Dellinger v. Recovery Ranch
Hearing Date:
Motion for Class Certification

Case No. 20CV04256
March 5, 2024

PARTIES/ATTORNEYS

Plaintiff	Henry Dellinger	James H. Cordes Angelica J. Caro James H. Cordes and Associates
Defendant	Recovery Ranch LLC	Neil S. Lerner Edward A. Cosgrove Cox Wootton Lerner Griffin & Hansen LLP

TENTATIVE RULING

Plaintiff Henry Dellinger, on behalf of and a representative of a proposed class and subclasses, is suing Recovery Ranch LLC, a sober living facility in Santa Ynez. According to the operative pleading, the Ranch operates businesses "that offer guys in the house the opportunity to work for and manage businesses while working on a foundation for long-term sobriety." Plaintiff "became a client and resident of [the Ranch] in or around May 2018," and began working five days a week, up to 14 hours per day, at defendant's businesses, such as The Barn (a retail apparel business) and Ranch Hand Construction (a 24-hour handyman service), until approximately May 2020, at which time he left. Neither plaintiff nor those similarly situated were paid wages, and no efforts were made to provide meal or rest breaks.

Dellinger filed his complaint on December 17, 2020, alleging the following wage and hour violations: (1) Unpaid Minimum Wages; (2) Unpaid Overtime Wages; (3) Waiting Time Penalties; (4) Missed Meal Periods; (5) Missed Rest Periods; (6) Missing or Improper Wage Statements; (7) Failure to Allow Inspection of Personnel File; (8) Unfair Business Practices; and (9) Penalties under the Private Attorney General Act (PAGA). The complaint was amended to add Ranch Hands Construction LLC as a defendant on April 10, 2023.

On September 11, 2023, plaintiff filed a motion for class certification pursuant Code of Civil Procedure section 382. Opposition was filed on October 10, 2023. Reply was filed on October 17, 2023. The court has considered all filings.

Related Cases

The following cases are filed by the plaintiffs in their individual capacities ("Related Individual Cases").

- Berry et al. v. Recovery Ranch et al. (21CV03386): On August 23, 2021, plaintiffs James Berry, James Anderson, and Kyle Maglaya filed a complaint against Recovery Ranch LLC and Daniel Ross for (1) Failure to Pay Wages; (2) Failure to Pay Overtime Wages; (3) Failure to provide Meal Periods; (4) Failure to permit Rest Breaks; (5) Waiting Time Penalties; (6) Failure to Provide Lawful Wage Statements; (7) Failure to Pay Minimum Wage; and (8) Restitution for Unfair Competition. Ranch Hands Construction was added as a defendant by Doe substitution on March 24, 2023.
- Wheldon v. Recovery Ranch (22CV01849): On May 9, 2022, plaintiff Samuel Whelden filed a complaint against Recovery Ranch, LLC, Ranch Hands Construction, LLC, and Daniel Ross for: (1) Failure to Pay Wages; (2) Failure to Pay Overtime Wages; (3) Failure to provide Meal Periods; (4) Failure to permit Rest Breaks; (5) Waiting Time Penalties; (6) Failure to Provide Lawful Wage Statements; (7) Failure to Pay Minimum Wage; and (8) Restitution for Unfair Competition; (9) Intentional Infliction of Emotional Distress; (10) Negligent Infliction of Emotional Distress.

Ranch asserts a lack of employment relationship as a defense to each of these actions. On June 21, 2023, these cases were related to each other and Dellinger v. Recovery Ranch. On February 5, 2024, the court ordered the above two cases consolidated, with Berry v. Recovery Ranch as the lead case. Trial is set for January 13, 2025 on these consolidated cases. Of these plaintiffs, only James Anderson is identified as a purported class member in Dellinger v. Recovery Ranch et al. There are no future case management conferences set for these consolidated cases.

The following case is alleged by the plaintiff and on behalf of all aggrieved employees under the Private Attorney General Act (PAGA).

