

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARLOS VILLACRES,
individually, and on
behalf of other members
of the general public
similarly situated,

Plaintiff,

v.

ABM INDUSTRIES
INCORPORATED, a Delaware
corporation; ABM
SECURITY SERVICES, INC.,
a California
corporation; SECURITY
SERVICES AMERICA, INC.,
a California
corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. CV 07-5327-VAP
(AGRx)

[Motion filed on November 3,
2008]

ORDER DENYING PLAINTIFF'S
RENEWED MOTION FOR CLASS
CERTIFICATION

Plaintiff Carlos Villacres' ("Plaintiff") Renewed
Motion for Class Certification ("Motion") came before the
Court for hearing on January 12, 2009. After reviewing
and considering all papers filed in support of, and in
opposition to, the Motion, as well as the arguments

1 advanced by counsel at the hearing, the Court DENIES the
2 Motion.

3
4 **I. BACKGROUND**

5 **A. California Labor Code section 226**

6 The instant Motion concerns claims brought under
7 California Labor Code section 226. This provides in
8 pertinent part:

9 (a) Every employer shall . . . furnish
10 each of his or her employees . . . an
11 accurate itemized statement in writing
12 showing (1) gross wages earned, (2) total
13 hours worked by the employee . . . (3) the
14 number of piece-rate units earned and any
15 applicable piece rate if the employee is
16 paid on a piece-rate basis, (4) all
17 deductions, provided that all deductions
18 made on written orders of the employee
19 may be aggregated and shown as one item,
20 (5) net wages earned, (6) the inclusive
21 dates of the period for which the
22 employee is paid, (7) the name of the
23 employee and his or her social security
24 number, except that by January 1, 2008,
25 only the last four digits of his or her
26 social security number or an employee
27 identification number other than a social
28 security number may be shown on the
itemized statement, (8) the name and
address of the legal entity that is the
employer, and (9) all applicable hourly
rates in effect during the pay period and
the corresponding number of hours worked
at each hourly rate by the employee. . .

(e) An employee suffering injury as a
result of a knowing and intentional
failure by an employer to comply with
subdivision (a) is entitled to recover
the greater of all actual damages or
fifty dollars (\$50) for the initial pay
period in which a violation occurs and
one hundred dollars (\$100) per employee
for each violation in a subsequent pay
period, not exceeding an aggregate
penalty of four thousand dollars

1 (\$4,000), and is entitled to an award of
2 costs and reasonable attorney's fees.

3
4 **B. Procedural History**

5 **1. Complaints**

6 Plaintiff filed a Complaint on August 15, 2007, on
7 behalf of a putative class of employees of defendants ABM
8 Industries Incorporated, ABM Security Services, Inc., and
9 Security Services America, Inc. ("Defendants.")

10 Plaintiff filed a First Amended Complaint on September
11 26, 2007, alleging violations of California statutes,
12 including provisions governing the payment of wages and
13 appropriate meal and rest periods.

14 Plaintiff lodged a proposed Second Amended Complaint
15 ("SAC") on February 1, 2008 and the Court granted
16 Plaintiff leave to file a SAC in a Minute Order dated
17 April 24, 2008 ("April 24 Minute Order"). Defendant
18 answered the Second Amended Complaint on May 19, 2008.
19

20 **2. First Motion for class certification**

21 On December 17, 2007, Plaintiff filed a Motion for
22 Class Certification and Appointment of Counsel. After
23 various proceedings, the Court confirmed jurisdiction. It
24 then issued a Minute Order on February 26, 2008, setting
25 forth the basis for its tentative ruling that class
26 certification would be appropriate under Rule 23(b)(3) of
27 the Federal Rules of Civil Procedure. In the April 24
28

1 Minute Order, the Court granted (1) Plaintiff's Motion
2 for leave to file a Second Amended Complaint stating only
3 a wage statement claim and (2) Plaintiff's Motion to
4 certify a class of employees.

5
6 **3. Motion for reconsideration**

7 Defendants filed a motion on May 8, 2008, seeking
8 reconsideration of the Court's class certification order
9 and requesting a stay of class notice pending
10 consideration of jurisdiction. In a July 1, 2008 Order,
11 the Court granted Defendants' Motion for reconsideration
12 of the court's class certification order ("July 1
13 Order").

14
15 In the July 1 Order, the Court distinguished
16 Plaintiff's claims from those brought by "class members
17 in Wang and Cicairos" in that Plaintiff alleged only that
18 he

19 received inaccurate wage statements. . .
20 Since Plaintiff and his fellow class
21 members do not challenge the amounts of
22 their pay and do not otherwise have to
23 reconstruct their pay records for
24 purposes of this litigation, they do not
25 appear to have a basis for alleging the
26 type of injury under section 226(e)
27 recognized by courts.

