

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

CATALINA RICALDAI, on behalf)	Case No. CV 10-07388 DDP (PLAx)
of herself and all others)	
similarly situated,)	ORDER DENYING IN PART AND
)	GRANTING IN PART DEFENDANT'S
Plaintiff,)	MOTION FOR PARTIAL SUMMARY
)	JUDGMENT
v.)	
)	
US INVESTIGATIONS SERVICES,)	[Docket No. 48]
LLC, a Delaware limited)	
liability company,)	
)	
Defendant.)	
_____)	

Presently before the court is Defendant's Motion for Partial Summary Judgment ("Motion"). Having reviewed the parties' moving papers and heard oral argument, the court denies the Motion in part, grants the Motion in part, and adopts the following Order.

I. BACKGROUND

From July 2003 to November 2008, Plaintiff Catalina Ricaldai ("Ricaldai") worked as a field investigator for Defendant US Investigations Services, LLC ("USIS"). USIS field investigators conduct background investigations of individuals seeking employment with or already employed by the federal government. During

1 Ricaldai's employment at USIS, field investigators typically worked
2 remotely out of their homes and with a company car, gathering
3 records, conducting interviews, and preparing written reports.
4 (Pl.'s Statement of Genuine Issues in Opp'n to Mot. ("SS"), Nos. 1-
5 2, 6-9.) "USIS expected California-based investigators to work 40
6 hours each week and eight hours per day unless they had approved
7 overtime." USIS also "expected investigators to close their
8 investigation within the time allotted to the file." (Mot. at 5.)
9 USIS therefore "trained investigators to build their own daily work
10 schedule based on the work they had to complete for their
11 investigations, not based on a particular schedule." (SS No. 13.)

12 Under California state law, if an employee works five or more
13 hours in a day, the employee has the right to a 30-minute meal
14 period, free of any job duties and starting no later than the fifth
15 hour of work.¹ See Brinker Rest. Corp. v. Super. Ct., 139 Cal.
16 Rptr. 3d 315, 343-44 (Cal. 2012) (discussing Labor Code section
17 512). The meal break is not limited to the right to eat; rather,
18 employees must be free to attend to any personal business they may
19 choose during the 30-minute period. See id. at 340.

20 During Ricaldai's employment, the USIS employee handbook
21 section on timekeeping included the statement: "Do not start work
22 early, finish work late, work during a meal break or perform any
23 other extra or overtime work unless you are authorized to do so."
24 (Decl. of Lara K. Strauss in Supp. of Mot. ("Strauss Decl."), Ex. E
25 at 41.) USIS also posted in its district offices the required

27 ¹ If an employee works no more than six hours in a day, the
28 meal period may be waived by mutual consent of the employer and
employee. See Brinker, 139 Cal. Rptr. 3d at 344.

1 Industrial Welfare Commission ("IWC") wage order regarding meal
2 periods. See 8 Cal. Code Regs. tit. 8, § 11040(22). USIS did not,
3 however, otherwise train or advise employees as to their meal
4 period rights. (SS at 45-53.) To the contrary, Ricaldai argues
5 that her trainers and supervisors, along with particular company
6 policies, unlawfully pressured her to work during meal periods.
7 USIS also failed to record meal periods, in violation of the
8 applicable IWC wage order. See id. § 11040(7)(A)(3). Ricaldai
9 claims that she therefore never took the 30-minute, duty-free meal
10 period provided by California law.

11 Specifically, Ricaldai alleges that during a 2003 field
12 training for "update investigations," her trainer told her "to pack
13 her lunch because they would not have time to stop and eat lunch."
14 (SS Nos. 56-58; Decl. of Christine C. Choi in Supp. of Pl.'s Opp'n
15 to Mot. ("Choi Decl."), Ex. 1 at 66, 75, 79.) Throughout the
16 training period, Ricaldai and her trainer did in fact "eat lunch
17 while they were looking at the paperwork and reviewing the
18 interviews they had done." (SS No. 59.) Further, while
19 instructing Ricaldai on how to fill out her time cards, the trainer
20 told her that: "it was not okay for [Ricaldai] to do something else
21 during the course of the day for personal reasons, such as go to a
22 doctor's appointment," and that Ricaldai "had to work eight hours a
23 day and request time off from the district manager if she needed to
24 incorporate any personal activities." (SS Nos. 60-61.) During
25 this field training and a one-week training in Pennsylvania,
26 Ricaldai was also "told that she had to 'zone' her work," meaning
27 that "if she was in a particular geographic area, she had to make
28 sure to fill her day in the zone with scheduled interviews, visits

1 to the court, or walks around the neighborhood to try and get more
2 interviews." (SS Nos. 62, 65-66.)