- Gonzalez v. Ranch Hands Construction, LLC et al. (22CV01984): On May 24, 2022, plaintiff Jesus Gonzalez filed a complaint against Ranch Hands Construction LLC and Daniel Ross for (1) Failure to Compensate For All Hours Worked; (2) Failure To Pay Minimum Wages; (3) Failure To Pay Overtime; (4) Failure To Provide Accurate Itemized Wage Statements; (5) Failure To Pay Wages When Employment Ends; (6) Failure To Pay Wages Owed Every Pay Period; (7) Failure To Give Rest Breaks; (8) Failure To Give Meal Breaks; (9) Private Attorneys General Act ("PAGA"); (10) Failure To Reimburse For Business Expenses; (11) Failure To Provide Personnel Records; (12) Failure To Provide Pay Records; (13) Violation of California Business And Professions Code Section 17200.

No Notices of Related Case have been filed involving this case and the court has not related it to any of the other pending cases. No allegations appear that suggest the plaintiff or other aggrieved employees were classified as interns or were otherwise clients of the treatment program. Ranch does not assert a lack of employment relationship as a defense. In other words, this action appears to be on behalf of those classified by Ranch as employees. Trial in this case is set for February 3, 2025.

Proposed Classes

The proposed class is defined as follows:

All persons who worked for Defendant Recovery Ranch, LLC in California and were classified as unpaid interns between June 15, 2016 and the present (the "Class Period").

Sixty-three (63) people allegedly fit this class definition.

Moreover, plaintiff proposes the following subclasses:

(1.)Defendant did not pay lawful minimum wages (the "Minimum Wage Subclass").
(2.)Defendant did not pay lawful overtime wages (the "Overtime Wage Subclass").
(3.)Employment ended any time after June 15, 2016 who are entitled to waiting time penalties under Labor Code §203 (the "Penalty Subclass")
(4.)Defendant did not provide lawful meal periods ("Meal Period Subclass");
(5.)Defendant did not authorize or permit lawful rest periods (the "Rest Period Subclass"); and,
(6.)Defendant did not provide paycheck deduction statement penalties under Labor Code §226 (the "Paycheck Stub Subclass").

The use of subclasses is an appropriate device to facilitate class treatment. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470–471 [class action need not be dismissed when trial court can use subclasses to remove any antagonism among members of the putative class]; see also *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821 [efficiency of class action may be promoted by use of subclasses]; *Hicks v. Kaufman & Broad Home Corp*. (2001) 89 Cal.App.4th 908, 926 [recognizing trial court's ability to divide class members into subclasses to eliminate differences in damage claims].)

Legal Background

"Code of Civil Procedure section 382 authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . .' " (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (Sav-On Drug Stores).) "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods." (*Id.*)

"On a motion for class certification, the plaintiff has the 'burden to establish that in fact the requisites for continuation of the litigation in that format are present.' " (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 654.) In reviewing a certification order, the court considers "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. [Citations.] 'Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question.' " (*Sav-On Drug Stores, supra*, 34 Cal.4th at p. 327.) One valid reason for denying certification is sufficient. (*Ibid*; see also *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 143.)

Public policy encourages use of the class action device to enforce California's overtime laws. (See *Sav-on Drug Stores, Inc. v. Sup.Ct. (Rocher)* (2004) 34 Cal.4th 319, 340; *Vigil v. Muir Medical Group, IPA, Inc.* (2022) 84 Cal.App.5th 197, 212.) However, in an employment case, the trial court should not grant class certification if individualized inquiries into the particular nature of job duties or other issues would predominate, even if there is evidence of common job descriptions, common classification criteria, and common policies and procedures. (*Lampe v. Queen of the Valley Med. Ctr.* (2018) 19 Cal.App.5th 832, 841-842.)