28
29 Nevertheless, it is possible that
30 Plaintiff can make some initial showing
31 concerning injury, e.g., that he dropped
32 his related wage and hour claims because
33 the alleged failure to provide accurate
34 wage statements hampered his pursuit of
35 those related claims. Accordingly, the

1 Court finds that further briefing on the
2 issue of the class members' injury is
3 necessary to determine whether such
4 injury is disproportionately small
5 compared with the available statutory
6 penalty. The parties also may further
7 brief the issue of whether Plaintiff must
8 make some showing of injury to the class
9 as a result of the alleged violation of
10 Labor Code section 226(e).

11 (July 1 Order at 9-10.)

12 When granting Defendants' Motion for reconsideration,
13 the Court rejected "Plaintiff's contention that the mere
14 failure to provide an accurate wage statement results in
15 actual injury" of the kind recognized by courts. (July 1
16 Order 9, 10 n. 1.)

17 **4. Renewed Motion for class certification**

18 Now before the Court is Plaintiff's Motion filed
19 November 3, 2008. Defendants filed their Opposition
20 ("Opp'n") on November 24, 2008, as well as comprehensive
21 objections. Plaintiff filed his Reply on December 8,
22 2008, with opposition to Defendants' objections. The
23 Court overrules all objections as moot, as they pertain
24 to material the Court did not consider in reaching its
25 decision.

26 Plaintiff does not provide a definition of the
27 proposed class. The Court assumes Plaintiff seeks to
28 certify the following class: "all non-exempt security

1 guards employed by Defendants from August 15, 2006 to the
2 present" who received inaccurate wage statements. (See
3 April 24 Minute Order.)

4 5 **II. DISCUSSION**

6 **A. Scope of Requested Briefing**

7 In the Court's July 1 Order, the Court noted it was
8 "not persuaded by Plaintiff's contention that the mere
9 failure to provide an accurate wage statement results in
10 actual injury." (July 1 Order 10 n. 1.) Nevertheless,
11 the Court allowed it was "possible that Plaintiff can
12 make some initial showing concerning injury, e.g., that
13 he dropped his related wage and hour claims because the
14 alleged failure to provide accurate wage statements
15 hampered his pursuit of those related claims."

16 Accordingly, the Court directed briefing on (1) "the
17 issue of the class members' injury . . . to determine
18 whether such injury is disproportionately small compared
19 with the available statutory penalty" and (2) "whether
20 Plaintiff must make some showing of injury to the class
21 as a result of the alleged violation of Labor Code
22 section 226(e)." (July 1 Order 9-10.)

23
24 In his Motion, Plaintiff, however, re-argues the
25 motion for reconsideration. Plaintiff's Motion states
26 the Court requested information about whether: "(1) . . .
27 this Court [could] certify a penalty only class action;

1 and (2) must Plaintiff show actual damages to certify
2 under California Labor Code section 226." (Mot. 4:21-
3 25.)¹ Plaintiff is mistaken. The Court's July 1 Order
4 clearly rejected Plaintiff's theory that provision of
5 inaccurate wage statements without a showing of actual
6 injury stated a claim under California Labor Code section
7 226. (July 1 Order 9.)

8

9 **B. Plaintiff's Showing**

10 In his Motion, Plaintiff fails to make the required
11 showing concerning injury. (July 1 Order 9-10.) He does
12 not explain how the allegedly inaccurate wage statements
13 changed his prosecution of other claims; nor does he
14 otherwise allege actual injury. For example, Plaintiff
15 avers the proposed class satisfies the commonality
16 requirement of Rule 23(a) of the Federal Rule of Civil
17 Procedure because "the wage statements issued by
18 Defendant: (1) do not show the total sum of hours worked;
19 (2) do not show the inclusive dates of pay; and (3) do
20 not show the legal entity that was the employer." (Mot.
21 19:17-19.) Likewise, Plaintiff argues a class action is
22 the superior way to adjudicate the dispute because the
23 "deficiencies identified by Plaintiff were common to all
24 putative class members." (Mot. 22:12-13.) Plaintiff

25

26

27 ¹Accordingly, much of Plaintiff's Motion addresses
28 issues not now before the Court, such as the meaning of
"injury" under California Labor Code section 226. (See
Mot. 10- 17.)

1 does not aver class members suffered common actual
2 injuries stemming from the alleged deficiencies.

3

4 As Plaintiff presents no facts showing actual injury,
5 the Court concludes he does not "have a basis for
6 alleging the type of injury under section 226(e)
7 recognized by courts." (See July 1 Order 9.) The Court
8 also finds Plaintiff fails to show actual injury to the
9 class. (See July 1 Order 10.) Accordingly, the Court
10 DENIES the request to certify the class and DENIES the
11 Motion.

12

13

III. CONCLUSION

14

The Court DENIES the Motion.

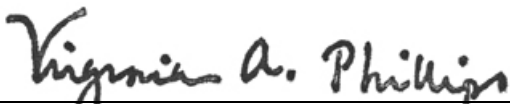
15

16

17

18 Dated: January 14, 2009

19



VIRGINIA A. PHILLIPS
United States District Judge

20

21

22

23

24

25

26

27

28