SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling.
(See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS

DATE: SEPTEMBER 5, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV422688	Villa v. Cal Door and Drawer, Inc., et al. (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	24CV428659	Abbott v. Saunders Construction, Inc. (PAGA)	A stipulated stay of this action expired on September 3, 2024. The Court requests the parties to appear to discuss the status of this motion, which at present is unopposed.
LINE 3	23CV409732	Sanchez v. The Posh Bakery Inc. (Class Action)	See Line 3 for tentative ruling.
LINE 4	23CV413084	Sanchez v. The Posh Bakery Inc. (PAGA)	

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	22CV394263	Garcia v. Norcal Pool Construction Inc. (Class Action/PAGA)	See Line 5 for tentative ruling.
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Abundio Villa v. Cal Door and Drawer, Inc., et al.*
Case No.: 23CV422688

This is a putative class and representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Abundio Villa alleges that Defendants Cal Door and Drawer, Inc. ("Cal Door") and California Kitchen Cabinet Door Corporation ("California Kitchen") (collectively, "Defendants") committed various wage and hour violations.

Before the Court is Defendants' motion for summary judgment, or in the alternative, summary adjudication of issues. As discussed below, the Court GRANTS IN PART and DENIES IN PART the motion.

I. BACKGROUND

Plaintiff was employed by Defendants as a non-exempt, hourly-paid employee from August 2021 through September 20, 2022. (Complaint, ¶ 10.) He alleges that Defendants failed to pay him and all putative class members all sick pay, vacation pay, minimum, regular, overtime and double wages for all hours worked. (*Id*., ¶ 26.) He further alleges that Defendants, among other failings: rounded their hours worked, thereby depriving them of wages for all hours or work; failed to compensate Plaintiff and class members for all hours worked because they were regularly on-duty during their meal and/or rest periods; and failed to reimburse them for business expenses incurred in the performance of their job duties.

Based on the foregoing allegations, Plaintiff initiated this action on September 18, 2023, asserting the following causes of action: (1) failure to pay all wages; (2) failure to provide meal periods or compensation in lieu thereof; (2) failure to permit rest periods or provide compensation in lieu thereof; (4) failure to provide accurate itemized wage statements; (5) waiting time penalties; (6) failure to reimburse business expenses; (7) violations of unfair competition law ("UCL"); (8) PAGA civil penalties; (9) violations of the Fair Credit Reporting Act ("FCRA"); (10) violations of the Investigative Consumer Reporting Agencies Act ("ICRAA"); and (11) violations of the Consumer Credit Reporting Agencies Act ("CCRAA").

II. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUE

A. Legal Standard

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co*. (2002) 98 Cal.App.4th 66, 72; see also Code Civ. Proc., § 437c, subd. (p)(2).)

This standard provides for a shifting burden of production; that is, the burden to make a prima facie showing of evidence sufficient to support the position of the party in question. (See *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850-851 (*Aguilar*).) The burden of persuasion remains with the moving party and is shaped by the

ultimate burden of proof at trial. (*Ibid.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*) The opposing party must produce substantial responsive evidence that would support such a finding; evidence that gives rise to no more than speculation is insufficient. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162-163.)

The traditional method for a defendant to meet its burden on summary judgment is by "negat[ing] a necessary element of the plaintiff's case" or establishing a defense with its own evidence. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 334.) The defendant may also demonstrate that an essential element of plaintiff's claim cannot be established by "present[ing] evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence-as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Aguilar v. Atlantic Richfield Co.*, *supra,* 25 Cal.4th at p. 855.)

On summary judgment, "the moving party's declarations must be strictly construed and the opposing party's declaration liberally construed." (*Hepp v. Lockheed-California Co*. (1978) 86 Cal.App.3d 714, 717; see also *Johnson v. American Standard, Inc*. (2008) 43 Cal.4th 56, 64 [the evidence is viewed in the light most favorable to the opposing plaintiff; the court must "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor"].) Summary judgment may not be granted by the court based on inferences reasonably deducible from the papers submitted, if such inferences are contradicted by other inferences which raise a triable issue of fact. (*Hepp v. Lockheed-California Co*., *supra,* 86 Cal.App.3d at pp. 717-718.)