"As ' "trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification." ' (*Sav–On Drug Stores, Inc. v. Superior Court, supra,* 34 Cal.4th at p. 326.) Accordingly, 'in the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed "unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]" [citation]. Under this standard, an order based upon improper criteria or incorrect assumptions calls for reversal " 'even though there may be substantial evidence to support the court's order.' " [Citations.] Accordingly, we must examine the trial court's reasons for denying class certification' (*Linder* [, *supra,*] 23 Cal.4th [at pp.] 435–436) and 'ignore any unexpressed grounds that might support denial.' (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 844.) 'We may not reverse, however, simply because *some* of

the court's reasoning was faulty, so long as *any* of the stated reasons are sufficient to justify the order. [Citation.]' (*Ibid.*)"

Analysis

1. The Class is Sufficiently Numerous and Ascertainable

An ascertainable class exists after examining "(1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Global Minerals v. Superior Ct.* (2003) 113 Cal.App.4th 836, 849.) In defining an ascertainable class, "the goal is to use terminology that will convey sufficient meaning to enable persons hearing it to determine whether they are members of the class plaintiffs wish to represent." (*Global Minerals v. Superior Ct.*, *supra*, 113 Cal.App.4th at 858.) Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) Here, class members have already been ascertained because Ranch has listed them in response to interrogatories. (See Plaintiff's Exhibit J [Defendant's Amended Further Responses to Plaintiff's Special Interrogatories, Set One] (listing and identifying Class members).) Further, Ranch has also produced payroll records for the putative Class. (See Plaintiff's Exhibit I [Collection of Earnings Statements (aka paycheck stubs) and Check History Detail Reports].)

A class is sufficiently numerous if individual joinder of all plaintiffs is impracticable, and "no set number is required as a matter of law for the maintenance of a class action." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 disapproved on other grounds by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15.) The evidence has shown that plaintiffs' proposed classes would include approximately 60-63 putative class members. Therefore, class treatment would be appropriate. (See *Rose, supra,* 126 Cal.App.3d at 934 ["The class of 42 retirees in the present is quantitatively sufficient for a class action."].)

The class is sufficiently numerous and ascertainable.

2. There is a Well-Defined Community of Interest

The second requirement for certification of a class action is a well-defined community of interest among the putative class members. (*Sav-On Drug Stores, supra,* 34 Cal.4th at p. 326.) The 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.' " (*Fireside Bank, supra*, 40 Cal.4th at p. 1089.) "The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.' " (*Sav-On Drug Stores*, at p. 326.) Based

on the present record, there is not a well-defined community of interest because there are not predominate questions of law or fact.

"Predominance is a comparative concept." (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99.) It "requires a showing 'that questions of law or fact common to the class predominate over the questions affecting the individual members.' " (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th 402, 410.) "The 'ultimate question' the element of predominance presents is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*).)

"To assess predominance, a court 'must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.' " (*Brinker, supra*, 53 Cal.4th at p. 1024.) The legal elements of the causes of action must be considered in determining whether common issues predominate. (*Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101, 1116.) The court "must determine whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." (*Ayala v. Antelope Valley Newpapers, Inc.* (2014) 59 Cal.4th 522, 537; *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 398.) "In deciding whether the common questions 'predominate,' courts must do three things: 'identify the common and individual issues'; 'consider the manageability of those issues'; and 'taking into account the available management tools, weigh the common against the individual issues to determine which of them predominate.' " (See *Ayala, supra*, 59 Cal.4th at p. 530 [the question at the class certification stage is "whether the operative legal principles, as applied to the facts of the case, render the claims susceptible to resolution on a common basis"].) "[T]he focus in a certification dispute is on what type of questions—common or individual—are likely to arise in the action." *(Sav-On, supra,* 34 Cal.4th at p. 327.)

