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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TERRANCE ALLAN VANN, an  
Individual, On Behalf of Himself and  
All Others Similarly Situated,

CASE NO. 13-CV-2221-BEN (WVG)

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

Plaintiff,

[Docket No. 41]

vs.

MESSAGE ENVY FRANCHISING  
LLC, an Arizona Limited Liability  
Corporation, et al.,

Defendants.

Before this Court is a Motion for Summary Judgment, filed by Defendant  
Massage Envy Franchising, LLC ("MEF"). (Docket No. 41). Plaintiff Terrance Allan  
Vann filed a Response in Opposition. (Docket No. 60). Having carefully considered  
the Parties arguments, the Court finds and concludes as follows.

**BACKGROUND**

**I. Procedural Background**

Mr. Vann, a massage therapist who worked at various Massage Envy spa  
locations, filed this class-action complaint against Defendants MEF, Charis Group,  
LLC, and OC Wellness Group, Inc.,<sup>1</sup> alleging violations of California's minimum-wage  
laws. (Docket No. 1, Ex. B). Defendant MEF is the franchisor, and Defendants Charis  
Group, LLC and OC Wellness Group, Inc. are franchisees.

<sup>1</sup>Incorrectly sued as "OC Envy Group, Inc."

1 On September 16, 2013, the action was removed to this Court. (Docket No. 1).  
2 On March 3, 2014, the Parties agreed to dismiss all claims against OC Wellness Group,  
3 Inc. (Docket Nos. 23, 24). The action against Defendant Charis Group, LLC was  
4 stayed in light of its recent filing for bankruptcy. (Docket No. 69).

## 5 **II. Factual Background**

6 The following factual background is drawn from the evidence submitted by the  
7 Parties, from which the Court finds there are no genuine issues of material fact in  
8 dispute.

### 9 A. Massage Envy Franchising

10 MEF is a “business format franchisor”<sup>2</sup> headquartered in Scottsdale, Arizona.  
11 (Mot. 3). MEF grants licenses to independently owned and operated entities to use the  
12 Massage Envy name, trademark, and standardized business operations in exchange for  
13 paying a franchise fee. (*Id.*) Each of MEF’s more than 900 locations nationwide offers  
14 customers a uniform experience of convenient, affordable, and quality massages.  
15 (Opp’n 3). MEF operates a website which provides service information and lists job  
16 opportunities at its various franchised locations. (*Id.*)

17 On November 14, 2006, Defendants MEF and Charis Group entered into a  
18 Franchise Agreement. (Mot., Decl. of Melanie Hansen (“Hansen Decl.”), Ex. 1). MEF  
19 provided franchisee Charis Group with an Operations Manual that “contain[ed]  
20 mandatory and suggested specifications, standards, operating procedures and rules that  
21 [MEF] periodically prescribe[s] for operating a [franchise].” (*Id.* at 14). Pursuant to  
22 the Franchise Agreement, any personnel policies or procedures made available in the  
23 Operations Manual were “for [the franchisee’s] optional use and are not mandatory.”

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24  
25 <sup>2</sup>A business format franchisor applies the following model:

26 [T]he franchisee pays royalties and fees for the right to sell products or  
27 services under the franchisor’s name and trademark. In the process, the  
28 franchisee also acquires a business plan, which the franchisor has crafted  
for all of its stores. This business plan requires the franchisee to follow  
a system of standards and procedures.

*Patterson v. Domino’s Pizza, LLC*, 60 Cal. 4th 474, 489 (2014) (citations omitted).

1 (*Id.*)

2 The 2014 version of the Operations Manual was the first version of the Manual  
3 that included any information about a pay policy. (Opp'n, Decl. of Jeff Geraci ("Geraci  
4 Decl."), Ex. F at 5). The 2014 Operations Manual provided, "Franchisees are  
5 responsible for hiring, managing and compensating their employees within the law and  
6 are encouraged to consult their own legal counsel to ensure their compliance with all  
7 applicable laws." (Geraci Decl., Ex. J at 2). The Operations Manual notes that  
8 California has more stringent rules regarding piece-rate payments. (*Id.* at 8). It urges  
9 franchisees who intend to implement a piece-rate pay policy to consult with legal  
10 counsel. (*Id.* at 8-9).