3 Likewise, at a 2004 training and during quarterly "'check
4 rides' with the district manager or team lead" throughout her
5 employment, Ricaldai and the trainer or supervisor again had
6 "working lunch[es]." (SS Nos. 68-72; Choi Decl., Ex. 1 at 80.) On
7 days that Ricaldai had a check ride, she and her supervisor "would
8 sit down, grab a sandwich, go through a checklist, and talk about
9 different things that they liked or did not like during the
10 interviews that [Ricaldai] had conducted." (SS No. 72.)

11 More broadly, Ricaldai asserts that "it was not possible for
12 [her] to take 30 minutes of off-duty time during the day because it
13 was the culture of the job to get as much testimony as possible."
14 (SS No. 73.) According to Ricaldai, "[a]ny time off was considered
15 a waste and a failure to correctly zone the geographic area."
16 Ricaldai also "had to accommodate the schedules and availability of
17 witnesses." (SS Nos. 74-75.) Ricaldai therefore allegedly
18 "allways took a working lunch wherein she would review paperwork
19 and type reports on her laptop," and "n]ever did any type of
20 personal activity during the course of her day without previously
21 requesting time off." (SS Nos. 76-78.)

22 Based on these alleged meal period violations - and overtime
23 issues not relevant to this Motion - Ricaldai filed a putative
24 class action suit against USIS in California state court, on August
25 26, 2010. USIS removed the action to this court on October 4,
26 2010, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.
27 § 1332(d). Ricaldai filed a Second Amended Class Action Complaint
28 ("Complaint") on June 9, 2011. In her Complaint, Ricaldai alleges

1 six causes of action: 1) failure to provide meal periods, in
2 violation of California Labor Code ("Labor Code") sections 226.7
3 and 512; 2) failure to properly calculate and pay overtime, in
4 violation of Labor Code section 1194(a); 3) failure to timely pay
5 wages, in violation of Labor Code section 203; 4) failure to
6 maintain and provide accurate itemized statements, in violation of
7 Labor Code section 226; 5) enforcement of the Private Attorneys
8 General Act ("PAGA"), Labor Code § 2698; and 6) unlawful business
9 practices, in violation of California Business and Professions Code
10 section 17200. Ricaldai's third through sixth causes of action are
11 predicated on her meal period and overtime claims.

12 USIS filed this Motion for Partial Summary Judgment on
13 September 9, 2011. USIS argues that it is entitled to judgment as
14 a matter of law on Ricaldai's meal period claim, because Ricaldai
15 indisputably had the independence and flexibility to set her own
16 schedule and take the required breaks. USIS therefore also argues
17 that it is entitled to summary judgment on claims three through
18 six, to the extent they are based on Ricaldai's meal period claim.
19 Last, USIS contends that Ricaldai's PAGA and Labor Code section 226
20 claims are time-barred, and that the section 226 claim also fails
21 because Ricaldai does not allege certain required elements.

22 **II. LEGAL STANDARD**

23 Summary judgment is appropriate where "the movant shows that
24 there is no genuine dispute as to any material fact and the movant
25 is entitled to a judgment as a matter of law." Fed. R. Civ. P.
26 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).
27 In deciding a motion for summary judgment, the evidence is viewed
28 in the light most favorable to the non-moving party, and all

1 justifiable inferences are drawn in its favor. Anderson v. Liberty
2 Lobby, Inc., 477 U.S. 242, 255 (1986).

3 A genuine issue exists if "the evidence is such that a
4 reasonable jury could return a verdict for the nonmoving party,"
5 and material facts are those "that might affect the outcome of the
6 suit under the governing law." Id. at 248. No genuine issue of
7 fact exists "[w]here the record taken as a whole could not lead a
8 rational trier of fact to find for the non-moving party."

9 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
10 587 (1986).

11 It is not enough for a party opposing summary judgment to
12 "rest on mere allegations or denials of his pleadings." Anderson,
13 477 U.S. at 259. Instead, the nonmoving party must go beyond the
14 pleadings to designate specific facts showing that there is a
15 genuine issue for trial. Celotex, 477 U.S. at 324. The "mere
16 existence of a scintilla of evidence" in support of the nonmoving
17 party's claim is insufficient to defeat summary judgment.