Even if there are some triable issues in the case, the court has the power to summarily adjudicate that one or more causes of action has no merit, there is no affirmative defense to one or more causes of action, there is no merit to a claim for punitive damages (Civil Code section 3294), or one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. (Code Civ. Proc., § 437c, subd. (f)(1).) Absent a stipulation approved by the court, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty."[1] (*Ibid.*)

B. Discussion

1. *California Kitchen's Liability*

As a threshold matter, Defendants maintain that California Kitchen is entitled to summary judgment as a matter of law because it never employed Mr. Villa; only Cal Door did. To this end, they submit evidence—specifically, the declaration of Cal Door's Chief Executive Officer, Edward J. Rossi—which establishes that California Kitchen is an "active" registered entity under California law, but has no business operations and no employees, and had neither of the foregoing during Mr. Villa's employment. (See Declaration of Edward J. Rossi in Support of Defendants' Motion for Summary Judgment/Adjudication ("Rossi Decl."), ¶ 11.)

[1] Defendants' requests for judicial notice, the first of which Plaintiff objects to, are GRANTED. (Evid. Code, 452, subd. (c).)

Mr. Rossi explains that he founded both California Kitchen and Cal Door, and the business that is now conducted by Cal Door was once conducted by California Kitchen, with the change occurring in late 2017 or early 2018. (*Id*.) He states that Mr. Villa was never employed by California Kitchen. (*Id*.)

While Plaintiff claims to dispute Mr. Rossi's evidence in his opposing separate statement, he offers no counter-evidence that raises a triable issue. Instead, he simply cites to his own declaration wherein he states that, "from his understanding," California Kitchen is part of the same corporate structure as his employer. Plaintiff's "understanding," without more, is insufficient to defeat Defendants' showing. (See *Laird v. Capital Cities/ABC* (1998) 68 Cal.App.4th 727, 737 ["Corporate entities are presumed to have separate existences, and the corporate form will be disregarded only when the ends of justice require this result]".) Thus, the Court finds that California Kitchen is entitled to summary judgment because it was not Mr. Villa's employer. (See *Aguilar, supra*, 25 Cal.4th at p. 850 [if the party moving for summary judgment carries the burden of production to show the nonexistence of a triable issue of material fact, "the opposing party is then subjected to a burden of production of his own to make a prima facie showing the existence of a triable issue of material fact"].)

2. *Failure to Pay All Wages (First Cause of Action)*

Plaintiff's first cause of action is predicated on allegations that Cal Door failed to pay him and putative class members wages for all hours worked, including sick pay, vacation pay, minimum, regular, overtime and double wages, and meal and rest period premiums. Cal Door maintains that the first cause of action should be summarily adjudicated in its favor the following reasons[2]: Mr. Villa is exempt from California state law as to overtime; Mr. Villa recorded his own hours and was paid for all hours he recorded; at all times during Mr. Villa's employment, Cal Door's PTO policy complied with the Labor Code; and Mr. Villa was paid all of his accrued unused PTO on the day of his termination.

[2] In their motion for summary judgment/adjudication, Defendants assert that they are entitled to judgment on various "claims" in the first cause of action, specifically overtime, failure to pay wages for all hours worked, failure to pay sick leave and vacation pay. Generally, unless a party has complied with Code of Civil Procedure section 437c, subdivision (t), it cannot obtain summary adjudication of a legal issue or a claim for damages that does not completely dispose of a cause of action. (See Code Civ. Proc., § 437c, subdivision (f).) Defendants have not complied with subdivision (t), but they maintain that the Court *can* summarily adjudicate these "claims" under *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854 (*Lilienthal*).) In that case, the court held that an exception to subdivision (f)(1) of Code of Civil Procedure section 437c exists "where two or more separate and distinct wrongful acts are combined in the same cause of action in a complaint . . . ." (*Blue Mountain Enterprises, LLC v. Owen* (2022) 74 Cal.App.5th 537, 549, citing *Lilienthal.*) In such a circumstance, a "party may present a summary adjudication motion that pertains to some, but not all, of the separate and distinct wrongful acts" because "each separate and distinct wrongful act is an invasion of a separate and distinct primary right, and each violation of a primary right is a separate and distinct "cause of action"- regardless of how the claim is presented in the complaint." (*Ibid*., citing *Lilienthal, supra,* 12 Cal.App.4th at p. 1853.) Here, the Court agrees with Defendants that the first "cause of action" is comprised of several separate and distinct wrongful acts that can be summarily adjudicated under *Lilienthal.*

a. Overtime

California Labor Code section 510 provides that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be paid at one and one-half times the employee's regular rate of pay, while any work performed in excess of 12 hours must be compensated at the rate of no less than twice the employee's regular rate of pay. (Labor Code, § 510, subd. (a).) Cal Door is alleged to have violated this code section, and "applicable sections of the California Code of Regulations and the IWC Wage Orders applied to Plaintiffs' work" (Compl., ¶ 57), by failing to pay Mr. Villa (and putative class members) the proper rates of pay for hours worked in excess of eight hours per workday and 40 hours per workweek (*id.* at ¶ 66.) As stated above, Cal Door asserts that Mr. Villa is exempt from California overtime laws and his hours of service are instead subject to regulation by the U.S. Department of Transportation (the "DOT") via the Federal Motor Carrier Safety Administration (the "FMCSA").