11 The Franchise Agreement states that it is the franchisee's responsibility to  
12 determine whether any suggested personnel policies are applicable in the franchisee's  
13 jurisdiction. (Hansen Decl., Ex. 1 at 14). It goes on, "You [Charis Group] and we  
14 [MEF] recognize that we neither dictate nor control labor and employment matters for  
15 you and your employees." (*Id.*) The Franchise Agreement also explicitly defined the  
16 relationship between Charis Group and MEF. It stated that Charis Group was an  
17 independent contractor, and had "no authority, express or implied, to act as agent of  
18 [MEF]." (*Id.* at 41). By way of the Agreement, the Defendants agreed that they did not  
19 intend to be "partners, associates, or joint employers in any way." (*Id.*) The Franchise  
20 Agreement further stated, "[MEF has] no relationship with [Charis Group] employees  
21 . . . ." (*Id.*)

22 Defendant MEF required Charis Group, and all other franchise owners to use a  
23 particular computer system. The Franchise Disclosure Document states, "You must  
24 obtain the Computer System, software licenses, maintenance and support services, and  
25 other services related to the Computer System from the suppliers we specify. . . ."  
26 (Hansen Decl., Ex. 8). The Franchise Disclosure Document also specified that the  
27 required software was the "Millennium Software." (Hansen Decl., Exs. 8-13). Its  
28 purpose was to "generate and/or store member, accounting, and point of sale

1 information.” (Hansen Decl., Ex. 8).

2 MEF enlists regional developers to recruit potential franchisees and assist in  
3 opening new franchises. (Geraci Decl., Ex. E at 3). Regional developers receive a  
4 portion of the franchise fee and a portion of the royalties for their services.

5 In addition to the computer system, MEF requires franchise owners to conform  
6 to other MEF standards. MEF requires that franchise owners perform mandatory  
7 background checks of potential massage therapists using Universal Background  
8 Screening. (Geraci Decl., Ex. G at 4). They were not required to perform background  
9 checks on sales associates, although it was recommended. (*Id.* at 5). Also, MEF  
10 implements standard business hours for all franchise locations. MEF allows the  
11 regional director to choose a color scheme for employee attire. MEF also has a sample  
12 script for massage therapists to use when interacting with clients and guests. MEF only  
13 allows certain types of massage, and prohibits the use of scented oils.

14 B. Mr. Vann’s Employment

15 Mr. Vann worked as a massage therapist at a Massage Envy franchise in Brea,  
16 California (“Spa Brea”), which was owned by OC Wellness Group. (Mot. 10). Mr.  
17 Vann only worked at Spa Brea for a few days in January 2011. He applied directly to  
18 the clinic administrator of Spa Brea via an advertisement on Craigslist. (Def.’s Reply,  
19 Supplemental Decl. of Hope Anne Case, Ex. 14). Mr. Vann was interviewed and hired  
20 by someone named Megan, an employee at Spa Brea. (Decl. of Hope Anne Case  
21 (“Case Decl.”), Ex. 3). During the interview, Mr. Vann was told he would be paid  
22 “hourly plus commission.” (*Id.*) Mr. Vann’s one and only paycheck from Spa Brea  
23 was written by OC Wellness Group and paid an hourly rate (for the hours he was  
24 clocked in), plus commission (for the hours he performed massages) and tips. Mr.  
25 Vann agreed that he was paid appropriately for his time at Spa Brea.

26 In May 2011, Mr. Vann went to work for the Massage Envy franchise in Chula  
27 Vista, California (“Spa Chula Vista”), which was owned by Charis Group. Mr. Vann  
28 agreed that his pre-employment contact regarding a massage therapist position at Spa

1 Chula Vista was with Cynthia Tovar, its clinic administrator. (Case Decl., Ex. 3 at 62).  
2 Ms. Tovar interviewed Vann, and extended him a verbal offer of employment. Mr.  
3 Vann was informed he would be paid “hourly versus commission,” which meant that  
4 Mr. Vann would be paid either minimum wage for all the hours clocked in during a pay  
5 period, or \$15 per hour for each hour he performed massages during the pay period,  
6 whichever was greater. (*Id.* at 63-64). Ms. Tovar also communicated Mr. Vann’s work  
7 schedule to him; and, either she or her assistant would review his requests for days off.  
8 (*Id.* at 71-72). All of Mr. Vann’s performance reviews and disciplinary records are  
9 signed by either Ms. Tovar, or her assistant. (Case Decl., Ex. 10-13). All of the  
10 paychecks Mr. Vann received for his work at Spa Chula Vista were written by Charis  
11 Group. (Case Decl., Ex. 4).