18 Anderson, 477 U.S. at 252. But "[c]redibility determinations, the
19 weighing of the evidence, and the drawing of legitimate inferences
20 from the facts are jury functions, not those of a judge," when he
21 or she is ruling on a motion for summary judgment. Id. at 255.

22 **III. DISCUSSION**

23 **A. Meal Period Claim**

24 **1. California Meal Period Law after Brinker**

25 The California Supreme Court recently clarified the law
26 regarding meal periods, in Brinker Restaurant Corp. v. Superior
27 Court, 139 Cal. Rptr. 3d 315 (Cal. 2012). Relevant here, the court
28 concluded that "an employer must relieve the employee of all duty

1 for the designated period, but need not ensure that the employee
2 does no work." Id. at 338. The court further explained that a
3 "worker must be free to attend to any personal business he or she
4 may choose during the unpaid meal period." Id. at 340 (quoting
5 Cal. Dep't of Indus. Relations, Div. of Labor Standards
6 Enforcement, Opinion Letter No. 1991.06.03, at 1). Accordingly,
7 the meal period requirement is only "satisfied if the employee (1)
8 has at least 30 minutes uninterrupted, (2) is free to leave the
9 premises, and (3) is relieved of all duty for the entire period."
10 Id.

11 The court also emphasized that, although employers are not
12 required to ensure that employees do not voluntarily choose to work
13 during a meal period, "an employer may not undermine a formal
14 policy of providing meal breaks by pressuring employees to perform
15 their duties in ways that omit breaks." Id. at 343 (citing
16 Cicairos v. Summit Logistics, Inc., 133 Cal. App. 4th 949, 962-63
17 (2005) (finding potential meal period violations where "defendant's
18 management pressured drivers to make more than one daily trip,
19 making drivers feel that they should not stop for lunch"); Jaimez
20 v. DAIHOS USA, Inc., 181 Cal. App. 4th 1286, 1304-05 (2010)
21 (finding potential violations based on evidence that scheduling
22 policy "made it extremely difficult" for employees to both timely
23 complete deliveries and take all required breaks); Dilts v. Penske
24 Logistics, LLC, 267 F.R.D. 625, 638 (S.D. Cal. 2010) (finding
25 potential violations given evidence of informal anti-meal-period
26 policies "enforced through 'ridicule' or 'reprimand'")).

27 In other words, the "wage orders and governing statute do not
28 countenance an employer's exerting coercion against the taking of,

1 creating incentives to forego, or otherwise encouraging the
2 skipping of legally protected breaks." Brinker, 133 Cal. App. 4th
3 at 343. Thus, as the court summarized: "The employer satisfies
4 [its meal period] obligation if it relieves its employees of all
5 duty, relinquishes control over their activities and permits them a
6 reasonable opportunity to take an uninterrupted 30-minute break,
7 and does not impede or discourage them from doing so." Id.²

8 Finally, in a concurring opinion joined by Justice Liu,
9 Justice Werdegar emphasized that relevant IWC wage orders also
10 require employers to record meal periods. Id. at 353 (Werdegar,
11 J., concurring) (citing Cal. Code Regs. tit. 8, § 11050); see also
12 Cal. Code Regs. tit. 8, § 11040(7)(A)(3) (same). The Justices
13 therefore concluded that the burden is on the employer to show that
14 it relieved an employee of all duty for a meal period, if the
15 employer fails to record the meal period as required. As the
16 Justices explained in detail:

17 If an employer's records show no meal period for a given
18 shift over five hours, a rebuttable presumption arises that
19 the employee was not relieved of duty and no meal period
20 was provided. An employer's assertion that it did relieve
21 the employee of duty, but the employee waived the
22 opportunity to have a work-free break, is not an element
23 that a plaintiff must disprove as part of the plaintiff's
24 case-in-chief. Rather, as the Court of Appeal properly
25 recognized, the assertion is an affirmative defense, and
26 thus the burden is on the employer, as the party asserting
27 waiver, to plead and prove it.

24 ² The court also held that if an employee does in fact
25 voluntarily decide to work during a meal period - free of employer
26 pressure or coercion - the employer may still have to pay for that
27 time worked. See id. at 342 n.19. Specifically, although the
28 employer would not be liable for the "premium pay" penalty for a
meal period violation, the employer would be liable for "regular
compensation" for the time worked, if it "knew or reasonably should
have known that the worker was working through the authorized meal
period." Id. (internal quotation marks omitted).

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

. . . .