Cal Door explains that the IWC Wage Order applicable to its business and Plaintiff's employment is the wage order that applies to the manufacturing industry, Wage Order 1-2001. This order, they continue, defines the manufacturing industry to broadly include any business "operated for the purpose or preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part. . . ." (Cal. Code Regs., tit. 8, § 11010, subd. 2(H).) Plaintiff does not dispute any of the foregoing. Subdivision 3(A)(2) of this wage order exempts from the overtime requirements those employees whose hours of service are regulated by (1) the DOT, Code of Federal Regulations, Title 49, Sections 395.1 to 395.13 or (2) Title 13 of the California Code of Regulations, section 1200, subchapter 6.5, section 1200 and the following sections.[3] The foregoing federal regulations "form part of the Federal Motor Vehicle Safety Standards (49 C.F.R. § 371 et seq. 2001) and establish a unique regulatory scheme regulating the driving hours of truck drivers, which is designed to balance safety considerations against the demands of the trucking industry." (*Collins v. Overnite Transportation Co.* (2003) 105 Cal.App.4th 171, 175.) These regulations are often referred to as the "motor carrier exemption." (*Id.* at 180.)

Cal Door asserts that Plaintiff's hours of service are regulated by the cited portions of the Federal Motor Vehicle Safety Standards because in the performance of his job duties he operated a vehicle that weighed 10,001 pounds[4] or more and travelled in "interstate commerce."[5] Citing *Merchant's Fast Motor Lines, Inc. v. I.C.C.* (5th Cir. 1976) 528 F.2d

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[3] Title 13 of the California Code of Regulations, section 1200, subchapter 6.5, section 1200 and the following sections are not implicated here.

[4] It is undisputed that as a driver for Cal Door, Plaintiff drove trucks that met this requirement. (See Defendants' Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment/Adjudication ("UMF"), No. 5.)

[5] See Code of Federal Regulations, Title 49, section 395.1, subdivision (a)(1) ("The rules of this part apply to all motor carriers and drivers, excepted as provided in paragraphs (b) through (x) of this section"), section 390.3, subdivision (a)(1) ("The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce") and section 390.5 ("Driver means

1042, 1044), Cal Door asserts that a motor carrier is deemed to engage in interstate commerce by actually transporting goods across state lines or by transporting within a single state goods that are in the flow of interstate commerce. Thus, it continues, traffic need not always physically cross state lines in order to be engaged in interstate commerce. Relying chiefly on Mr. Rossi's declaration, Cal Door insists that Mr. Villa was engaged in interstate commerce while employed as a truck driver with Cal Door.

According to Mr. Rossi's deposition, Cal Door is a wholesale manufacturer of cabinet doors, drawers and related items who operates two manufacturing facilities- one in Salinas and one in Morgan Hill. (See Rossi Decl., ¶ 2.) While most of Cal Door's employees work in manufacturing positions at one of the two facilities, he explains, it also employs a small number of drivers, one of whom was Mr. Villa, who worked for the company from August 12, 2021 to September 2022. (*Id*., ¶¶ 2-3.) Mr. Rossi declares that in his role as a driver with Cal Door, Mr. Villa delivered products to its customers that were moving in interstate commerce, explaining that as a wholesale manufacturer, Cal Door does not sell directly to consumers. (*Id*., ¶¶ 4-5.) Instead, he continues, its customers are companies that build, sell, and install finished cabinets, and thus incorporate the doors, drawers, and other products that Cal Door builds into cabinets that are sold throughout the country. (*Id*., ¶ 5.) As such, he declares, even when the company's drivers make deliveries within California, they are regularly delivering goods that are traveling in interstate commerce. (*Id*.) Mr. Rossi continues that Cal Door drivers also regularly make deliveries to customers in Arizona and Nevada, and all of them must be qualified to make deliveries outside of California. (*Id*.) Cal Door maintains that the foregoing establishes that Mr. Villa was engaged in interstate commerce during his employment such that his hours of service were regulated by the DOT and he is exempt from California overtime laws under the applicable wage order via the motor carrier exemption.