12 Mr. Vann acknowledged that he received an Employee Handbook, which  
13 described policies imposed by ADP Total Source<sup>3</sup> and the “work site  
14 employer”—Charis Group. (Case Decl., Ex. 8). Mr. Vann’s responsibilities at Spa  
15 Chula Vista were different from those at Spa Brea. Mr. Vann had to dust, vacuum, and  
16 do laundry among other things at Spa Chula Vista. (Case Decl., Ex. 3 at 55). Mr. Vann  
17 also claims that he was not compensated for meetings he was required to attend while  
18 working at Spa Chula Vista.

19 Mr. Vann presented testimonies of five other MEF franchise employees to  
20 support his argument that MEF implemented a uniform pay policy. First, Erika  
21 Calderon testified that she was paid either hourly or commission, whichever was  
22 greater, at a MEF franchise in Wildomar, California (“Spa Wildomar”). (Opp’n, Decl.  
23 of Erika Calderon). In October 2013, Spa Wildomar changed its pay policy to “hourly  
24 plus commission.” (*Id.*)

25 Second, Monica Estrada testified that she currently works at Spa Wildomar and  
26 claims that a new pay policy took effect on July 1, 2014. (Opp’n, Decl. of Monica  
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28 <sup>3</sup> Automated Data Processing, Inc., the company hired by Charis Group to manage employee payment records at Spa Chula Vista.

1 Estrada). Before July 1, 2014, Ms. Estrada was paid \$15 for each hour she performed  
2 massages, or \$8 per hour that she was clocked in during the pay period, whichever was  
3 greater. (*Id.*) Since July 1, Ms. Estrada was paid \$9 per hour she was clocked in, plus  
4 an additional \$6 per hour for those hours she performed massages. (*Id.*)

5 Third, Toby O'Dell testified that he worked at a franchise location in Escondido,  
6 California ("Spa Escondido") until November 1, 2013. (Opp'n, Decl. of Toby O'Dell).  
7 Mr. O'Dell was paid "hourly versus commission." (*Id.*)

8 Fourth, Garrett Love testified that he used to work at a MEF franchise in  
9 Escondido, California, but currently works at a franchise in Corona, California ("Spa  
10 Corona"). (Opp'n, Decl. of Garrett Love). Spa Corona paid Mr. Love "hourly versus  
11 commission" until January 1, 2014. (*Id.* at 2). As of January 1, Love was paid \$9 per  
12 hour he was clocked-in plus a "service bonus" of \$2.75 for the hours he performed  
13 massages. (*Id.*)

14 Finally, Rachel Ogren testified that between 2008 and 2013 she worked for three  
15 different MEF franchise locations in northern California. (Opp'n, Decl. of Rachel  
16 Ogren). Ms. Ogren was paid "minimum wage versus commission." (*Id.*) She also  
17 testified that "one time," after a new payroll employee was hired, Ms. Ogren received  
18 a check that paid minimum wage plus commission. (*Id.* at 2). The following day, Ms.  
19 Ogren claimed that the franchise owner demanded the checks back. (*Id.*)

## 20 STANDARD OF REVIEW

21 Summary judgment is appropriate when "there is no genuine dispute as to any  
22 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.  
23 P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In  
24 considering a summary judgment motion, the evidence of the nonmovant is to be  
25 believed, and all justifiable inferences are to be drawn in his or her favor. *Id.* at 255.

26 A moving party bears the initial burden of showing there are no genuine issues  
27 of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). It can do so by  
28 negating an essential element of the non-moving party's case, or by showing that the

1 non-moving party failed to make a showing sufficient to establish an element essential  
2 to that party's case, and on which the party will bear the burden of proof at trial. *Id.*  
3 The burden then shifts to the non-moving party to show that there is a genuine issue  
4 for trial. *Id.*

5 "Only disputes over facts that might affect the outcome of the suit under the  
6 governing law will properly preclude the entry of summary judgment. Factual disputes  
7 that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. As  
8 a general rule, the "mere existence of a scintilla of evidence" will be insufficient to  
9 raise a genuine issue of material fact; there must be evidence on which the jury could  
10 reasonably find for the non-moving party. *Id.* at 252.

