

**Tentative Rulings**  
January 14, 2025  
Department S-17  
Judge Joseph Ortiz

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Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or [www.courtcall.com](http://www.courtcall.com)), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8715 in advance of the hearing. If all parties submit on a tentative ruling, it will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

**ATTENTION:** Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S-17 at [jgarcez@sb-court.org](mailto:jgarcez@sb-court.org). Parties who do not retain their own reporter have waived the right to one.

**UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

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9. *Requejo v. Hernandez Room & Board, Inc., et al*, Case No. CIVSB2330117  
Motion to be Relieved as Attorney of Record  
1/14/25, 9:00 a.m., Dept. S-17

The Court would **GRANT** this unopposed motion by counsel for Plaintiff Requejo. Common grounds for terminating a client relationship include inability to work together, irreconcilable difference about the course of litigation, or failure to pay fees or expenses. Here, the supporting declaration establishes a valid basis. Thus, the motion is **GRANTED**.

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10. *Charles v. Armada Trucking, Inc., et al*, Case No. CIVSB2310332  
Defendant's Motion for Summary Judgment or, in the alternative, Summary Adjudication<sup>1</sup>  
1/14/25, 9:00 a.m., Dept. S-17

***Tentative Rulings***

*Preliminarily:* The Court would exercise to consider movant's non-conforming Separate Statement. See Rules of Court, rule 3.135(d)(2) [immaterial facts]; 3.1350(d)(3) [failure to cite line from deposition]; 3.1116(d) [inclusion of transcripts not cited]; and 3.1116(c) [failure to mark transcripts].

*As to Evidentiary Objections:* The Court would **SUSTAIN** objections to the Stricevic Declaration as follows:

- Para. 5-6 (first portion) [lacks foundation & hearsay]
- Para. 7 [secondary evidence]
- Para. 8 (second portion) [lacks foundation] & Para. 8 (third portion) [sec. evidence]
- Para. 11 [sec. evidence]
- Para. 14 (second & third portions) [irrelevant]
- Exh. 3 [failure to authenticate]
- Exh. 10 [irrelevant]

The Court would otherwise **OVERRULE**.

*As to the Motion:* The Court would deem the motion moot as to the first, second, and third causes of action given Plaintiff's dismissal of those causes.

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<sup>1</sup> Movant additionally titles the motion as one to "Deny Class Certification". Importantly, a separate motion to deny class certification would require a separate and additional filing fee under Local Rule 521. Because a separate filing fee was not provided, the Court construes the title to merely refer to the implication that summary judgment would mitigate the need for certification.

As to the remainder: The Court would **DENY** the motion.<sup>2</sup>

### **Case Summary**

This is a wage-and-hour class and Private Attorneys General Act (PAGA) representative action. Plaintiff seeks to represent all current and former hourly, non-exempt employees of Defendant working in California during the statutory period. Plaintiff asserts that the workers are non-exempt and that Defendant, among other things, engaged in a scheme of wage abuse to deprive them of pay for “all hours worked, missed meal periods, and missed rest breaks . . . .” (Compl., ¶24.) As such, on February 15, 2023, he issued a notice to the Labor and Workforce Development Agency (LWDA), and after the exhaustion of administrative remedies, filed suit on May 18, 2023. The operative Complaint alleges violations relating to (1) overtime wages; (2) meal periods; (3) rest breaks; (4) minimum wages; (5) final pay; (6) wage statement accuracy; (7) reimbursements; as well as (8) civil penalties pursuant to PAGA and (9) violation of the unfair competition law.

### **Summary of the Law**

Summary judgment is proper where there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c(c).) The analysis requires three steps: First, the court must identify of the issues framed within the pleading. (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064-1065.) Second, it must determine whether the moving party has established facts sufficient to negate the claim and justify a judgment in movant’s favor. (*Ibid.*) Third, and finally, when a summary judgment motion, as a prima facie matter, justifies a judgment, the court must determine whether the opposition demonstrates the existence of a triable issue of material fact. (*Ibid.*)

A motion for summary judgment granted where moving party has not met its burden of showing that the action is without merit “would have to be reversed, *even if the plaintiff failed to introduce a scintilla of evidence challenging that element.*” (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468 [emphasis in original].) The court’s sole function on a motion for summary judgment is issue finding, not issue determination. (See *Zavala v. Arce* (1997) 58 Cal.App.4th 915, 926.)

### **Analysis**

*Failure to Pay Minimum Wage [4th Cause]*: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” (Lab. Code, § 1194(a).) Here, Plaintiff

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<sup>2</sup> Supporting evidentiary basis includes UMF, 67-71, 84-86, 151-153; Charles Depo., 19:18-23, 21:20-24, 23:1-6, 48:4-23 & 76:3-77:2; and Plaintiff’s Pay Statements [Exh. 2].

does not dispute that he was paid above the minimum wage. (UMF, 70.) Instead, he argues that he was not paid for all hours worked.