In his opposition, Plaintiff essentially challenges the simplicity Cal Door's characterization of the meaning of "interstate commerce" for the purposes of determining whether an employee's hours of service are regulated by the DOT and maintains that Defendants have not met their burden to establish that he engaged in such commerce during his employment. He insists that he was not exempt from California overtime rules because he almost exclusively delivered goods *intrastate* and to the company's customers in California. The intended route for Cal Door's goods, he argues, was completed once they were delivered to its California-based customers. Further, Mr. Villa continues, he did not have a "reasonable expectation"[6] that he would engage in interstate commerce during his employment and the

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any person who operates a commercial motor vehicle" and "Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle … (1) Has a gross vehicle weight rating or gross combination weight rating, or gross weight combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater ….").

[6] The "reasonable expectation" language originates from a 1981 Notice of Interpretation promulgated by the DOT. However, it *only* applies to employees for whom there is *no* evidence of actual interstate driving. (See *Reich v. Am. Driver Serv., Inc.* (9th Cir. 1994) 33 F.3d 1153, 1157.) Here, Mr. Villa himself states in his declaration that he made one out-of-state delivery during his employment. (See Declaration of Abundio Villa in Support of Opposition to Motion for Summary Judgment, ¶ 6.) Thus, Plaintiff's expectations appear not to be implicated, but even if they were, as Defendants explain in their reply, the focus is not on

only delivery made by him out of state was de minimus[7] and thus did not change the character of his delivery as intrastate.

As Plaintiff notes in his opposition, the exemption from California overtime law is narrowly construed, and the burden is on the employer to establish that it is entitled to the exemption. (See *Villalpando v. Exel Direct Inc.* (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 118065, *103 (*Villalpando*); *Reich v. Am. Driver Serv., Inc.* (9th Cir. 1994) 33 F.3d 1153, 1156 (*Reich*).) "Interstate commerce" is defined within the Federal Motor Carrier Safety Regulations thusly:

> Interstate commerce means trade, traffic, or transportation in the United States-
>
> (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
>
> (2) Between two places in a State through another State or a place outside of the United States; or
>
> (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

(49 C.F.R. § 390.5.)[8]

"The motor carrier exemption applies where trips in interstate commerce are part of the company's normal business operations, are distributed throughout the year, and are shared indiscriminately by the employees in question, even though they are mingled with other services not in interstate commerce." (*Antemate v. Estenson Logistics, LLC* (C.D. Cal. 2017) 2017 U.S. Dist. LEXIS 184502, citing *Reich, supra,* at 1156.) "Whether transportation is interstate or intrastate is determined by the essential character of the commerce, manifested by shipper's fixed and persisting transportation intent at the time of the shipment, and is ascertained from all of the facts and circumstances surrounding the transportation." (*S. Pac. Transp. Co. v. I.C.C.* (9th Cir.1977) 565 F.2d 615, 617.) "A driver operates in interstate

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each driver's *subjective* expectations. A company's drivers "can be said to have a reasonable expectation of engaging in interstate commerce if the carrier's work is 'shared indiscriminately,' that is, if it is apportioned in such a way as to ensure that all drivers are likely to engage in interstate commerce." (*Reich v. Am. Driver Serv., Inc.* (9th Cir. 1994) 33 F.3d 1153, 1158.) Mr. Rossi states in his declaration that Cal Door expects that all of its drivers will driver in interstate commerce and are qualified to do so. (Rossi Decl., ¶¶ 4-5.)

[7] Under the U.S. Supreme Court's decision in *Morris v. McComb* (1947) 332 U.S. 422, even a minor involvement in interstate commerce as part of an employee's regular duties can subject that employee to the DOT's jurisdiction. However, some courts recognize a *de minimus* where less than 1% of deliveries are interstate deliveries. (See, e.g., *Coleman v. Jiffy June Farms, Inc.* (S.D. Ala. 1970) 324 F.Supp. 664, 669-670.) However, as Defendants note, no controlling California authority has held that a de minimus exception applies to California's exemption for drivers involved in interstate commerce.

[8] The Court notes that this section was suspended for an indefinite period of time on November 17, 2023, effective that date. Plaintiff's employment concluded September 20, 2022; accordingly, this section was in effect during his employment.

commerce not only when the driver actually transports goods across state lines but also when there is a 'practical continuity of movement from the manufacturers or suppliers without the state, through [a] warehouse and on to customers whose prior orders or contracts are being filled.'" (*Villalpando, supra*, 2015 U.S. Dist. LEXIS 118065 at *103, quoting *Walling v. Jacksonville Paper Co.* (1943) 317 U.S. Dist. 564, 567, 569.)

