S275431

CASE NO. 21-16201

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE HUERTA,

Plaintiff and Appellant,

v.

CSI ELECTRICAL CONTRACTORS, INC.,

Defendant and Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 5:18-CV-06761-BLF
BETH LABSON FREEMAN, UNITED STATES DISTRICT JUDGE

APPELLANT'S EXCERPTS OF RECORD VOLUME 1 OF 6

PETER R. DION-KINDEM (95267)
PETER R. DION-KINDEM, P.C.
2945 Townsgate Rd., Suite 200
Westlake Village, CA 91301
Telephone: (818) 883-4900
Email: peter@dion-kindemlaw.com

LONNIE C. BLANCHARD, III (93530)
THE BLANCHARD LAW GROUP, APC
5211 E. Washington Blvd., #2262
Commerce, CA 90040
Telephone: (213) 599-8255
Email: lonnieblanchard@gmail.com

Attorneys for Plaintiff and Appellant George Huerta

PETER R. DION-KINDEM (SBN 95267)
THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P. C.
2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Telephone: (818) 883-4900
Fax: (818) 338-2533
Email: peter@dion-kindemlaw.com

LONNIE C. BLANCHARD, III (SBN 93530)
THE BLANCHARD LAW GROUP, APC
5211 East Washington Boulevard, No. 2262
Commerce, California 90040
Telephone: (213) 599-8255
Fax: (213) 402-3949
Email: lonnieblanchard@gmail.com

Attorneys for Plaintiff George Huerta

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

George Huerta, an individual, on behalf of himself and all others similarly situated and as a representative plaintiff,

Plaintiff,

vs.

First Solar, Inc., a Delaware corporation; California Flats Solar, LLC, a Delaware Limited Liability Company; CA Flats Solar 130, LLC, a Delaware Limited Liability Company; CA Flats Solar 150, LLC, a Delaware Limited Liability Company; Cal Flats Solar CEI, LLC, a Delaware Limited Liability Company; Cal Flats Solar Holdco, LLC, a Delaware Limited Liability Company; CSI Electrical Contractors, Inc.; Milco National Constructors, Inc.; California Compaction Corporation; and Does 1 through 10,

Defendants.

Case No. 5:18-cv-06761-BLF
CLASS ACTION

Stipulated Judgment

Plaintiff George Huerta and Defendant CSI Electrical Contractors, Inc. ("CSI") ("Parties"), through their attorneys of record, stipulate that judgment in this case ("Judgment") be entered in favor of Plaintiff and against CSI as follows:

1. CSI will pay to Plaintiff the amount of $500.00 ("Payment") on Plaintiff's individual claims that remain after the Court's various prior orders, rulings, and findings of fact and law on CSI's motions for partial summary judgment ("Plaintiff's Remaining Individual Claims").

2. The Judgment is being stipulated to facilitate Plaintiff's appeal of the Court's various prior orders, rulings, and findings on CSI's motions for partial summary judgment that occurred prior to the date of the Judgment. In this regard, the Parties agree that Plaintiff expressly reserves the right and does not waive his right to appeal the Judgment or any or all of this Court's prior orders, rulings, and findings of fact and law in the above-captioned action ("Action"), including but not limited to the Court's prior orders, rulings, and findings of fact and law on CSI's motions for partial summary.

3. The Payment will be due within 14 calendar days after either (1) the applicable date for seeking appellate review of the Judgment has passed without a timely appeal or request for review having been made, or (2) the Ninth Circuit Court of Appeals has rendered a final judgment affirming the Judgment and the date for further appeal has passed without further appeal. If the Ninth Circuit Court of Appeals reverses the Judgment or any of this Court's orders, rulings, or findings of fact and law in the Action, including but not limited to the Court's prior orders, rulings, and findings of fact and law on CSI's motions for partial summary, and the action is remanded to this Court to enable Plaintiff to pursue and recover those claims that the Ninth Circuit has ruled can go forward against CSI, then the Payment will not become due for Plaintiff's Individual Remaining Claims.

4. The Judgment does not resolve the issue of attorneys' fees and costs. Either party may make a motion for the award of attorneys' fees and costs in accordance with applicable law after the time periods set forth in paragraph 3. If the Ninth Circuit Court of Appeals affirms or reverses the Judgment or any of this Court's prior orders, rulings, and findings of fact and law in the Action, the Parties reserve their rights to make a motion for attorneys' fees or costs at the appropriate time in connection with the Action.

5. The Parties agree that the Judgment is not an admission of liability or guilt of any kind and that the Judgment is not a finding that CSI acted with any negligence, active negligence, violated the law in any way, engaged in any willful misconduct, or misconduct of any kind, or was an employer of Plaintiff.

6. This Judgment resolves all of Plaintiff's Remaining Individual Claims in the Action. The Judgment does not affect the claims of any other individuals or their ability to file any class or collective action.

Dated: July 14, 2021

THE DION-KINDEM LAW FIRM

BY: _____
PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiff George Huerta

Dated: July 14, 2021

FORD & HARRISON LLP

BY: /S DANIEL B. CHAMMAS
DANIEL B. CHAMMAS
Attorney for Defendant
CSI Electrical Contractors, Inc.

IT IS SO ORDERED.

Dated: July 14, 2021

_____
Beth Labson Freeman
District Court Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GEORGE HUERTA,

Plaintiff,

v.

CSI ELECTRICAL CONTRACTORS, INC.,

Defendant.

Case No. 18-cv-06761-BLF

ORDER GRANTING SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

On April 28, 2021, this Court granted Defendant CSI Electrical Contractors' ("CSI") motion for partial summary judgment. ECF 141. The same day, the Court directed the parties to inform the Court of the remaining claims in the case. ECF 142. While Defendant appeared to believe that no claims remained, Plaintiff George Huerta informed the Court that his Paragraph 5(A) claim remained. ECF 143.[1] During a subsequent case management conference, this Court permitted CSI to file a second summary judgment motion addressing the viability of this claim. ECF 148. On June 8, 2021, CSI filed its motion. Mot., ECF 149. On June 22, 2021, Huerta filed his opposition brief. Opp., ECF 150.[2] On June 23, 2021, CSI filed a reply brief. Reply, ECF 152. For the reasons discussed below, the Court GRANTS CSI's motion.