11 A moving party is only entitled to summary judgment where it has shown that  
12 there are no genuine issues of material fact, even if the nonmoving party does not offer  
13 materials in support of its opposition. *Henry v. Gill Indus. Inc.*, 983 F.2d 943, 950 (9th  
14 Cir. 1993). Summary judgment is inappropriate where the movant's papers are  
15 insufficient to support that motion or on their face reveal a genuine issue of material  
16 fact. *See id.*

## 17 DISCUSSION

### 18 I. Mr. Vann's Rule 56(d) Request

19 Mr. Vann requests the Court, in the event it does not deny MEF's Motion for  
20 Summary Judgement, to permit further discovery.

21 "If a nonmovant shows by affidavit or declaration that, for specified reasons, it  
22 cannot present facts essential to justify its opposition, the court may: (1) defer  
23 considering the motion or deny it; (2) allow time to obtain affidavits or declarations or  
24 to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). In  
25 making a Rule 56(d) motion, a party opposing summary judgment must make clear  
26 what information is sought and how it would preclude summary judgment." *Burnett*  
27 *v. Frayne*, No. C 09-04693, 2011 WL 5830339, at \*1 (N.D. Cal. Nov. 18, 2011)  
28 (quoting *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998)). In a ruling on a Rule

1 56(d) motion, a district court considers: “whether the movant had sufficient opportunity  
2 to conduct discovery; whether the movant was diligent; whether the information sought  
3 is based on mere speculation; and whether allowing additional discovery would  
4 preclude summary judgment.” *Martinez v. Columbia Sportswear USA Corp.*, 553 F.  
5 App’x 760, 761 (9th Cir. 2014) (citations omitted).

6 Mr. Vann failed to meet his burden of showing that additional discovery would  
7 reveal specific facts precluding summary judgment. He claimed that through limited  
8 discovery, he learned “of additional information that is likely to controvert the  
9 positions taken by Massage Envy.” (Opp’n 19). However, Mr. Vann did not allege  
10 what the “additional information” was, or what specific facts he believes further  
11 discovery will uncover.

12 Mr. Vann argued that because he was only permitted five requests for  
13 admissions, nine document requests, five interrogatories, and a deposition notice as to  
14 MEF, he should be permitted further discovery. Specifically, Mr. Vann requests  
15 additional discovery of Andrea Rivera, Massage Envy Director of Training; the four  
16 owners of Charis Group; the current owner of Charis Group; Dennis Conklin, Regional  
17 Developer for San Diego; and depositions of two current or former franchise owners.  
18 But, in addition to discovery of MEF, Mr. Vann was also permitted discovery of Charis  
19 Group. (See Order Regarding Discovery, Docket No. 28). Further, the number of  
20 requests of Charis Group was not limited like that of MEF. It is evident then, that Mr.  
21 Vann had the opportunity to gain the information he now seeks.

22 The Court therefore **DENIES** Mr. Vann’s Motion for Further Discovery.

## 23 **II. MEF’s Motion for Summary Judgment**

### 24 A. Evidentiary Objections

25 Mr. Vann objects to portions of Melanie Hansen’s and Jordan Levine’s  
26 Declarations. Defendant objects to portions of Jeff Geraci’s, Terrance Allan Vann’s,  
27 Erika Calderon’s, Monica Estrada’s, Toby O’Dell’s, Garrett Love’s, and Rachel  
28 Ogren’s Declarations, and to characterizations in Vann’s Opposition.



1 In connection with a motion for summary judgment, courts focus on the  
2 admissibility of the evidence's content rather than its form. *Fraser v. Goodale*, 342  
3 F.3d 1032, 1036 (9th Cir. 2003). Where material cited to support or dispute a fact  
4 cannot be presented in a form that would be admissible in evidence, a party is permitted  
5 to object. Fed. R. Civ. P. 56(c)(2). Affidavits or declarations used to support or oppose  
6 a motion must be made on personal knowledge, set out facts that would be admissible  
7 in evidence, and show that the affiant or declarant is competent to testify on the matters  
8 stated. Fed. R. Civ. P. 56(c)(4).

9 Here, the Parties demand of each other that they go beyond what is required for  
10 a declaration or an attachment thereto. The declarants have personal knowledge of the  
11 items or topics they seek to testify to due to their various professional capacities. Thus,  
12 the Court **OVERRULES** both Plaintiff's and Defendant's Objections.