Plaintiff insists that in order to determine whether there is "practical continuity of movement," courts are to look at a 1992 Interstate Commerce Commission ("ICC") policy statement that sets forth seven factors that may be considered. All of these factors, Mr. Villa argues, weigh against Defendants or at the very least create a triable issue of material fact. Defendants challenge Plaintiff's reliance on this statement and the factors identified therein, insisting that the case that they cite where such factors were considered, *Ruiz v. Affinity Logistics Corp.* (S.D. Cal. 2006) 2006 U.S. Dist. LEXIS 82201 (*Ruiz*), involved application of the motor carrier exception under the Fair Labor Standards Act rather than the Motor Carrier Act, and is therefore distinguishable. The Court agrees. While *Villalpando, supra*, relied on the ICC statement to determine whether the plaintiff was engaged in "interstate commerce" and involved the Motor Carrier Act, the authority it cites for doing so is *Ruiz*. The statement is also, by its own language, limited to situations involving "for-hire motor traffic moving from warehouses or similar facilities to points in the same State after a for-hire movement from another state." (8 I.C.C.2d 470, *1.) Plaintiff offers nothing which establishes that those are the circumstances involved here.

Thus, the Court is left to consider the "essential character" of the commerce at issue and whether interstate trips are part of Cal Door's normal business operations. Is Cal Door's evidentiary showing sufficient to establish its character? The Court does not believe so. First, the fact that Cal Door's products (cabinet components) ultimately make their way into cabinets that are sold throughout the country does not necessarily mean that their drivers are engaged in interstate commerce when they are delivering those components. Cal Door delivers its goods to its customers, the manufacturers, and that represents the end of Cal Door's involvement. Cal Door certainly offers no authority for the proposition that the deliverer of component parts is engaged in interstate commerce if the final product that incorporated those components, which it plays no role in assembling or delivering, is sold to customers in numerous states. Second, Mr. Rossi's declaration is sparse when it comes to providing any detail as to the nature of its deliveries, e.g., how many deliveries are made by Cal Door, how frequently trips are made to Arizona and Nevada, etc. Given the significant implications of making a finding that Mr. Villa's hours of service were governed by the DOT, the Court does not believe that Cal Door has made the concrete evidentiary showing necessary to support such a finding, at least at this juncture. Consequently, the Court will not summarily adjudicate Plaintiff's overtime "claim" in Cal Door's favor and DENIES their request to do so.

b. Payment for All Hours Worked

Defendants assert that they are entitled to summary adjudication of Plaintiff's claim based on his alleged failure to be paid for all hours he worked because Plaintiff kept a log of the time he worked, turned that log over to Cal Door to document that time, and was paid for his recorded hours. (UMF Nos. 6-7.) Cal Door notes that during a deposition of Mr. Villa taken during a workers' compensation case he filed prior to the instant action alleging that he was injured while working for Cal Door, Mr. Villa responded "yes" when asked whether he was paid for every hour worked and "yes" when asked whether he kept a record of the time he

worked that he signed and turned in to Cal Door to documents the hours he worked. (See Declaration of Fred Gerbino[9] in Support of Motion for Summary Judgment/Adjudication, Exhibit A at 30:7-13.) Cal Door continues that Mr. Villa's time and pay records confirm his admission. (Rossi Decl., Exhibits B and C.)

In opposition, Mr. Villa insists that he did *not* receive payment for all hours worked and directs the Court to his time records for the pay period of June 1, 2022 to June 15, 2022, which show that he worked 103 hours. He continues that Cal Door's wage statements indicates that he was only paid for 97.50 hours. (See Plaintiff's Separate Statement in Opposition to Motion for Summary Judgment/Adjudication ("PUMF") No. 6.) He asserts the same happened for the August 16, 2021 to August 31, 2021 pay period, when he worked 140.25 hours but was only paid for 135.75 hours.

In reply, Cal Door responds that Mr. Villa has not actually disputed his admission because his calculations of time worked, as reflected in his logs, fail to account for unpaid meal periods. His time sheets, Cal Door explains, show his start and end time each day and his signature acknowledges that "I have taken all required meal and rest periods." Cal Door continues that as a result, the logs expressly say that "one meal period" (unpaid time) will be deducted "for up to 12 hours worked" and "a second meal period" will be deducted from the recorded time over 12 hours. (See Rossi Decl., Exhibit B, Cal Door 000095 and Cal Door 000115.) Upon review of the materials cited, the Court agrees with Cal Door that Plaintiff has not demonstrated the existence of a triable issue as to whether he was paid for all hours worked. Consequently, the Court GRANTS Defendants' request for summary adjudication of Plaintiff's claim that he was not paid for all hours worked.