[1] Although it was not clear to the Court that any class issues remained unresolved after the first partial summary judgment ruling, the Court determined that in the event that a hyper-technical reading of that order showed that the order did not clearly and exactly dispose of all class issues, supplemental briefing on the issue identified by Plaintiff as unresolved would be appropriate and thus the Court allowed this second motion for partial summary judgment.

[2] The Court GRANTS Huerta's concurrently filed motion for judicial notice. ECF 151. Fed. R. Evid. 201 permits the Court to take judicial notice of "matters of public record." *MGIC Indem. Corp. v. Weisman* (9th Cir. 1986) 803 F.2d 500, 504.

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Partial summary judgment that falls short of a final determination, even of a single claim, is authorized by Rule 56 in order to limit the issues to be tried." *State Farm Fire & Cas. Co. v. Geary*, 699 F. Supp. 756, 759 (N.D. Cal. 1987).

The moving party "bears the burden of showing there is no material factual dispute," *Hill v. R+L Carriers, Inc.*, 690 F. Supp. 2d 1001, 1004 (N.D. Cal. 2010), by "identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact," *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). In judging evidence at the summary judgment stage, "the Court does not make credibility determinations or weigh conflicting evidence, and is required to draw all inferences in a light most favorable to the nonmoving party." *First Pac. Networks, Inc. v. Atl. Mut. Ins. Co.*, 891 F. Supp. 510, 513–14 (N.D. Cal. 1995). For a court to find that a genuine dispute of material fact exists, "there must be enough doubt for a reasonable trier of fact to find for the [non-moving party]." *Corales v. Bennett*, 567 F.3d 554, 562 (9th Cir. 2009).

Huerta brings a claim against CSI for failure to pay hours worked pursuant to Paragraph 5(A) of Wage Order 16. Compl. ¶ 29, ECF 101. Under Paragraph 5(A), "[a]ll employer mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay." The FAC alleges that "Defendants required [Huerta] and other class members to arrive at the Security Gate Entrance controlled by Defendants, to wait in vehicle lines for Defendants' biologists to approve the road for travel, then wait in a vehicle line to have their badges swiped ('badge in') by a person or persons employed or controlled by Defendants." Compl. ¶ 30.

CSI moves for summary judgment on this claim "on the grounds that there is no dispute as to any material fact as to Plaintiff's claim for unpaid wages under California Wage Order 16, paragraph 5(A), based on the allegation that the first location where Plaintiff's presence was required by CSI was the Security Gate where the badging occurred." Mot. Notice. CSI contends that *Griffin v. Sachs* "definitively and resolutely" forecloses Huerta's claims for unpaid wages pursuant to Wage Order 16 ¶ 5(A). Mot. at 2-3 (citing *Griffin v. Sachs*, 390 F. Supp. 3d 1070, 1096 (N.D. Cal. 2019)).

The Court agrees. *Griffin* was a virtually identical wage and hour class action suit arising out of the California Flats Solar Project. *See generally* ECF 141 at 6-7. Plaintiff Justin Griffin filed a class action against Sachs Electric Company and McCarthy Building Companies, Inc. on behalf of himself and other workers involved in the construction of the Project. 390 F. Supp. 3d at 1074. Griffin sought payment for hours worked under California law—to include Wage Order 16 ¶ 5(A)—for traveling between the Security Gate entrance and the solar panel work zone set approximately 12 miles onto the property. *Id*. While Griffin brought his claims against a different California Flats Solar Project employer, the claims involved his employment at the Jack Ranch work site as well as workplace and road rules practically identical to the ones at issue in this case. *See* ECF 141 at 7.

Defendant Sachs Electric Company moved for summary judgment on the grounds that "Plaintiff's 'interaction [at the Security Gate] [was] too minimal' to constitute the required 'presence' under Wage Order 16." 390 F. Supp. 3d at 1096. This Court agreed, holding that "Plaintiff's brief stop at the guard shack to enable scanning of his badge was not a 'location where the employee's presence is required' within the meaning of Wage Order 16 ¶ 5(A)." *Id*. at 1096-97. The Court explained:

> [S]imply [holding] up [a] badge[] for scanning by the person(s) manning the guard shack…is no different than that of any employee who enters a work campus or premises that requires scanning an

> employee badge to gain access. This obligation is no different than that of any employee who enters a work campus or premises that requires scanning an employee badge to gain access. . . Plaintiff drove his own vehicle, did not exit his vehicle, and simply presented his badge for scanning. It is simply illogical that merely scanning a badge to gain access triggers the right to compensation under Wage Order 16. If so, a massive swath of squarely non-compensable walking or commute time from the first 'badge' checkpoint of a given work location would be covered by paragraph 5(A).

Id. at 1097. The Court concluded that "Plaintiff's pass through the Security Gate was not 'the first location where Plaintiff's presence was required' and that Plaintiff is not entitled to compensation for his travel time on the Access Road under Wage Order 16 ¶ 5(A)." *Id*.

This reasoning applies with equal force to Huerta's Paragraph 5(A) claim. Huerta worked on the same Project as Griffin. ECF 141 at 7. Like Griffin, Huerta did no more than flash a badge to a security attendant for scanning before driving past the guard shack without ever leaving his vehicle. *Id*. at 2; *see* Huerta Decl. ¶ 21, ECF 150, Exh. 2 ("At the Security Gate where the mandatory security process occurred . . . To conduct the mandatory entrance and exit security process, the security guard or guards would stop each vehicle to check for security badges of the passengers. For both entering and exiting the Solar Site . . . the security guards would each stand on a side of the vehicle to inspect and scan in security badges."). The Court thus finds, as it did in *Griffin*, that there is no law or evidence supporting Huerta's Paragraph 5(A) claim and that Huerta is not entitled to compensation for his travel time on the Access Road.

