice-President of Human Resources, and Frank Canzoneri, former Regional Vice President, the Wackenhut Corporation has centralized management which implements standardized policies and practices throughout California. Ex. P (Goodboe decl. p. 27:4-28:10, 92:3-23); Ex. D (Canzoneri decl. p.

40:14-41:3). Apparently, almost every client demands an on-duty rest period, although there are exceptions.[1] *Id.*

Wackenhut, in opposition, contends that determining whether each employee actually meets the "nature of the work" exception and cannot be relieved of their duties requires individualized inquiries into each worksite, post, and shift. Plaintiffs, however, show the predominance of common questions in connection with the validity of Wackenhut's uniform determination process (client preference) and the uniform conclusion (that Security Officers cannot be relieved of their duties for 30-minute meal periods). Regardless of the merits of these contentions, there appears a common policy or practice on behalf of Wackenhut suitable for class treatment.

Plaintiffs' second theory, that the on-duty meal agreements between Wackenhut and its employees are invalid for lack of a revocability clause, is also well-suitable for class treatment. Evidence purports to show Wackenhut's uniform practice of having Security Officers sign on-duty meal agreements during orientation. Ex. AQ (Dodough p. 87:4-88:13); Ex. M (Chang decl. p. 30:8-11); Ex. O. 58:22-59:3). From January 7, 2001, until April or May 2004, on-duty meal agreements purportedly lacked the required revocability clause. Ex. AQ (Dodough decl. pp. 95:10-96:14 & 97:10-18); Exs. AS, AX, AY, & AZ. Since April or May 2004, Wackenhut disseminated on-duty meal agreements with a revocability clause, but only to newly hired employees, and not to current employees. Ex. AQ (Dodough decl. pp. 97:10-100:17, 141:4-21); Ex. O (Fisher decl. p. 78:11-24). Not until May 2008, apparently, did Wackenhut distribute to all employees an on-duty meal agreement with a revocability clause in an Addendum to its Security Officer Handbook. Ex. S; Ex. L (Tsuji decl. pp. 15:7-18:18 & 23:13-24:5).

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[1] E.g., The San Francisco Conservatory of Music requires off-duty meal periods. Ex. M (Chang decl. p. 29).

The bottom line is that plaintiffs meet their burden of proffering substantial evidence showing common questions regarding Wackenhut's apparently uniform policies and practices as to on-duty meal periods and on-duty meal period agreements, amenable to class treatment.

2. *Predominant Common Legal and Factual Issues Exist regarding Rest Period Claims.*

California Code of Regulations, title 8, § 11040 (IWC Order No. 4-2001) provides:

> 12. Rest Periods
>
> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee on (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

Here, plaintiffs' theory of recovery contemplates that Wackenhut uniformly failed to authorize and permit the requisite off-duty rest periods. Wackenhut appears to admittedly have had a uniform rest break policy "from corporate for all of California" in which employees remained on call and were not completely relieved of their duties. Ex. O (Fisher decl. p. 80:19-21); Ex. AQ (Dodough decl. p. 28:6-10); Ex. M (Chang decl. *see e.g.*, pp. 123:6-16, 116:3-7, 117:13-17, 118:21-25, 120:2-6). As demonstrated by the depositions of Michael Goodboe, Senior Vice-President of Human Resources, and Frank Canzoneri, former Regional Vice President, the Wackenhut Corporation has centralized management which implements standardized policies and practices throughout California. Ex. P (Goodboe decl. p. 27:4-28:10,

92:3-23); Ex. D (Canzoneri decl. p. 40:14-41:3). Moreover, plaintiffs' compendium of declarations of employees shows innumerable instances of employees not given rest periods nor any relief from their duties. (*See generally* Compendium of Declarations in Support of Plaintiffs' Motion for Class Certification).

Thus, substantial evidence show common legal and factual questions exist and predominate as to whether Wackenhut uniformly failed to comply with statutory requirements by not authorizing and permitting employees to take duty-free paid rest breaks. As Wackenhut's rest period policies and practices appear applicable to all employees, such claims are amenable to class treatment.

3. <u>Predominant Common Legal and Factual Issues Exist regarding Wage Statement Claims.</u>

Labor Code § 226 and California Code of Regulations, title 8, § 11040 (IWC Order No. 4-2001) require employers to provide accurate itemized wage statements to employees, including, among other things, "the inclusive dates of the period for which the employee is paid."

Here, plaintiffs' theory is that Wackenhut failed to provide the inclusive dates of the pay period on all wage statements prior to at least March 2005, and failed to include all premium wages earned for missed meal and rest periods. These claims are derivative of plaintiffs' meal and rest period claims, and given Wackenhut's alleged uniform practices toward wage statements, involve common questions that are suitable for class treatment.