c. Sick Leave

In the Complaint, Plaintiff alleges that Defendants violated Labor Code section 246 ("Section 246"), which provides, as relevant here, that employees are entitled to use at least 24 hours, or three days, of paid sick leave per year. (Complaint, ¶¶ 121, 139.) Cal Door asserts that it is entitled to summary adjudication of Plaintiff's sick leave claim because at all times during Mr. Villa's employment, its PTO policy complied with the applicable provisions of the Labor Code. Subdivision (f) of Section 246 provides that an employer is not required to provide additional paid sick days if the employer "has a paid leave policy or paid time off policy, the employer makes available an amount of leave applicable to employees that may be used for the same purposes and under the same conditions as specified in this section . . . ." Per the evidence submitted, Cal Door's PTO policy provided Plaintiff with three days of PTO to use during his first 12 months of employment and allowed him to start accruing more PTO each year after completed 12 months of employment,[10] and thus complied with Section 246. (UMF No. 8.)

[9] Plaintiff moves strike Mr. Gerbino's declaration because it is unsigned. However, Cal Door subsequently submitted a signed copy of Mr. Gerbino's declaration, along with a declaration from Sandra Savage, an assistant at Mr. Gerbino's firm, who explains that she inadvertently attached the unsigned version. Given that Cal Door has corrected this error, there is nothing to strike.

[10] Cal Door notes that the sick leave provisions of the Labor Code were recently amended (effective January 1, 2024) to increase the amount of sick leave required, but explains

In his opposition, Plaintiff disputes that Cal Door complied with Section 246, but he references the requirements of the law in its *current* state and not when he was employed. He also challenges the amounts of sick leave he was allowed to accrue. But at the time of his employment, an employer was permitted to use a *different* accrual method for sick days "other than providing one hour for every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period." (Former Lab. Code, § 246, subd. (b)(3).) Cal Door's policy did so. Thus, Plaintiff has not demonstrated the existence of a triable issue in this regard. Consequently, Cal Door's request for summary adjudication of Plaintiff's sick leave claim is GRANTED.

d. Vacation Pay

In the Complaint, Plaintiff alleges that he was not paid all of his accrued "vacation pay" at termination. Cal Door maintains that it is entitled to summary adjudication of this claim because Mr. Villa was subject to its code-compliant PTO policy and was paid all of his accrued, unused PTO on the day of his termination.

Labor Code section 227.3 provides that "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served. . . ." Cal Door submits evidence that Mr. Villa used and was paid the three days of PTO he was granted in his first 12 months of employment (August 12, 2021 to August 12, 2022) (UMF No. 9), began accruing PTO at a rate of 64 hours per year starting August 13, 2022, and was paid at the time of his discharge the amount of unused PTO—5.34 hours— that he had accrued between August 13, 2022 and September 20, 2022 (UMF Nos. 8, 10, 11.) Plaintiff fails to raise a triable issue to contrary. Consequently, Cal Door's request for summary adjudication of Plaintiff's vacation pay claim is GRANTED.

3. *Meal and Rest Period Claims (Second and Third Causes of Action)*

Cal Door asserts that it is entitled to summary adjudication of Plaintiff's meal and rest period claims as a matter of law because they are preempted by federal law under the FMCA's order on the subject of "California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption." (See 83 Fed. Reg. 67470 (2018).) That is, Defendants assert that as shown in connection with Plaintiff's overtime claim, he is subject to the FMCSA's hours of service regulations and as the aforementioned order provides that California's meal and rest break rules are preempted as applied to such workers, his claims necessarily fail. While Cal Door's description of the effect of the FMCA's order on California's meal and rest break law is accurate, as the Court has concluded that Cal Door has not demonstrated that Mr. Villa was subject to FMCSA's hours or service regulations during his employment, it will not summarily adjudicate these claims in its favor and therefore DENIES its request.

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that at the time of Mr. Villa's employment, the statute required no more than three days per year. (Lab. Code § 246, subdivision (d) in effect prior to January 1, 2024; see also 2014 Cal. Legis. Serv. Ch. 317 (A.B. 1522).)

4. *Failure to Provide Accurate Itemized Wage Statements (Fourth Cause of Action)*

Next, Cal Door contends that summary adjudication of the fourth cause of action in its favor is warranted because Mr. Villa received code-compliant itemized wage statements along with each paycheck.

Labor Code section 226 requires employers to issue accurate itemized wage statements showing the gross and net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, among other things. (Lab. Code, § 226, subdivision (a).) Plaintiff's claim under this statute is predicated on Defendants' alleged failure to be paid for all hours worked, to be paid premium pay for missed meal breaks and to be reimbursed for business expenses incurred. As the Court has denied Cal Door's request for summary adjudication of Plaintiff's meal and rest period claims, it follows that it must DENY its request for summary adjudication of this cause of action.