Plaintiff insists that he has proffered evidence that establish that the Security Gate was, in fact, the first location his presence was required. Opp. at 1. This evidence consists of declarations by Huerta and putative class members that CSI management informed employees that the Security Gate was the first place they were required to be at each day. *Id*. But these declarations in no way avoid the implications of *Griffin*. In *Griffin*, just as here, workers were required to be at the Security Gate each morning to badge in for the day. 390 F. Supp. 3d at 1076 ("Workers traveling

by car were required to present their badges at the guard shack in order to enter through the Security Gate."). Plaintiff further argues that the effect of Paragraph 5(A) is not limited to workplace locations (1) with a single entrance or (2) where a badging process occurs. Maybe so. But that issue is not before the Court because there is no dispute here that employees did enter the Project through one location and were required to badge in each day. The Court has merely concluded that, given the specific record before it, that Paragraph 5(A) does not entitle Huerta to compensation starting at the Security Gate.[3]

For the foregoing reasons, CSI's second motion for partial summary judgment is GRANTED. The Court finds that Plaintiff's pass through the Security Gate was not the first location where Plaintiff's presence was required and that Plaintiff is not entitled to compensation for his travel time on the Access Road under Wage Order 16 ¶ 5(A).

IT IS SO ORDERED.

Dated: June 25, 2021

BETH LABSON FREEMAN
United States District Judge

[3] Plaintiff objects to the page limitations imposed by the Court. Opp. at 1. However, the Court notes that Plaintiff neither used the full three pages allotted nor identified any other issues or arguments he was unable to adequately brief. Having considered the submissions of both parties, the Court is satisfied that ample briefing was submitted on this issue and that there was no limitation on the evidence that could be submitted.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GEORGE HUERTA,

Plaintiff,

v.

CSI ELECTRICAL CONTRACTORS, INC.,

Defendant.

Case No. 18-cv-06761-BLF

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff George Huerta filed this wage and hour class action on behalf of himself and other workers involved in the construction of the California Flats Solar Project. On behalf of the class, Huerta seeks payment for hours worked under California law. Now before the Court is a motion for partial summary judgment by Defendant CSI Electrical Contractors, Inc. ("CSI") as to Huerta's class claims. Mot., ECF 116; Opp., ECF 128; Reply, ECF 130. The parties largely agree on the facts underlying this motion and instead dispute the legal implications of said facts. For the reasons discussed below, Defendant CSI's motion for partial summary judgment is GRANTED.

I. SUMMARY OF FACTS

The California Flats Solar Project ("the Project") involves the construction, operation, and maintenance of a solar power generating facility in the County of Monterey, California. Mot. at 2; Opp. at 3. The Project is located on undeveloped grassland owned by Jack Ranch, a private property. Declaration of Amy Arnold ("Arnold Decl.") ¶ 3, ECF 116-1; *see generally Griffin v. Sachs Electric Company,* 390 F.Supp.3d 1070 (2019) (discussing the California Flats Solar

Project). While First Solar Electric, Inc. is the owner of the California Flats Solar Facility, it retained CSI to "perform procurement, installation, construction, and testing services on Phase 2 of the Project." Arnold Decl. ¶ 3.

CSI started its work on the Project on May 7, 2018 and employed about 528 workers through June 19, 2019. Arnold Decl. ¶ 3. CSI required its subcontractor, Defendant Milco National Constructors, Inc. ("Milco"), to assign a few dozen workers to assist CSI. *Id*. Huerta worked on the Project, first as an employee of Defendant California Compaction Corporation, and then for Milco. Huerta Deposition ("Huerta Depo.") at 31:1-10, 119:17-121:23, ECF 116-2, Exh. A. While Huerta was employed by Milco, he was assigned to work for CSI. *Id*. at 131:2-7.

The Project Entrance opened each morning after a biologist cleared the road. Backus Deposition ("Backus Depo.") at 36:14-22, ECF 116-2, Exh. B; Huerta Declaration ("Huerta Decl.") ¶ 32, ECF 128-2. This generally happened before the sun came up. *Id*. The Project had only one entrance, which was guarded by a Security Gate. While the Security Gate during Phase 1 of the Project was located on Turkey Flats Road ("Access Road") just after the intersection of the Access Road and Highway 41, during Phase 2, when CSI was involved, the Security Gate moved closer to the parking lots. Huerta Decl. ¶¶ 8-10. The Phase 2 Security Gate was located about 5.9 miles down the Access Road toward the parking lots. Arnold Decl. ¶ 4. The entire Access Road was about 12 miles long. Arnold Decl. ¶ 8.

CSI workers were required to badge in and out of the project at the Phase 2 Security Gate. Arnold Decl. ¶ 4; Huerta Decl. ¶¶ 17-20. During this process, a security guard would stop each vehicle to check and scan the security badges of each passenger in the car. Arnold Decl. ¶ 4; Huerta Decl. ¶¶ 21-23. The number of security badges in each vehicle was required to match the number of passengers in each vehicle. Huerta Decl. ¶ 22. If a worker forgot or lost a security badge, the worker could not enter the Solar Site without special permission. Huerta Decl. ¶¶ 17-20.

After clearing security, employees drove from the Phase 2 Security Gate Entrance to the parking lots. Arnold Decl. ¶ 4; Huerta Decl. ¶ 54. During this drive, employees were "subject to a broad range of job site rules and restrictions and were monitored for . . . compliance with such rules and restrictions." Huerta Decl. ¶ 15; *see also id.* ¶¶ 42-56 (listing rules); Arnold Decl. ¶ 9, Exh. B. For example, the speed limit on the Access Road was generally 20 miles per hour after sunrise and 10 miles per hour before sunrise. Backus Depo. at 36:23-25, 37:20-24; Arnold Decl. ¶ 7. Portions of the drive were subject to a speed limit of 5 miles per hour because of the presence of endangered kit fox zones. Arnold Decl. ¶ 8. These speed limits were derived from the Incidental Take Permit, which is required pursuant to the California Endangered Species Act. Arnold Decl. ¶ 7, Exh. A. CSI also enforced rules about passing, smoking, drugs, endangered animals, creating dust, and firearms. Huerta Decl. ¶¶ 42-56. Huerta was told by CSI management that workers could be suspended or terminated for noncompliance with these rules. Huerta Decl. ¶ 37.