Finally, while the amount of individual claims may vary from member to member, the introduction of that variable into the equation in no way alters our decision. The law unequivocally provides that each class member may establish damages independently without threatening the integrity of the class action. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 815.)

a. As Applied to Wage and Hour Cases

The Cal. Supreme Court's decision in *Brinker, supra*, 53 Cal.4th 1004, is our touchstone for analyzing whether common issues of law and fact predominate in a putative class action alleging employment policies in violation of the wage and hour

laws. Because the analytic framework announced by *Brinker* appears dispositive of the issue before this court, it's examined in detail. In *Brinker*, the trial court certified a class action for approximately 60,000 current and former nonexempt employees of defendant corporations for a complaint alleging the defendants violated state laws requiring meal and rest breaks for nonexempt hourly employees. (*Brinker, supra*, 53 Cal.4th at pp. 1017-1019 & fn. 4.) On appeal, the appellate court held the trial court erred in certifying each of the subclasses and granted writ relief to reverse class certification. The California Supreme Court subsequently vacated that decision by its grant of review "to resolve uncertainties in the handling of wage and hour class certification motions." (*Id*. at p. 1021.) The Supreme Court ultimately concluded the trial court properly certified the rest break subclass, remanded the question of certification of the meal break subclass for reconsideration by the trial court, and concluded the trial court erred by certifying the off-the-clock subclass. (*Id*. at p. 1017.)

Brinker's significance lies in its statements on the extent to which a trial court may or must reach the merits of a plaintiff's claim when deciding whether to certify a class. (*Brinker, supra,* 53 Cal.4th at p. 1023.) *Brinker* stated a class certification motion "is not a license for a free-floating inquiry into the validity of the complaint's allegations" (*ibid*.) and that "[i]n many instances, whether class certification is appropriate or inappropriate may be determined irrespective of which party is correct." (*Ibid*.). Although *Brinker* recognized that "[w]hen evidence or legal issues germane to the certification question bear as well on aspects of the merits, a court may properly evaluate them" (*id*. at pp. 1023–1024), it cautioned that "[s]uch inquiries are closely circumscribed" (*id*. at p. 1024), and "resolution of disputes over the merits of a case generally must be postponed until after class certification has been decided [citation], with the court assuming for purposes of the certification motion that any claims have merit [citation]" (*Id*. at p. 1023). *Brinker*, summarizing the controlling approach, stated that "[p]resented with a class certification motion, a trial court must examine the plaintiff's theory of recovery, assess the nature of the legal and factual disputes likely to be presented, and decide whether individual or common issues predominate. To the extent the propriety of certification depends upon disputed threshold legal or factual questions, a court may, and indeed must, resolve them. Out of respect for the problems arising from one-way intervention, however, *a court generally should eschew resolution of such issues unless necessary*." (*Id*. at p. 1025, italics added.)

Brinker ultimately concluded the plaintiff's theory of liability as to the rest break subclass--the employer had a uniform policy that violated the mandated rest breaks under the statute as construed by Brinker--was properly certified for class treatment. *Brinker* explained class treatment was proper because there existed "a common, uniform rest break policy ... equally applicable to all Brinker employees [and] [c]lasswide liability could be established through common proof if [plaintiff] were able to demonstrate that, for example, Brinker under this uniform policy

refused to authorize and permit a second rest break for employees working shifts longer than six, but shorter than eight, hours. Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at p. 1033.) Although electing to accede to the parties' request to reach the merits of the plaintiff's theory of liability (*id*. at p. 1026, 139 Cal.Rptr.3d 315, 273 P.3d 513), *Brinker* unequivocally reiterated:

> "[C]ontrary to the Court of Appeal's conclusion, the certifiability of a rest break subclass in this case *is not dependent upon resolution of threshold legal disputes over the scope of the employer's rest break duties.* The theory of liability--that Brinker has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law--is by its nature a common question eminently suited for class treatment. As noted, we have at the parties' request addressed the merits of their threshold substantive disputes. However, in the general case to prematurely resolve such disputes, conclude a uniform policy complies with the law, and thereafter reject class certification--as the Court of Appeal did--places defendants in jeopardy of multiple class actions, with one after another dismissed until one trial court concludes there *is* some basis for liability and in that case approves class certification. [Citation.] It is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits, and thus permit defendants who prevail on those merits, equally with those who lose on the merits, to obtain the preclusive benefits of such victories against an entire class and not just a named plaintiff."
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> (*Id*. at pp. 1033-1034.)