5. *Waiting Time Penalties (Fifth Cause of Action)*

Cal Door maintains that it is entitled to summary adjudication of the fifth cause of action because Mr. Villa was paid all wages owed to him at the time of his discharge.

Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but that the wages shall not continue for more than 30 days per employee.

As with the preceding cause of action, this claim is predicated on various purported violations, including unpaid missed meal period premiums. As the Court has denied Cal Door's request for summary adjudication of Plaintiff's meal and rest period claims, it must DENY its request for summary adjudication of this cause of action.

6. *Failure to Reimburse Business Expenses (Sixth Cause of Action)*

Next, Cal Door argues that the sixth cause of action should be summarily adjudicated in its favor because Mr. Villa was not required to use his personal cell phone in order to perform his job duties.

Labor Code section 2802 ("Section 2802") requires an employer to reimburse "all *necessary* expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. . . ." (Emphasis added.) Cal Door insists that it is undisputed that it provided Mr. Villa with a company cell phone to use for work-related purposes (UMF No. 15) and thus he cannot show that it was "necessary" for him to him to use his personal cell phone such that its had an obligation to reimburse him for its use.

Indeed, Plaintiff does not dispute that Cal Door provided him with a company cell phone. However, he argues that he was entitled to reimbursement for use of his personal cell phone for work purposes because his supervisor often called him on that phone and the phone provided by Cal Door frequently failed to work. (See PUMF No. 15.) "If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802." (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.) If Plaintiff's supervisor called him on his personal cell phone for work purposes, it is reasonable inferred that he was required to use that phone for work such that there is a triable issue of material fact as to whether Plaintiff was entitled to reimbursement for such use. In its reply, Cal Door insists that Plaintiff has not demonstrated that it was "necessary" for him to use his personal cell phone, but notably does not specifically address Plaintiff's showing that he was frequently contacted on that phone by his supervisors and that Cal Door-provided phone often did not work, forcing him to use his own phone to perform work-related tasks. Consequently, Cal Door's request for summary adjudication of the sixth cause of action is DENIED.

7. *Violation of the UCL (Seventh Cause of Action)*

Cal Door explains that because Plaintiff's UCL claim is predicated on the preceding alleged violations of the Labor Code, and it is entitled to summary adjudication of the claims arising from those violations, it follows that it is entitled to summary adjudication of the seventh cause of action in its favor. As the Court has not summarily adjudicated all of the underlying predicate claims in Cal Door's favor, it will not summarily adjudicate this claim and DENIES Cal Door's request.

8. *PAGA (Eighth Cause of Action)*

Cal Door asserts that it is entitled to summary adjudication of Plaintiff's PAGA claim because it is derivative of the underlying claims alleging that it committed various Labor Code violations and, as demonstrated above, it did not commit those violations. As with the preceding cause of action, summary adjudication of this claim must be denied as not all of the underlying claims have been summarily adjudicated in Cal Door's favor.

9. *Violations of the FCRA, the ICRAA and the CCRAA (Ninth, Tenth and Eleventh Cause of Action)*

Finally, Cal Door asserts that summary adjudication of the remaining claims in its favor is warranted because neither it nor California Kitchen ever obtained any report about Mr. Villa that is governed by any of the subject statutes.

In the ninth cause of action, Mr. Villa alleges that Defendants violated the provisions of the FRCA, particularly 15 U.S.C. sections section 1681b ("Section 1681b"), subdivision (b)(2)(A)(i) and (ii) and subdivision (b)(3)(A), by failing to: provide Plaintiff with "clear and conspicuous" notice in a written documents that they may procure consumer background reports for employment purposes; obtain written authorization from Plaintiff prior to obtaining his consumer background report for employment purposes; provide Plaintiff a copy of his consumer background report prior to taking adverse actions against him; and provide Plaintiff with a summary of his rights under the FCRA prior to taking adverse actions against him. (Complaint, ¶¶ 146-149.)

The purpose of the FCRA, which was enacted in 1969, is to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter." (15 U.S.C. § 1681(b); see *Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal.App.4th 548, 559.) Section 1681b "restricts the circumstances under which a consumer reporting agency may . . . divulge a consumer report, limiting its ability to disclose to those situations specifically enumerated in the statute 'and no other.' " (*Cisneros v. U.D. Registry, Inc.*, *supra,* 39 Cal.App.4th at p. 561.) One permissible situation is when an agency has reason to believe a person it furnishes a report to "intends to use the information for employment purposes." (15 U.S.C. § 1681b(a)(3)(B).)