Huerta further states that he was told by CSI management that employees were required to stay at their relevant installation sites during the entire workday, to include meal periods. Huerta Decl. ¶¶ 67-68. At the end of the day, employees drove out of the parking lot, down the access road, and waited in line at the Phase 2 Security Entrance to badge out for the day. This process largely mirrored the security entrance procedure. *Id*. ¶¶ 22-24. During the exit process, security guards looked inside workers' car windows and "inspected" the bed of any pickup trucks. *Id*. ¶ 61.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Partial summary judgment that falls short of a final determination, even of a single claim, is authorized by Rule 56 in order to limit the issues to be

tried." *State Farm Fire & Cas. Co. v. Geary*, 699 F. Supp. 756, 759 (N.D. Cal. 1987).

The moving party "bears the burden of showing there is no material factual dispute," *Hill v. R+L Carriers, Inc.*, 690 F. Supp. 2d 1001, 1004 (N.D. Cal. 2010), by "identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact," *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). In judging evidence at the summary judgment stage, "the Court does not make credibility determinations or weigh conflicting evidence, and is required to draw all inferences in a light most favorable to the nonmoving party." *First Pac. Networks, Inc. v. Atl. Mut. Ins. Co.*, 891 F. Supp. 510, 513–14 (N.D. Cal. 1995). For a court to find that a genuine dispute of material fact exists, "there must be enough doubt for a reasonable trier of fact to find for the [non-moving party]." *Corales v. Bennett*, 567 F.3d 554, 562 (9th Cir. 2009).

III. ANALYSIS

CSI moves the Court for partial summary judgment in favor of CSI and against Huerta on the grounds that there is no dispute as to any material fact as to the following issues:

> 1. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to begin compensating Plaintiff after he entered the Project.
>
> 2. The requirement that Plaintiff enter the Project from its single entrance does not rise to a level of control sufficient to require compensation.
>
> 3. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.
>
> 4. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to begin compensating Plaintiff after he passed through security.
>
> 5. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge in.
>
> 6. The requirement that Plaintiff "badge in" at a guard shack each

> morning does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.
>
> 7. The requirement that Plaintiff "badge in" at a guard shack each morning does not rise to a level of control sufficient to require compensation.
>
> 8. The requirement that Plaintiff drive from the Project entrance to the parking lot does not rise to a level of control sufficient to require compensation.
>
> 9. The requirement that Plaintiff drive from the parking lot to the Project entrance does not rise to a level of control sufficient to require compensation.
>
> 10. The requirement that Plaintiff "badge out" at a guard shack at the end of the day does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge out.
>
> 11. The requirement that Plaintiff "badge out" at a guard shack at the end of each day does not rise to a level of control sufficient to require compensation.
>
> 12. Plaintiff's claim based on "hours worked" during his meal period fails because Plaintiff worked under a qualifying collective bargaining agreement.
>
> 13. CSI is entitled to summary judgment in its favor and against Plaintiff as to the Second, Third, Fourth, Fifth, and Sixth Causes of Action to the extent that they are derivative of the claims for hours worked that are adjudicated in CSI's favor in this motion.

Mot. Notice at 1-2.

A. Judicial Notice

Huerta requests judicial notice of three declarations filed in support of defendant Apple Inc.'s motion for summary judgment in *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (2020). RJN, ECF 129 at 2. Defendant does not object to this request. Courts may properly take judicial notice of court filings and matters of public record. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing *Burbank-Glendale Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)). The Court GRANTS the request as to each declaration.

B. Preclusion and Collateral Estoppel

The California Flats Solar Project has proven to be a wellspring of wage and hour litigation. This Court has already ruled on motions for summary judgment in two virtually identical class action suits arising out of the Project: *Griffin v. Sachs Electric et al*., Case No. 17-cv-03778-BLF (the "*Griffin* Action") and *Durham v. Sachs Electric et al*., Case No. 18-cv-04506-BLF (the "*Durham* Action"). CSI contends that Huerta asserts claims identical to claims that the Court has already ruled fail as a matter of law in the *Griffin* and *Durham* Actions. Mot. at 1. Huerta, for his part, insists that the Court's rulings in the *Griffin* and *Durham* Actions have no gravity here as they are not binding. Opp. at 2. Huerta argues that because he was not a party in *Griffin* or *Durham*, "the rules of claim preclusion or issue preclusion do not apply." *Id*. Huerta further argues that the Ninth Circuit's memorandum disposition in the *Griffin* Action, which affirmed this Court's summary judgment order in full, is "completely inappropriate" for the Court to consider now as it is unpublished and therefore not precedential. *Id*.

Huerta's arguments about issue and claim preclusion, although correct as to the law, miss the mark. CSI's motion is not based on these legal principles. *See* Reply at 2. Instead, CSI's motion relies on *Griffin* and *Durham* as persuasive legal authority to argue that the Court should apply the law similarly to the instant set of facts. Huerta, for his part, seems to believe that this Court should simply disregard unfavorable caselaw— despite the fact that *Durham* and *Griffin* presented near-identical legal and factual issues by identical counsel in front of the same Court. Not so. To the extent that the instant action implicates similar issues, the Court will look to persuasive authority—such as district court orders and the Ninth Circuit memorandum disposition from *Durham* and *Griffin*— to adjudicate Huerta's claims. *See Hart v. Massanari*, 266 F.3d 1155, 1169 (9th Cir. 2001) ("Federal courts today do follow some common law traditions. When ruling on a novel issue of law, they will generally consider how other courts have ruled on the same issue."). Huerta has been given ample opportunity to explain why the factual and legal issues before the Court in this motion differ from persuasive authority raised by Defendant. For the

reasons explained below, Huerta has failed to do so.

C. *Griffin* Claims

In *Griffin v. Sachs*, 390 F. Supp. 3d 1070 (N.D. Cal. 2019), Plaintiff Justin Griffin filed a class action against Sachs Electric Company and McCarthy Building Companies, Inc. on behalf of himself and other workers involved in the construction of the California Flats Solar Project. Griffin sought payment for hours worked under California law for traveling between the Security Gate entrance and the solar panel work zone set approximately 12 miles onto the property. *Id*. at 1074. While Griffin brought his claims against a different California Flats Solar Project employer, the claims involved his employment at the Jack Ranch work site as well as practically identical work and road rules applicable to this case. *Compare id*. at 1074-1078 (detailing work rules) *with* Huerta Decl. ¶¶ 32-56 (same). And Huerta does little to distinguish the factual and legal issues before the Court in *Griffin* from the issues before the Court now. As discussed in detail below, the Court has considered all of Huerta's evidence and arguments under relevant California law and considered the reasoning in *Griffin* as it applies to the instant case.