Subsequent cases have concluded, considering *Brinker*, that when a court is considering the issue of class certification and is assessing whether common issues predominate over individual issues, the court must "focus on the policy itself" and address whether the plaintiff's theory as to the illegality of the policy can be resolved on a classwide basis. (*Faulkinbury v. Boyd & Associates, Inc*. (2013) 216 Cal.App.4th 220, 232 (*Faulkinbury*); accord, *Bradley, supra*, 211 Cal.App.4th at p. 1141 ["[o]n the issue whether common issues predominate in the litigation, a court must 'examine the plaintiff's theory of recovery' and 'assess the nature of the legal and factual disputes likely to be presented ' "]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (*Benton*) ["under *Brinker* ... for purposes of certification, the proper inquiry is 'whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment' "].)

In other words, "*Brinker* [] holds that, at the class certification stage, as long as the plaintiff's posited theory of liability is amenable to resolution on a classwide basis, the court should certify the action for class treatment even if the plaintiff's

theory is ultimately incorrect at its substantive level . . .” (*Hall v. Rite Aid Corp.* (2014) 226 Cal.App.4th 278, 293.)

b. How Common Issues are Proved

“Plaintiffs' burden on moving for class certification ... is not merely to show that some common issues exist, but, rather, to place substantial evidence in the record that common issues predominate.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1108.) California courts consider “pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate.” (*Sav–On Drug Stores, supra*, 34 Cal.4th at p. 333.)

Proof of uniform policies “are of the sort routinely, and properly, found suitable for class treatment.” (*Brinker, supra,* 53 Cal.4th at p. 1025, 1033; see also *Faulkinbury v. Boyd Associates* (2013) 216 Cal.App.4th 220, 233 [plaintiff’s theory of recovery for meal period violations was based on employer’s uniform policy, the lawfulness of which could be determined on a classwide basis] (*Boyd*.).) The policies may be express written policies, as in *Brinker* or undisputed practices, as in *Boyd.* (*Boyd, supra,* 216 Cal.App.4th at 237.) Moreover, having no policy can be used as common proof of a uniform policy that may violate California wage and hour laws. (*Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725-726; *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1149-1150 [no “material distinction” between an “express meal and break policy” and the “*lack* of a policy . . .” [emphasis in original].)

c. Common Questions of Law or Fact Predominate

With this background in mind, Plaintiff argues that its claims raise predominant common questions, and specifically, whether Ranch’s policies regarding minimum and overtime wages, meal and rest period policies, and wage statement and waiting time penalties violate California law. Each of these alleged improper practices ultimately rest on the question whether Ranch was plaintiff’s employer (and that of the other putative class members). If the Ranch is not plaintiff’s or the putative class members’ employer, the protections of the Labor Code don’t apply.

To that end, Ranch’s opposition to the motion focuses largely on its fourth affirmative defense that the parties lack an employment relationship. (See Answer, filed March 11, 2021, Fourth Affirmative Defense—"Defendant is informed and believes, and thereupon alleges, that Plaintiff’s Complaint, and each purported cause of action alleged therein, is barred on the ground that Defendant was not the employer of Plaintiff nor any of the putative class members and therefore is not

liable for any obligation that runs between an employer and its employees.") In other words, Ranch argues that since plaintiff and the other members of the putative class were not employees the California wage and hour laws do not apply. (See *Williams v. Strickland* (9th Cir. 1996) 87 F.3d 1064 —participants in rehabilitation program that included a work therapy component were not employees under the Fair Labor Standards Act where there was no express or implied agreement for compensation; compare *Tony & Susan Alamo Foundation v. Sec'y of Labor* (1985) 471 U.S. 290—associates who received food, shelter, and clothing but no cash wages and who were mostly rehabilitated drug addicts and criminals were "employees" for purposes of the Act where there was both a rehabilitative element and an implied agreement for compensation.)[1]