### 13 B. Burden of Proof

14 Providing no authority in support, Plaintiff argues that Defendant has not met its  
15 burden because it did not present evidence covering the entire class period. The Court  
16 disagrees. Evidence that spans the duration that Mr. Vann worked for MEF franchisees  
17 is sufficient to support MEF's Motion. *See Lierboe v. State Farm Mut. Auto Ins. Co.*,  
18 350 F.3d 1018, 1022-23 (9th Cir. 2003).

### 19 C. MEF's Relationship to Mr. Vann

20 Defendant MEF filed the instant Motion arguing that, as franchisor, MEF is not  
21 an employer of Mr. Vann and cannot be liable for any wage and hour violations made  
22 by a franchisee. (Mot. 1-2).

#### 23 *1. Legal Standard*

24 Under California Labor Code section 1194, an employee who received less than  
25 the legal minimum wage is entitled to recover the unpaid balance. Only an employer  
26 has a duty to pay wages. *Martinez v. Combs*, 49 Cal. 4th 35, 49 (2010). In section  
27 1194 actions, California Industrial Welfare Commission Wage Orders define the  
28 employment relationship. *Id.* at 52, 66.

1 “Employer” is defined as “any person . . . who directly or indirectly, or through  
2 an agent or any other person, employs or exercises control over the wages, hours, or  
3 working conditions of any person.” Cal. Code Regs. tit. 8, § 11020(2)(F). A “person”  
4 is any “person, association, organization, partnership, business trust, limited liability  
5 company, or corporation.” Cal. Lab. Code § 18. The California Supreme Court  
6 interpreted the Wage Order<sup>4</sup> to define “employer” in three ways—as one who exercises  
7 the ability “(a) to exercise control over the wages, hours or working conditions, or (b)  
8 to suffer or permit to work, or (c) to engage, thereby creating a common law  
9 employment relationship.” *Ford v. Yasuda*, No. 13-1961, 2014 U.S. Dist. LEXIS  
10 109540, at \*12-13 (C.D. Cal. July 30, 2014) (quoting *Martinez*, 49 Cal. 4th at 64).

11 California courts analyze the employment relationship between franchisors,  
12 franchisees, and employees under an agency theory. *See Kuchta v. Allied Builders*  
13 *Corp.*, 21 Cal. App. 3d 541, 547 (4th Dist. 1971) (“In the field of franchise agreements,  
14 the question of whether the franchisee is an independent contractor or an agent is  
15 ordinarily one of fact, depending on whether the franchisor exercises complete or  
16 substantial control over the franchisee.”). It is apparent that franchisors set  
17 “comprehensive and meticulous standards” to ensure uniformity among their  
18 franchises. *Patterson v. Domino’s Pizza, LLC*, 60 Cal. 4th 474, 478 (2014). As the  
19 business of franchising grows, the application of those theories must adapt. *Id.* “A  
20 franchisor will be liable [as an employer] if it has retained or assumed the right of  
21 general control over the *relevant* day-to-day operations at its franchised locations . . .”  
22 *Id.* at 503 (emphasis added).

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26 <sup>4</sup>The court specifically interpreted Wage Order No. 14, Cal. Code Regs., tit. 8,  
27 11140(2)(C)(F). Wage Order No. 2, Cal. Code Regs., tit. 8, 11020(2)(F), is applicable  
28 in the instant case. Because both Wage Order No. 14 and No. 2 use identical  
definitions of “employer,” applying the *Martinez* court’s interpretation is appropriate  
to determine whether MEF is an employer. *See Ford v. Yasuda*, No. 13-1961, 2014  
U.S. Dist. LEXIS 109540, at \*13 (C.D. Cal. July 30, 2014).

1                   2. *Analysis*

2           Plaintiff argues that disputes of material fact exist regarding MEF's status as an  
3 employer. Plaintiff claims that multiple Massage Envy franchises use the same or  
4 similar payment policy, which supports his argument that MEF implemented the policy  
5 and MEF controlled Mr. Vann's wages, hours, and working conditions.