1. *Single Entrance (Requests 1-3)*

CSI's first three partial summary judgment requests are for the Court to make findings that

> 1. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to begin compensating Plaintiff after he entered the Project.
>
> 2. The requirement that Plaintiff enter the Project from its single entrance does not rise to a level of control sufficient to require compensation.
>
> 3. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.

Mot. Notice at 1.

In *Griffin*, Plaintiff argued that he was entitled to compensation for travel time on the Access Road because his presence was required at the Security Gate in a manner sufficient to

trigger compensation under paragraph 5(A) of Wage Order 16.[1] 390 F. Supp. 3d at 1096. This Court disagreed and found as a matter of law that Plaintiff's pass through the Security Gate was not "the first location where Plaintiff's presence was required" and that Plaintiff was not entitled to compensation for his travel time on the Access Road under Wage Order 16 ¶ 5(A). *Id*. at 1097. This Court first turned to Paragraph 5(A) of Wage Order 16, which provides:

> All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required . . .

Applying this language, the Court found that "Plaintiff's brief stop at the guard shack to enable scanning of his badge was not a 'location where the employee's presence is required' within the meaning of Wage Order 16 ¶ 5(A)." *Id*. at 1096-1097. The Court explained:

> Plaintiff and fellow workers traveling by car were required to present their badges at the guard shack in order to enter through the Security Gate. But, whether driving or riding, workers were not required to exit the car—they simply held up their badges for scanning by the person(s) manning the guard shack. This obligation is no different than that of any employee who enters a work campus or premises that requires scanning an employee badge to gain access.

Id. at 1097. The Court concluded as a matter of law that "Plaintiff's pass through the Security Gate was not 'the first location where Plaintiff's presence was required' and that Plaintiff [was] not entitled to compensation for his travel time on the Access Road under Wage Order 16 ¶ 5(A)." *Id*.

Huerta's employment, like Griffin's, is governed by Wage Order 16. Huerta does not attempt to distinguish the facts in *Griffin* from the facts in the instant case. *See generally* Opp. The Court finds that here, as in *Griffin*, CSI employees were required to present badges at the guard shack in order to enter through the Phase 2 Security Gate. Undisputed evidence shows that

[1] Wage Order 16 is one of many wage orders promulgated by the Industrial Welfare Commission ("IWC"), which is "the state agency empowered to formulate regulations (known as wage orders) governing employment in the State of California." Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal. 4th 557, 576 (1996) (citing Cal. Lab. Code §§ 1173, 1178.5, 1182). Wage Order 16 applies to all persons employed in the on-site occupations of construction, drilling, logging, and mining, subject to exceptions not relevant here. *See generally* Wage Order 16, Cal. Code Regs. tit. 8, § 11160.

employees were not required to exit the car and simply held up their badges for scanning. This obligation is akin to any employee who enters a workplace that requires scanning an employee badge to gain access. *See Griffin*, 390 F. Supp. 3d at 1097 ("It is simply illogical that merely scanning a badge to gain access triggers the right to compensation under Wage Order 16."). The Ninth Circuit affirmed this Court's finding in full. *Griffin v. Sachs*, 831 Fed. Appx. 270, 271 (9th Cir. Dec. 11, 2020) ("[T]he security gate was not the first location where employees' presence is required under the meaning of paragraph 5(a) of Wage Order 16-2001. Rather, the record establishes that Griffin was first required to arrive at the parking lot, not the security gate.").

In light of Huerta's factual showing and the rulings of this Court and the Ninth Circuit in *Griffin*, the Court finds as a matter of law that CSI's requirement that Huerta enter the Project from a single entrance does not (1) obligate CSI to begin compensating Plaintiff after he entered the Project; (2) rise to a level of control sufficient to require compensation; or (3) obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16. Accordingly, the Court GRANTS CSI's motion as the requests one, two, and three.

2. *Badging In and Out (Requests 4-7, 10-11)*

Requests four, five, six, seven, ten and eleven involve CSI's badging and security process. Specifically, CSI requests findings that

> 4. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to begin compensating Plaintiff after he passed through security.
>
> 5. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge in.
>
> 6. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16.
>
> 7. The requirement that Plaintiff "badge in" at a guard shack each morning does not rise to a level of control sufficient to require compensation.
>
> 10. The requirement that Plaintiff "badge out" at a guard shack at the

> end of the day does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge out.
>
> 11. The requirement that Plaintiff "badge out" at a guard shack at the end of each day does not rise to a level of control sufficient to require compensation.

Mot. Notice at 1-2.

The Court considered similar issues in *Griffin*. In considering cross-motions for summary judgment, this Court rejected Griffin's argument that "workers were [] under Sachs's control at the beginning and end of the workday because they were required to badge-in and badge-out at the Security Gate." 390 F.Supp.3d at 1090-1096. In doing so, this Court distinguished *Cervantez v. Celestica Corp*., 618 F. Supp. 2d 1208, 1216 (C.D. Cal. 2009), a case in which "the security screening at issue was 'akin to screenings at an airport' to which all employees had to submit." *Id*. at 1090-91. The Court explained that during Phase 1 of the Solar Flats Project, "personnel at the Security Gate did not screen employees or their belongings in such a manner. Instead, workers traveling by car presented their badges at the guard shack to gain entry through the Security Gate." *Id*. at 1091. The Court continued: "workers were not required to exit the car, but simply held up their badges for scanning by the person(s) staffing the guard shack," which was "analogous to scanning or flashing an employee badge to enter a compound or campus, and unlike the airport-like screening in *Cervantez* that applied to all employees." *Id*. at 1076, 1091. The Court also considered *Pelz v. Abercrombie and Fitch Stores, Inc.,* 2015 WL 12712298, at *1-*2 (C.D. Cal. June 4, 2015), and distinguished it because it involved an "actual bag check before the employees were permitted to leave." *Id*. at 1091. Finally, the Court highlighted that Griffin's "wait time [in the Security Gate line was] equivalent to a normal bottleneck entering/exiting parking lots on an employer's premises around the time shifts begin/end and not an employer-controlled body screening." *Id*. (internal marks omitted).