Plaintiff identifies precisely this issue as a common question among the putative class members that is ripe for resolution by classwide treatment, e.g., whether class members are interns and not employees. Ranch, however, argues this is a threshold foundational question going to the issue of whether a justiciable controversy even exists in the first place. The court disagrees with Ranch. As noted, "[w]e read *Brinker* to hold that, at the class certification stage, as long as the plaintiff's posited theory of liability is amenable to resolution on a classwide basis, the court should certify the action for class treatment even if the plaintiff's theory is ultimately incorrect at its substantive level . . ." (*Hall v. Rite Aid Corp*., *supra*.) Here, plaintiff's theory of liability is that Ranch was an employer and plaintiff and the other putative class members were employees entitled to compensation under the Labor Code. Ranch's defense is there was no employment relationship. Whether either theory is legally correct should be deferred to the merits stage of the litigation.[2]

Instead, the court must determine the issues framed by the pleadings and the law applicable to the causes of action alleged. In doing so, courts consider both plaintiff's *legal theories* and defendant's *affirmative defenses*. (*Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 28-29;*Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440, 1450.) The class members are identified as follows: "All persons who worked for Defendant RECOVERY RANCH, LLC in California and were

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[1]Both cases involved the applicability of the federal FLSA to the relationship between the parties. The court acknowledges that where California and federal employment laws do not materially diverge, California courts may look to the FLSA and federal decisions for guidance. (See e.g. *Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 812-818; *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 798 ["where the language or intent of state and federal labor laws substantially differ, reliance on federal regulations or interpretations to construe state regulations is misplaced"].)

[2] The cases Ranch relies on were not class action cases and therefore offer no guidance on how this decision would fit into the certification process. *Williams v. Strickland* (9th Cir. 1996) 87 F.3d 1064 was decided at summary judgment. In that case, the court considered (but rejected) Williams' testimony that he had an expectation of employment. Likewise, in *Tony and Susan Alamo Foundation v. Secretary of Labor* (1985) 471 U.S. 290, 295, the case was appealed after trial, at which the associates testified they considered themselves volunteers, which testimony the trial court rejected. Neither of these cases neatly resolves the putative class members employment status. Notably, defendants does not address the import of *Brinker*, as outlined in the body of this order.

classified as unpaid interns between June 15, 2016 and the present (the "Class Period")." Here, both sides identify the following factors that are relevant to determining the employment status of an unpaid intern:

(1) The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
(2) The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
(3) The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
(4) The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
(5) The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
(6) The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
(7) The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

(*Glatt v. Fox Searchlight Pictures, Inc.* (2d Cir. 2015) 811 F.3d 528, 535 [applying test to determine whether interns at a film production company were employees in which the lack of expectation of payment was only one factor among others]; *Benjamin v. B & H Education, Inc.* (9th Cir. 2017) 877 F.3d 1139, 1146-1147, 1150 [predicting that the California Supreme Court would likely apply the same multifactor test under California law]; DOL Wage and Hour Division Opinion Letter FLSA2004-5NA (May 17, 2004); DLSE Opinion Letter 2010.04.07;[3].)

There is common evidence on these points, particularly the first point: the extent to which the intern and the employer clearly understand that there is no expectation of compensation. Plaintiff and the purported class members were required to enter into an Employee Agreement Regarding Rent, Store, Activity, and Clothing Expenses. (Plaintiff's Exhibit B [Ross PMQ Depo, pp. 49:25-50:12; 135:7-

[3] The DLSE's opinion letters, while not controlling on the courts, " ' " ' "do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." ' " ' " (*Brinker, supra,* 53 Cal.4th at p. 1029, fn. 11, quoting *Seymore v. Metson Marine, Inc*. (2011) 194 Cal.App.4th 361, 369, fn. 5.) "A court may adopt the DLSE's interpretation if the court independently determines that the interpretation is correct." (*Oliver v. Konica Minolta Business Solutions U.S.A., Inc*. (2020) 51 Cal.App.5th 1, 27.)