As Cal Door explains, the requirements for furnishing and using consumer reports for employment purposes mandated by subdivision (b) of Section 1681b, provide a basis for liability only where such a report has *actually* been procured. This is because a violation occurs only when a report is obtained without adhering to those requirements. Cal Door submits evidence demonstrating that it never obtained such a report concerning Plaintiff. (UMF No. 16.) Mr. Villa does not dispute this fact. Consequently, the Court finds that Defendants are entitled to summary adjudication of this claim.

In the tenth cause of action, Plaintiff alleges that Defendants violate the ICRAA, specifically Civil Code sections 1786.2, subdivision (c), 1786.16, subdivision (a)(2)(B) and (C) and subdivision (c). (Complaint, ¶¶ 157, 159, 160.) This claim essentially mirrors the preceding claim for violation of the FCRA, with the difference being that it is predicated on state rather than federal law. In the remaining cause of action, Plaintiff alleges that Defendants violated the CCRAA, particularly Civil Code section 1785.20.5, subdivision (a), by obtaining and using information in consumer reports to conduct background checks on him without providing proper notice. (*Id.*, ¶ 170.)

The CCRAA was originally enacted in 1970 and governed "credit rating reports" that included consumer credit record and standing reports. (See *First Student Cases* (2018) 5 Cal.5th 1026, 1032.) It was repealed in 1975 and then re-enacted with the ICRAA to govern consumer background reports, including checks conducted for employment purposes. (*Ibid*.) "The statutes were modeled after the FCRA and were intended to serve complementary, but not identical, goals," but have "similar purposes," that being to "ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and respect for the consumer's right to privacy." (*Ibid*., quoting Civil Code §§ 1785.1, subd. (c) and 1786, subd. (b).) The ICRAA applies to "investigative consumer reports" prepared by "investigative consumer reporting agencies," and the former is defined as "any report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means." (Civ. Code, § 1786.2, subd. (c).)

Similar to the FCRA, the ICRAA imposes various "conditions" on obtaining such reports. But, as with the FCRA, the statute is violated *only* if someone "procure[s] or cause[s] to be prepared an investigative consumer report" without complying with the statutory "conditions." (See Civ. Code, § 1786.16.) Defendants submit evidence that neither of them ever obtained an investigative consumer report regarding Mr. Villa. (UMF No. 16.) Mr. Villa

does not dispute this. Consequently, the Court finds that Defendants are entitled to summary adjudication of Plaintiff's ICRAA claim.

The CCRAA applies to credit reports, which are expressly excluded from the ICRAA and, similar to that statute and the FCRA, imposes conditions on "consumer credit reporting agencies" that prepare and provide credit reports, and on users of such reports. (See Civ. Code, §§ 1785.10 and 1785.20.) Also similar to those statutes, there is no violation if no credit report is ever obtained. Defendants submit evidence that they never obtained a credit report regarding Mr. Villa (UMF No. 16) and he does not dispute this. Accordingly, the Court finds that Defendants are entitled to summary adjudication of Plaintiff's CCRAA claim.

III. CONCLUSION

Defendants' motion for summary judgment is GRANTED as to California Kitchen and DENIED as to Cal Door. Cal Door's alternative motion for summary adjudication is GRANTED as to the claims for failure to pay all hours worked, sick leave and vacation pay and the ninth, tenth and eleventh causes of action. The alternative motion is otherwise DENIED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 2

Case Name:
Case No.:

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Calendar Line 3

Case Name: *Silvia Romero de Sanchez v. The Posh Bakery Inc. et al.*
Case No.: 23CV409732

The unopposed motion to be relieved as counsel for Defendant The Posh Bakery Inc. is GRANTED. The Court will sign the proposed order.

The Court observes, however, that Defendant, as a corporate entity, cannot appear in this action without counsel. (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898 ["A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona"]; *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101 ["As a general rule, it is well established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney"].) Accordingly, the Court intends to lift the responsive pleading stay and order Defendant to file an Answer or other responsive pleading, through counsel, within 30 days of the date of the order. Failure to do so may result in the entry of default and default judgment against Defendant.

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Calendar Line 4

Case Name: *Silvia Romero de Sanchez v. The Posh Bakery Inc. et al.*
Case No.: 23CV413084

See Line 3 for tentative ruling.

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Calendar Line 5

Case Name: *Jesse Garcia v. Norcal Pool Construction Inc. et al.*
Case No.: 22CV394263

The unopposed motion to be relieved as counsel for Defendants Norcal Pool Construction Inc. and Gustavo Negrete Rodriguez is GRANTED. The Court will sign the proposed order.

The Court observes, however, that Norcal Pool Construction Inc., as a corporate entity, cannot appear in this action without counsel. (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898 ["A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona"]; *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101 ["As a general rule, it is well established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney"].)

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