The employees in the instant class are subject to the same security restrictions as those in

Griffin. In opposition, Huerta largely rehashes the arguments the Court already considered and rejected in *Griffin*. *See* Opp. at 10-14. Huerta does nothing to suggest that the badging procedures before the Court now meaningfully differ from those in *Griffin*. One notable exception is Huerta's reliance on the California Supreme Court's February 13, 2020 decision in *Frlekin v. Apple, Inc.,* 8 Cal. 5th 1038 (Cal. 2020). In *Frlekin*, Apple required all employees to undergo mandatory package and bag searches before leaving Apple stores. 8 Cal. 5th at 1042. As part of this process, Apple managers opened all employee bags, asked employees to remove any items from their bags that the store sold, and verified the serial number of such items against each employee's personal technology log. *Id*. at 1043-1044. The high court considered the following question certified by the Ninth Circuit: "Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees compensable as 'hours worked' within the meaning of Wage Order 7?" 8 Cal. 5th at 1042. The California Supreme Court answered in the affirmative, explaining that

> Apple employees are clearly under Apple's control while awaiting, and during, the exit searches. Apple controls its employees during this time in several ways. First, Apple requires its employees to comply with the bag-search policy under threat of discipline, up to and including termination. Second, Apple confines its employees to the premises as they wait for and undergo an exit search. Third, Apple compels its employees to perform specific and supervised tasks while awaiting and during the search. This includes locating a manager or security guard and waiting for that person to become available, unzipping and opening all bags and packages, moving around items within a bag or package, removing any personal Apple technology devices for inspection, and providing a personal technology card for device verification.

Id. at 1047.

While the California Supreme Court decision in *Frlekin* had not been issued at the time of this Court's ruling in *Griffin*, the Ninth Circuit rejected its relevance to the badging process at issue in *Griffin*:

> Griffin was not under Sachs's control while waiting in line for guards to badge him in or out at the security gate. Griffin relies on *Frlekin v. Apple, Inc*., 8 Cal. 5th 1038 (Cal. 2020), in arguing that employees must be compensated any time they wait for and undergo "mandatory security processes." *Frlekin* made clear that an employer's level of control over its employees is the 'determinative factor' in assessing whether compensation is required, but that case involved mandatory searches of employees' bags and other belongings. 457 P.3d at 534. Here, although the line of vehicles waiting to pass through the security gate could be long, all Sachs's employees had to do was flash their badges to a guard, which is significantly less invasive than the exit searches at issue in *Frlekin*. Griffin's Security Time is thus not compensable.

Griffin, 831 Fed. Appx. at 271. Huerta does nothing to persuade the Court that the Ninth Circuit's reasoning should not apply to the instant case given the factual similarities of the badging processes. And Huerta raises no evidence to suggest that CSI's badging process falls into the scope of conduct described in *Frlekin*. *See generally* Opp. at 11-14. Huerta presents no evidence that security personnel at the Phase 2 Security Gate did anything aside from scan employee badges and look into car windows and truck pickup beds. *See* Huerta Decl. ¶¶ 17-31. This cursory security procedure is a far cry from the extensive procedure at issue in *Frlekin. See Griffin*, 390 F. Supp.3d at 1091 ("This process is analogous to scanning or flashing an employee badge to enter a compound or campus, and unlike the airport-like screening in *Cervantez* that applied to all employees. Accordingly, Plaintiff's time spent badging-in and badging-out at the Security Gate does not equate to control."). Huerta points to several declarations submitted in *Frlekin* that quantified the time necessary to conduct the bag checks at issue there. RJN, Exhs. 1-3; Opp. at 13. But the distinguishing characteristic is the level of control Apple had over the employees during this process, not the time required to complete the relevant tasks.

In light of Huerta's factual showing and the rulings of this Court and the Ninth Circuit in *Griffin*, the Court finds as a matter of law that CSI's requirement that Plaintiff "badge in" at a guard shack each morning (1) does not obligate CSI to begin compensating Plaintiff after he passed through security; (2) does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge

in; (3) does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16; and (4) does not rise to a level of control sufficient to require compensation. The Court further finds as a matter of law that the requirement that Plaintiff "badge out" at a guard shack at the end of the day (1) does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge out; and (2) does not rise to a level of control sufficient to require compensation. Accordingly, the Court GRANTS CSI's motion as to requests four, five, six, seven, ten, and eleven.

3. *Drive Time (Requests 8-9)*

CSI's eighth and ninth requests involve this Court making factual findings that:

> 8. The requirement that Plaintiff drive from the Project entrance to the parking lot does not rise to a level of control sufficient to require compensation.
>
> 9. The requirement that Plaintiff drive from the parking lot to the Project entrance does not rise to a level of control sufficient to require compensation.

Mot. Notice at 1. Once again, the Court emphasizes that it considered these same issues in *Griffin*. In particular, this Court rejected Griffin's argument that he was subject to his employer's control during his drive time on the Access Road by virtue of the Project's rules. 390 F.Supp.3d at 1087-1096. This Court explained that

> At bottom, Plaintiff was free on a daily basis to drive his own vehicle to work, carpool with other workers, ride an employer-provided bus to work from a multi-county area, or take employer-provided transportation from the Security Gate to the parking lot . . . That Plaintiff was required to travel at slow speeds and obey other rules of the Access Road while simultaneously abiding by Sachs's general workplace rules does not sufficiently distinguish Plaintiff's travel time on the Access Road from ordinary travel in a personal vehicle from a security entrance to a parking lot within any employer's secure campus or premises.

Id. at 1095. In reaching this conclusion, the Court highlighted that the Project Rules were "standard prohibitions common to many work campuses or premises that reasonably foreclose activities that may be illegal or unsafe in that setting." *Id*. at 1092. It also reasoned that "these

general workplace rules do not equate to control within the meaning of 'hours worked' because they simply reflect standard workplace requirements not directed to 'determining when, where, and how plaintiffs must travel.'" *Id*. The Ninth Circuit agreed:

> Nor was Griffin under Sachs's control while he drove the access road to the parking lots. His argument to the contrary rests on the various rules he had to follow while on the property where he worked. Griffin's drive on the access road more closely resembles a continuation of his commute, however, which is "not typically compensable under California labor law." *Alcantar v. Hobart Serv*., 800 F.3d 1047, 1054 (9th Cir. 2015). The rules governing the drive were not particularly burdensome and reflected the nature of the property—a remote, private ranch containing cattle, as well as endangered species and their habitat. *Morillion v. Royal Packing Co*., 22 Cal.4th 575 (2000), is distinguishable because Sachs did not require its employees to ride employer-mandated transportation, and instead allowed them to drive themselves, carpool, or take Sachs-provided buses.