Plaintiff testified he was told to clock in after picking up his load; although he does not recall who told him this and he has nothing in writing. (Charles Depo, 76:3-77:2.) Defendant argues this testimony is unsubstantiated, but it cites no authority requiring additional substantiation beyond Plaintiff's own testimony. Plaintiff further testified when working as a long-haul driver he had a partner driving the truck with him 80% of the time. (Charles Depo, 19:18-23 & 21:20-24.) Plaintiff testified he was also shorted on hours because he was not paid for time the other driver was driving; when he was "trying to find a trailer, coupling two double trailers"; or if he had to wait in line to receive a load. (Charles Depo, 48:4-23.)

Defendant, for its part, presents evidence concerning how Plaintiff was paid: Defendants contend they offer their drivers monetary incentives to obtain for arriving at the terminal early; compensation for being forced to wait; and rewards for clean inspections. (UMF, 69.) In support, Defendant cites Plaintiff's payroll records (Exh. 2); the Orientation Handbook (Exh. 4); three annual reports for the years 2020-2022 show Plaintiff was paid over minimum wage for those years (Exhs. 6-8); and Plaintiff's employment agreement. (Exh. 9). However, none of Defendant's facts expressly necessitate that Plaintiff was paid for all hours worked. (UMF, 67-71.) Thus, it appears that Plaintiff has raised a triable issue of material fact as to payment for all hours worked.

*Final Pay [5th Cause]*: When an employee separates from his or her employer, the employee's final wages are due immediately if terminated, or within 72 hours if the employee quits with less than 72-hours' notice, or last day if the employee quits with 72 hours' notice or more. (Lab. Code, §§ 201 & 202.) Here, the claim reliant on the assessment of the fourth cause of action for minimum wages. While Defendant presents evidence that Plaintiff was timely given a final check [UMF, 77], the claim remains as derivative of the claim in the fourth cause.

*Non-Compliant Wage Statements [6th Cause]*: Section 226(a) of the Labor Code sets out the requirements for wage statements. These requirements include, but are not limited to, total hours worked and gross wages earned. (See Lab. Code, § 226(a)(1)-(9).) Here, the claim is also derivative. Because the prior analysis concludes a triable issue of material fact as to hours worked but not paid, there remains a triable issue as to whether the wage statements were in compliance.

*Reimbursements [7th Cause]*: "An 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." (Lab. Code, § 2802, subd. (a).)

Here, Defendant contends Plaintiff was fully reimbursed for all incurred expenses because he was given a non-taxed \$66 daily per diem. (UMF, 85-56.) Defendant also cites Plaintiff's

testimony that his only out-of-pocket expenses were cellphone bills and that he did not submit an expense report for boots, gloves, or cellphone expenses. (Charles Depo, 46:23-25 & 118:1-6.) However, nothing Defendant cites to specifically mentions the per diem or indicates that it was intended to be reimbursement for all expenses. (See Exh. 9, Employment Agreement; also Charles Depo., 47:1-25 [asserting no reimbursement].) Therefore, Defendants fail to meet their initial burden. Furthermore, Plaintiff testified that he was required to the cellphone. (E.g., Charles Depo., 23:1-6.) Thus, there appears to be a triable issue as to whether he was properly reimbursed for his cellphone expenses and whether Defendants knew of such expenditures.

UCL & PAGA Causes [8th & 9th Causes]: Defendants argue that these two causes failed because they are dependent on a finding of one of the other causes. As the Court has denied the motion as to causes four through seven, potential underpinnings remain for these causes. Thus, the Court would deny as to these causes as well.

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11. *Padilla, et al, v. Sika Corporation, et al*, Case No. CIVSB2307242  
Motion for Preliminary Approval of Class Action Settlement  
1/14/24, 1:30 p.m., S-17

The Court would **CONTINUE** to allow the parties file the proposed Second Amended Complaint (SAC). On December 16, 2024, the parties filed a stipulation for a SAC that adds a cause for civil penalties pursuant to the Private Attorneys General Act (PAGA). The Court just received that stipulation and proposed order. However, importantly, it merely allows filing of the SAC within ten days. Thus, the SAC has not yet been filed.

Notably, case law requires that the releases be tailored to the claims that were, or reasonably could have been, asserted *in the lawsuit* based on the facts alleged in the operative complaint (and, in PAGA cases, the notice letter to the LWDA). (See, e.g., *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539 [“a court cannot release claims that are outside the scope of the allegations of the complaint”].) The Court declines to approve a settlement outside the four corners of the operative complaint. The matter will be continued to allow the filing of the SAC prior to consideration.

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