6           In the most recent decision on the topic, the California Supreme Court held that  
7 Domino's Pizza franchisor was not liable to an employee for the sexual harassment she  
8 endured by a supervisor at the franchised location. *Patterson*, 60 Cal. 4th at 503.  
9 Although *Patterson* dealt with a franchisor's liability for torts committed by the  
10 franchisee's employees, the court's analysis is helpful here. The record revealed that  
11 Domino's implemented a number of policies concerning appropriate attire and pizza-  
12 making, and even employed regional directors to check in on the franchises to ensure  
13 they were following Domino's policies. *Id.* at 502-03. In spite of this, the court  
14 concluded Domino's could not be liable for the supervisor's sexual harassment of  
15 another employee because it was not within Domino's authority to hire, fire, or train  
16 the supervisor—or any of the franchisee's employees for that matter. *Id.*

17           Mr. Vann presented undisputed testimonies of payment practices at MEF  
18 franchises throughout California. The same evidence that supports Mr. Vann's  
19 argument that a uniform pay policy exists, however, also negates it. Ms. Calderon, Ms.  
20 Estrada, Mr. O'Dell, Mr. Love, and Ms. Ogren all testified that they were either a  
21 current or past employee of an MEF franchise, and were paid "hourly versus  
22 commission." Spa Wildomar changed its pay policy in October 2013 and July 2014.  
23 Spa Corona changed its policy on January 1, 2014. There is no evidence that Spa  
24 Escondido or the northern California locations changed their pay policy at all. In  
25 addition, the two locations that did change their policies, did so at different times, and  
26 the new policy at Spa Wildomar was different from the new policy at Spa Corona. One  
27 paid \$9 per hour that the employee was clocked in and \$15 per hour for those hours the  
28 employee performed massages. The other paid \$9 per hour that the employee was

1 clocked in, plus a service bonus of \$2.75 per hour the employee performed massages.  
2 The lack of uniformity among these locations suggest that MEF did not control  
3 employee wages and hours but, rather, left the responsibility to the franchise owners.

4 Plaintiff argues MEF exercised control over the hiring and firing decisions at the  
5 franchise locations because MEF distributed the Operations Manual to franchise  
6 owners, a script governing conversations between employees and clients, and because  
7 MEF requires all massage therapists pass a background check. Based on the language  
8 of the Franchise Agreement between MEF and Charis Group, it appears that Charis  
9 Group possessed the exclusive right to control the hiring and firing decisions at Spa  
10 Chula Vista. In fact, Mr. Vann's deposition supports that conclusion. Mr. Vann  
11 testified that he never had any interactions with MEF, nor did any of the other franchise  
12 employees testify that they had any interactions with MEF. Mr. Vann further testified  
13 that it was the clinic administrator of Spa Chula Vista who hired and fired him, that  
14 Charis Group signed his pay checks, and that his daily work schedule and assignments  
15 were handed down from the clinic administrator or her assistant. No evidence indicates  
16 that MEF exercised any involvement with the terms of Mr. Vann's employment.

17 Further, Mr. Vann argues that MEF's use of regional directors and its  
18 implementation of other workplace policies show that MEF exercised control of daily  
19 operations. The Court is not so persuaded. First, Mr. Vann presented no evidence that  
20 a regional director ever visited Spa Chula Vista while he was working, or that a  
21 regional director gave him instruction directly, or even that a regional director  
22 instructed the clinic administrator to do something. Assuming *arguendo* that a regional  
23 director did actively visit Spa Chula Vista, such activity does not rise to the level of  
24 exercising control over day-to-day operations. *See Patterson*, 60 Cal. 4th at 485  
25 (finding no vicarious liability where an area leader and other inspectors visited the  
26 franchisee four times per year did not amount to control of daily operations).

27 MEF's policies on attire, the types of massages offered, what types of products  
28 could be used during a massage, and the types of conversations that should be had with

1 a client were policies to assist in brand uniformity. MEF is in the business of selling  
2 massages. Ensuring that a client can receive the same type of experience in California  
3 as she does in Texas is a necessary concern of franchisors. *See Patterson*, 60 Cal. 4th  
4 at 490 (“The [franchisor’s] systemwide standards and controls provide a means of  
5 protecting the trademarked brand at great distances.”).

6 There is also no evidence that MEF controlled the employees’ work schedules.  
7 On the contrary, the only evidence presented revealed that the work schedules were  
8 created, managed, and distributed within the particular franchise location.

9 **CONCLUSION**

10 Upon analysis of the foregoing, Mr. Vann’s claims against MEF cannot proceed  
11 as a matter of law. MEF was not an employer or joint employer of Mr. Vann, and  
12 therefore, cannot be liable for any wage violations committed by Charis Group.  
13 Finding no triable issues of material fact exist, MEF’s Motion for Summary Judgment  
14 is **GRANTED**.

15 **IT IS SO ORDERED.**

16  
17 Dated: January 05, 2015

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20 HON. ROGER T. BENITEZ  
21 United States District Judge  
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