Griffin, 831 Fed. Appx. at 271-272.

Instead of distinguishing the rules at issue in *Griffin* or offering new legal arguments, Huerta instead insists that the "control exercised by CSI over its workers is essentially the same as that exercised by the employer in *Morillion*" and that this Court's conclusion in *Griffin* is "irrelevant." Opp. at 15. Not so. Based on this Court and the Ninth Circuit's reasoning in *Griffin*, and this Court's review of all of Huerta's evidence and authorities, including a careful review of *Morillion*, the Court finds the undisputed evidence demonstrates as a matter of law that CSI's requirement that (1) Plaintiff drive from the Project entrance to the parking lot does not rise to a level of control sufficient to require compensation; and (2) Plaintiff drive from the parking lot to the Project entrance does not rise to a level of control sufficient to require compensation. The Court GRANTS CSI's motion as to requests eight and nine.

D. *Durham* Claim (Request 12)

In its twelfth request, CSI asks the Court to find that Huerta's "claim based on 'hours worked' during his meal period fails because Plaintiff worked under a qualifying collective

bargaining agreement" ("CBA"). Mot. Notice at 2. According to CSI, Huerta's meal period claim is statutorily exempted by Cal. Labor Code § 512 and Wage Order 16 § 10. Mot. at 9-22. CSI contends that this Court already disposed of this legal question in *Durham*. *Id*. at 9. Huerta objects to this request on two grounds. First, Huerta argues that "CSI has not established as a matter of law that Plaintiff was subject to any Collective Bargaining Agreement." Opp. at 18. Second, Huerta argues that his meal period time claim is not derivative or dependent on the meal period provisions of the Cal. Labor Code § 512 or Wage Order 16 § 10.

1. Whether Huerta was subject to a qualifying CBA

As evidence that Huerta was a member of a union subject to a CBA, CSI offers Huerta's deposition and the declaration of CSI Project Manager Amy Arnold. Huerta Deposition ("Huerta Depo."), ECF 116-2, Exh. A; Arnold Declaration ("Arnold Decl."), ECF 116-1. In his deposition, Huerta states that he is "a member of the Operating Engineers Local 3," that the Union "called" and offered him a chance to work on a "solar project," and that Huerta "accepted the order." Huerta Depo. at 22:11-15, 27:24-28:21. Huerta testified that he later "inquired about…work[ing] at Milco" on the Project, the "dispatch [from the union] came out of Santa Clara," and he was sent by his union to work for Milco. *Id*. at 121:2-122:16. Arnold is a CSI Project Manager and "was in charge of and managed CSI's work on the California Flats Solar Project . . . for its entire length." Arnold Decl. ¶ 2. According to Arnold, Huerta was a member of Operating Engineers Local 3 and was dispatched to the Project by the union. *Id*. ¶ 10. Arnold also submitted an Operating Engineers Local 3 Dispatch Form. *Id*., Exh. C. The dispatch form indicates that George Huerta was dispatched to the California Solar Flats job site. *Id*.

CSI proffers two CBAs: the Operating Engineers Local Union No. 3 Master Agreement ("Operating Engineers Master Agreement") and the Project Labor Agreement specific to the Project ("Cal Flats PLA"). Arnold Decl., Exhs. D ("Operating Engineers Master Agreement"), E ("Cal Flats PLA"); *see also* ECF 90 (CBAs submitted in relation to CSI's motion for judgment on

the pleadings). According to Arnold, Huerta's employment was governed by both agreements. Arnold Decl. ¶ 11. Under the Operating Engineers Master Agreement, union employees received premium pay for overtime hours worked and earned a regular hourly rate of at least $22.97 per hour. Operating Engineers Master Agreement, § 6.01.01, Addendum D § 03.01.00. Under the Cal Flats PLA, union employees working on the Project received one 30-minute unpaid meal break during each shift. Cal Flats PLA §7.1.

Huerta does not offer any evidence rebutting CSI's showing. Instead, he argues that CSI has not offered any *admissible* evidence that Plaintiff worked under any qualifying CBA.[2] Opp. at 18. For example, he argues that Arnold has no knowledge of Huerta's membership in the union and did not properly authenticate the Union Dispatch Form. *Id*. He also argues that the Dispatch Form is inadmissible hearsay. Finally, he argues that the Operating Engineers Master Agreement is facially incomplete, indecipherable, and contains no signature pages. *Id*.

The Court OVERRULES the evidentiary objections set forth in Huerta's opposition brief at page 18. "To survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rules of Civil Procedure 56." *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003) (quoting *Block v. City of Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001)). At this stage, the focus is on the admissibility of the contents of the evidence, not its form. *Fraser*, 342 F.3d at 1036; *see also JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1110 (9th Cir. 2016) ("[A]t summary judgment a district court may consider hearsay evidence submitted in an

[2] Huerta also requests that the Court strike two declarations that CSI submitted with its reply brief. ECF 132. The first is the declaration of CSI counsel Daniel Chammas along with additional pages from Huerta's deposition transcript. The Court DENIES Huerta's request. CSI included excerpts of Huerta's deposition to its opening brief. The Court is perplexed at how Huerta could be "sandbag[ged]" by the introduction of additional excerpts of his own deposition. The second is the declaration of Keith Mendes, who reviewed employee badge records at the California Solar Flats Project. The Court agrees with Huerta that this evidence was raised improperly in CSI's reply brief and SUSTAINS the objection to the declaration and accompanying exhibits.

inadmissible form, so long as the underlying evidence could be provided in an admissible form at trial, such as by live testimony."). As to the Operating Engineers Master Agreement, it appears as if some technical error rendered parts of the CBA indecipherable. CSI submitted a legible version of the Operating Engineers Master Agreement alongside its recent motion for judgment on the pleadings. *See* ECF 90. The Court is not inclined to omit this agreement based solely on a technical glitch—particularly when both parties were fully on notice of the contents of the CBA.