B. Named Plaintiffs' Claims are Typical of the Class.

The Compendium of Declarations in Support of Plaintiffs' Motion for Class Certification shows that the class representatives and the putative class members have the same alleged injuries: no off-duty meal periods, no off-duty rest periods, and inadequate itemized wage statements. These injuries allegedly result from Wackenhut's apparently uniform policies and practices, i.e., the same course of conduct. As demonstrated by the depositions of Michael

Goodboe, Senior Vice-President of Human Resources, and Frank Canzoneri, former Regional Vice President, the Wackenhut Corporation has centralized management which implements standardized policies and practices throughout California. Ex. P (Goodboe decl. p. 27:4-28:10, 92:3-23); Ex. D (Canzoneri decl. p. 40:14-41:3). Given these facts, the nature of the claims asserted on behalf of the class representatives are similar to those of the putative class and based on conduct which is not unique to the named plaintiffs. Accordingly, typicality is satisfied.

C. The Class Representatives Can Adequately Represent the Class.

The proposed class representatives do not appear to have interests antagonistic to the remainder of the class. The declarations of plaintiffs' attorneys demonstrate their substantial experience handling similar suits and qualifications as class counsel. *See generally*, declarations of Howard Z. Rosen, James R. Hawkins, and Emily P. Rich.

Wackenhut contends that there are inherent antagonistic interests because the putative class of employees does not seek to have an unpaid off-duty meal period and are happy with their current working arrangement. (Opp'n p. 32). The lawsuit, however, is really about recovering statutorily-authorized penalties for alleged meal and rest period violations, and not about implementing off-duty meal periods, which any employee can request at any time without filing suit by simply revoking their on-duty meal agreement. Assuming labor code violations are proven, the class has an identical interest in recovering unpaid wage premiums. Accordingly, adequacy is satisfied.

D. The Class is Sufficiently Numerous and Ascertainable.

Numerosity is satisfied given the thousands of current or former employees who may be included in the class. The proposed class is adequately defined by objective characteristics and common transactional facts. Identification of the class members can be readily ascertained from Wackenhut's electronic payroll records, time sheets, on-duty meal agreements, and computer-based Labor Scheduling System that tracks whether the contract for each job site allowed off-

duty meal periods. Ex. AQ (Dodough decl. p. 109:3-6). Accordingly, plaintiffs present a sufficiently ascertainable class.

Nonetheless, Wackenhut correctly contends that plaintiffs' proposed *subclasses* are not ascertainable. The subclasses are not sufficiently defined in terms of objective characteristics and common transactional facts thus making impossible the identification of subclass members. This may be amenable to a correction if plaintiffs revise the proposed subclass definitions.

E. Class Treatment is the Superior Method of Adjudication.

Plaintiffs sufficiently demonstrate the important benefits of resolving this controversy through class litigation. Without class representation, many current Wackenhut employees would be reluctant to file separate suits to enforce their rights because of perceived retaliation and intimidation. The costs of litigating an individual suit would also dwarf any potential recovery. Moreover, the most current decisions from the Court of Appeal show a strong preference for the trial court exercising its discretion to certify a wage-and-hour class action when common issues exist and to deal with any resulting case-management challenges thereafter as the record develops. *See e.g., Jaimez v. DAIOHS USA, Inc.* (January 12, 2010) No. B209486, 2010 WL 93848; *Ghazaryan v. Diva Limousine, Ltd.* (2009) 169 Cal.App.4th 1524; *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193; *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319. Given these considerations, and Wackenhut's apparent standardized policies and practices, there appears no advantage to requiring resolution through piecemeal individual litigation or through administrative claims filed with the Division of Labor Standards Enforcement.

CONCLUSION

For the reasons stated above, the Court finds:

(1) It is impracticable to bring all members of the class before the Court;

(2) The class is ascertainable and is sufficiently numerous to warrant class treatment;

(3) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members;

(4) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class;

(5) The representative plaintiff will fairly and adequately protect the interests of the class;

(6) A class action is the superior means for adjudicating the claims in the litigation.

Therefore, It Is Ordered That:

1. A class action is proper as to all causes of action of the Coordinated Complaint, with the exception of the causes of action for penalties under PAGA that are expressly not subject to plaintiffs' motion.

2. The class to be certified is defined as: **"all non-exempt Security Officers employed by Wackenhut in California during the Class Period of January 7, 2001 to the present."**

3. The proposed subclasses are unascertainable, and thus certification of such is denied without prejudice.

4. Class members are entitled to notice of the pendency of this action and to an opportunity to exclude themselves from the action. The parties shall meet and confer regarding the method of notice and who will bear the costs of such notice. The parties shall file with the Court a joint status report regarding such by March 16, 2010. If matters with regards to notice remain contested, the Court will hold a noticed hearing at a date to be determined.

Dated: March 3, 2010

WILLIAM F. HIGHBERGER

William F. Highberger
Judge of the Superior Court