23]; Plaintiff's Ex. E [Employee Agreement Regarding Rent, Store, Activity, and Clothing Expenses].) The Employee Agreement Regarding Rent, Store, Activity, and Clothing Expenses, at issue here provides: "I, _____ (*Name Of Employee*), permit Recovery Ranch to apply _____ (percentage of wages earned or dollar amount) of each to any open balance on account my personal, activity, clothing expenses, and/or) _____ (*percentage of wages earned or dollar amount*) towards rent incurred as a resident of The Recovery Ranch." In each blank is written "100%." This is also referred to as "pay to books" agreement. (Plaintiff's Exhibit A [Martz Depo, pp. 22:3-23:4; 30:18-31:1.) The purpose of the pay to books agreement was to credit wages earned to Ranch expenses. (Plaintiff's Exhibit B [Ross PMQ Depo pp. 133:6-19, 140:13-24].)

Plaintiff and the purported class members were also required to sign "Intern Agreements." (Plaintiff's Exhibit A [Martz Depo, pp. 41:22-42:5, 44:12-24; Plaintiff's Exhibit B [Ross PMQ Depo, pp. 43:18-44:01; see also Plaintiff's Exhibit C [Intern Agreement]; Plaintiff's Exhibit D [Collection of Intern Agreements].) Plaintiff's Intern Agreement was typical of all other Intern Agreements signed by Class members. (Plaintiff's Exhibit B [Ross PMQ Depo, pp.114:15-115:08, 165:19- 22; compare Plaintiff's Exhibit C [Intern Agreement] with Plaintiff's Exhibit D [Collection of 21 Intern Agreements].) The Intern Agreements state: "You are not entitled to wages or other compensation other than your experience and learning for the time spent as an intern. [¶] You further agree that the Internship does not create an 'employment' relationship under the Fair Labor Standards Act ('FLSA') or any other definition, and the FLSA's minimum wage and overtime provisions do not apply."

This will be relevant evidence to determine the extent to which the intern and the employer clearly understand that there is no expectation of compensation. The documents are common among the putative class members. Still, these documents arguably conflict and render the employment relationship unclear. (E.g., the Intern Agreement specifies there is no employment relationship while the Employment Agreement literally identifies the relationship as "employment," refers to the signer as "employee" and discusses distribution of "wages.") It seems likely the court will require testimony from each class member regarding his or her interpretation and understanding of the conflicting written evidence and understanding regarding expectation of compensation. While this testimony may be relevant, as suggested by the above case law, it is also possible that the court may disregard the testimony, as the court did in *Tony and Susan Alamo Foundation v. Secretary of Labor* (1985) 471 U.S. 290. For this reason, the court finds this to be a common issue capable of class resolution.[4]

[4] The court remains mindful that "[f]or purposes of class action manageability, a defense that hinges liability vel non on consideration of numerous intricately detailed factual questions, as is sometimes the case in misclassification suits, is different from a defense that raises only one or a few questions and that operates not to extinguish the defendant's liability but only to diminish the amount of a given plaintiff's recovery." (*Brinker, supra,* 53 Cal.4th at p.

Assuming an employment relationship is found, common issues predominate. There are common wage and hour practices: Defendant generated paycheck stubs for Class members. (Ross PMQ Depo (Ex. B)); the wage rate for each Class member was decided by Daniel Ross, Dave Martz, and the leadership team; the wage rates fall below the California minimum wage; the putative class members were not given meal or rest breaks as that is defined in the Labor Code; the putative class members were not given overtime wages as that is defined in the Labor Code. The manner of timekeeping and records of earning statements are all common as well.