Based on the Huerta Deposition, the Arnold Declaration, and the Dispatch Form, the Court finds that no reasonable trier of fact could find that Huerta was not a member of the Operating Engineers Local 3 union. Indeed, in the absence of a single piece of rebuttal evidence, Huerta's deposition testimony *alone* would have carried CSI's burden here. The Court further finds that no reasonable trier of fact could find that, as a member of Operating Engineers Local 3 union, Huerta was not subject to the Operating Engineers Master Agreement and Cal Flats PLA. By their plain terms, the Operating Engineers Master Agreement and Cal Flats PLA apply to employees of Operating Engineers Local 3. And according to Arnold, Huerta's employment was governed by both agreements. Arnold Decl. ¶ 11. While Huerta correctly highlights that the Operating Engineers Master Agreement is unsigned, this argument, in the presence of Huerta's union membership and Arnold's declaration, and in the absence of any rebuttal evidence, fails to alter the Court's calculus.

2. Whether Huerta's meal period claim is statutorily exempted

Having concluded that there is no dispute of fact that Huerta worked under a qualifying CBA, the legal issue before the Court is straightforward. While Huerta contends that "an employee's right to be paid for all hours worked exists independently of any right to meal periods and is not derivative of the employee's meal period rights," *see* Opp. at 19, the Court concluded just the opposite a few months ago in light of virtually identical facts in *Durham*. 2020 WL 76431251 (N.D. Cal. Dec. 23, 2020).

In *Durham*, William Durham, an employee of the California Flats Solar Project working under a CBA, brought a class claim against Sachs Electric Company for failure to pay wages for hours worked under Cal. Labor Code §§ 1194, 1197. *Id*. at *1, *3. Durham's claims were in part based on the fact that workers were not paid for meal periods during which they were under the control of their employer. *Id*. Defendant moved for judgment on the pleadings on Durham's meal period claims, arguing that Wage Order 16 preempted the employee from bringing such a claim because a qualifying CBA governed the plaintiff's employment. *Id*. at *3. Analyzing the statutory scheme and the Wage Order, the Court agreed with defendant and dismissed Durham's meal period claim as a matter of law on the grounds that the claim was preempted by Cal. Labor Code § 512[3] and Wage Order 16 § 10.[4] *Id*. at *3-*6. In doing so, this Court concluded that the express statutory exemption for CBA-covered employees who bargain for the terms of their meal periods

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[3] Cal. Labor Code § 512(a) provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes." Employers running afoul of this provision are entitled to an hour of additional premium pay under Cal. Labor Code § 226.7 along with any unpaid wages for the time they were not relieved of duty during the meal period. Cal. Labor Code § 512(a) does not apply to an "employee employed in a construction occupation" who is "covered by a valid collective bargaining agreement [that] expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate." *Id*. § 512(e), (f).

[4] Wage Order 16 § 10, titled "Meal Periods," provides that "[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 thirty (30) minutes." § 10(A). "Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked." *Id.* § 10(D). Wage Order 16 § 10(E) explains that

> Paragraphs A, B, and D of Section 10, Meal Periods, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty (30) percent more than the state minimum wage.

extended to plaintiff's derivative meal period claims under Cal. Labor Code §§ 1194, 1197.

Despite the identical factual and legal issues implicated here, Huerta does not offer the Court a single reason that this Court should reach a different conclusion, instead opting to rehash caselaw that this Court already considered and rejected in *Durham*. Huerta cannot escape the implications of the Court's ruling in *Durham* as this Court declines to reach a different outcome under the same facts. Accordingly, the Court GRANTS CSI's motion for partial summary judgment as to CSI's twelfth request and finds that Huerta's meal period hours worked claim fails as a matter of law because Plaintiff worked under a qualifying CBA.

E. Derivative Claims

CSI's final request is that "CSI is entitled to summary judgment in its favor and against Plaintiff as to the Second, Third, Fourth, Fifth, and Sixth Causes of Action to the extent that they are derivative of the claims for hours worked that are adjudicated in CSI's favor in this motion." Mot. Notice at 2. Huerta does not object to this request. *See generally* Opp. The Court agrees that Plaintiff's remaining claims are entirely derivative of claim one. Having granted partial summary judgment in CSI's favor with respect to claim one, the Court GRANTS partial summary judgment in CSI's favor with respect to claims two through six to the extent that they are derivative of claim one.

IV. ORDER

For the foregoing reasons, CSI's Motion for Partial Summary Judgment is GRANTED. The Court finds as follows:

1. The requirement that Plaintiff enter the Project from its single entrance does not obligate CSI to begin compensating Plaintiff after he entered the Project;

2. The requirement that Plaintiff enter the Project from its single entrance does not rise to a level of control sufficient to require compensation;

3. The requirement that Plaintiff enter the Project from its single entrance does not obligate

CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16;

4. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to begin compensating Plaintiff after he passed through security;

5. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge in;

6. The requirement that Plaintiff "badge in" at a guard shack each morning does not obligate CSI to compensate Plaintiff for reporting to work under Paragraph 5(A) of Wage Order 16;

7. The requirement that Plaintiff "badge in" at a guard shack each morning does not rise to a level of control sufficient to require compensation;

8. The requirement that Plaintiff drive from the Project entrance to the parking lot does not rise to a level of control sufficient to require compensation;

9. The requirement that Plaintiff drive from the parking lot to the Project entrance does not rise to a level of control sufficient to require compensation;

10. The requirement that Plaintiff "badge out" at a guard shack at the end of the day does not obligate CSI to compensate Plaintiff for the time spent waiting in line to badge out;

11. The requirement that Plaintiff "badge out" at a guard shack at the end of each day does not rise to a level of control sufficient to require compensation;

12. Plaintiff's claim based on "hours worked" during his meal period fails because Plaintiff worked under a qualifying collective bargaining agreement; and

13. CSI is entitled to summary judgment in its favor and against Plaintiff as to the Second, Third, Fourth, Fifth, and Sixth Causes of Action to the extent that they are derivative of the claims for hours worked that are adjudicated in CSI's favor in this motion.

IT IS SO ORDERED.

Dated: April 28, 2021

BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California