Ranch argues there is no well-defined community of interests between plaintiff and the purported class members. It points out that "each individual's involvement and experience with the Ranch's work-therapy program differs widely – on a case-by-case basis depending on any particular individual's needs –and necessitates a uniquely-tailored approach to each. No two residents are the same, and no resident's involvement and experience with the Ranch's work-therapy program is identical to, or interchangeable with, those of other residents at the Ranch." But this argument does not in any way suggest a uniqueness of experience with respect to employment status of the putative class members under the Labor Code or ancillary wage and hour practices.

d. Typicality and Adequacy of Representation

Also part of the "community of interest" requirement for class certification is that plaintiff show that plaintiff can *adequately represent* the class. (*Lockheed Martin Corp. v. Sup.Ct. (Carrillo)* (2003) 29 Cal.4th 1096, 1104.) The class representative, through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.) The prospective class representative must file a declaration stating that the person desires to represent the class and understands the fiduciary obligations of serving as class representative. Counsel's declaration to that effect will not suffice. (*Jones v. Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 998.) Dellinger has done so here.

Plaintiff has offered admissible evidence to support the adequacy of his counsel, which is not challenged by Defendant. Defendant does not dispute the adequacy of the class representatives.

1054 (conc. opn. of Werdegar, J.), fn. omitted.) Defenses that raise individual questions about the calculation of damages generally do not defeat certification. (Sav–On, supra, 34 Cal.4th at p. 334.) However, a defense in which liability itself is predicated on factual questions specific to individual claimants poses a much greater challenge to manageability. This distinction is important. As was observed in *City of San Jose v. Superior Court, supra*, 12 Cal.3d at page 463 "Only in an extraordinary situation would a class action be justified where, subsequent to the class judgment, the members would be required to individually prove not only damages but also liability." (*Duran v. U.S. Bank National Assn*. (2014) 59 Cal.4th 1, 30.)

Overall, for the reasons described above, plaintiff has adequately shown a well-defined community of interest.

3. Superiority

In determining whether a class action would be "superior" to individual lawsuits, courts usually consider:

- The interest of each member in controlling his or her own case personally;
- The difficulties, if any, that are likely to be encountered in managing a class action;
- The nature and extent of any litigation by individual class members already in progress involving the same controversy;
- The desirability of consolidating all claims in a single action before a single court.

(*Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 120; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1333 (disapproved on other grounds by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15); *Johnson v. GlaxoSmith-Kline, Inc.* (2008) 166 Cal.App.4th 1497, 1510 (disapproved on other grounds by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15); *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1537, (disapproved on other grounds by *Noel v. Thrifty Payless, Inc., supra*, 7 Cal.5th at 986, fn. 15).)

It is no accident that "wage and hour disputes (and others in the same general class) routinely proceed as class actions." (*Prince v. CLS Transportation, Inc.* (2012) 118 Cal.App.4th 1320, 1328.) As the Supreme Court has observed, "California's overtime laws are remedial and are to be construed so as to promote employee protection. [Citation.] And, as we have recognized, 'this state has a public policy which encourages the use of the class action device.' [Citation.] ' "By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." ' " (*Sav–On Drug Stores, supra*, 34 Cal.4th at p. 340.)

Class action is also an arguably superior method for determining employment status. This issue permeates all claims. There is no advantage to either party to resolve this question on a piecemeal basis.

The court finds that proceeding by class action is a superior method to individual lawsuits.

Tentative Ruling

For the reasons described above, plaintiff has adequately demonstrated (1) a sufficiently numerous, ascertainable class, (2) a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods.

The court notes that class certification of these issues can best be described as provisional. "After a class has been certified, the court's obligation to manage individual issues does not disappear. '[O]nce the issues common to the class have been tried, and assuming some individual issues remain, each plaintiff must still by some means prove up his or her claim, allowing the defendant an opportunity to contest each individual claim on any ground not resolved in the trial of common issues.' [Citation.]" (*Duran*, *supra*, 59 Cal.4th at p. 29.) "Trial courts also have the obligation to decertify a class action if individual issues prove unmanageable." (*Ibid*.) The court will continue to manage this case and, to the extent it may later appear appropriate by motion for decertification or otherwise, the court may revisit the scope or appropriateness of the class definitions or class certification.