As the Division of Labor Standards Enforcement (DLSE) has explained, even under the less restrictive wage order applicable to agricultural employees, if "a meal period is not taken by the employee, the burden is on the employer to show that the agricultural employee had been advised of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period. Again, we emphasize, the burden is on the employer." (Dept. Industrial Relations, DLSE Opinion Letter No. 2003.08.13 (Aug. 13, 2003) p. 2 [interpreting IWC wage order No. 14 (Cal. Code Regs., tit. 8, § 11140)].) To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and a potential windfall from the failure to record meal periods. Both the United States Supreme Court and the courts of this state have rejected such an approach.

Brinker, 133 Cal. App. 4th at 353 & n.1 (Werdegar, J., concurring) (citations omitted).

2. Application of Brinker

According to USIS, Ricaldai's meal period claim fails as a matter of law, because it is undisputed that: 1) Ricaldai had complete control over her schedule, given her remote work and the availability of overtime; and 2) USIS adequately informed Ricaldai of her meal period rights, by posting the relevant IWC wage order and including a statement prohibiting work during meal periods in its employee handbook. USIS therefore contends that, even if Ricaldai never took the required meal breaks, this decision was entirely voluntary. Ricaldai argues, to the contrary, that there is a genuine dispute as to this meal period issue, because USIS: 1) failed to record any meal periods, as required; 2) never informed employees of essential aspects of their meal period rights; and 3) instead, had affirmative policies and trainings that pressured Ricaldai not to take duty-free breaks. Although the question is a close one, and USIS makes valid points that certainly could

1 convince a trier of fact that USIS complied with its meal period
2 obligations, the court finds that Ricaldai has raised a genuine
3 issue of material fact. Specifically, a reasonable juror might
4 find that USIS policies and practices unlawfully discouraged
5 Ricaldai from taking the required duty-free meal periods.

6 As an initial matter, the court notes its agreement with
7 Justices Werdegar and Liu that it is the employer's burden to rebut
8 a presumption that meal periods were not adequately provided, where
9 the employer fails to record any meal periods. Otherwise,
10 employers would have an incentive to ignore their recording duty,
11 leaving employees the difficult task of proving that the employer
12 either failed to advise them of their meal period rights, or
13 unlawfully pressured them to waive those rights. See Brinker, 133
14 Cal. App. 4th at 353 & n.1 (Werdegar, J., concurring) (citing
15 Cicairos, 133 Cal. App. 4th at 961 ("[W]here the employer has
16 failed to keep records required by statute, the consequences for
17 such failure should fall on the employer, not the employee."
18 (internal quotation marks omitted))). Here, as mentioned, there is
19 no dispute that USIS failed to record any meal periods.

20 However, even if the burden of proof were on Ricaldai, the
21 court would still find a genuine issue of material fact. As
22 discussed, Ricaldai has provided evidence that during initial all-
23 day trainings, her trainer expressly informed her that there would
24 not be time for meal breaks. Ricaldai and her trainer therefore
25 took working lunches, where Ricaldai was not relieved of all duties
26 as required by California law. As USIS notes, these apparent meal
27 period violations fall outside the relevant statute of limitations.
28 They still support an inference, however, that USIS implicitly

1 trained Ricaldai to not take duty-free meal periods. The same can
2 be said for Ricaldai's claim that trainers and supervisors had her
3 take working lunches during subsequent trainings and check rides.
4 As USIS argues, it is unclear whether any of these later trainings
5 or check rides lasted five hours or more; thus, the working lunches
6 did not necessarily violate the meal period requirement. But even
7 if there was no direct violation on these occasions, USIS' ongoing
8 practice of having Ricaldai take working lunches still supports an
9 inference of employer pressure to work through meal periods.

10 This inference is further supported by evidence that USIS
11 prohibited employees from taking any personal time during the
12 workday, without employer permission. As mentioned, Ricaldai's
13 initial trainer allegedly instructed her that "it was not okay . .
14 . to do something else during the course of the day for personal
15 reasons," and that she had to request time off "if she needed to
16 incorporate any personal activities" in her eight-hour day.
17 Although ambiguous, a reasonable factfinder might conclude that
18 these instructions applied even to personal errands lasting thirty
19 minutes or less. If so, the instructions would clearly violate the
20 law, because meals breaks are expressly usable for personal
21 matters. As Brinker emphasized, employees are entitled to a "full
22 thirty-minute period," where the worker "must be free to attend to
23 any personal business he or she may choose." Brinker, 133 Cal.
24 App. 4th at 340 (internal quotation marks omitted). Accordingly,
25 the meal break is essentially personal time, where the employee is
26 free to eat or to do anything else for half an hour. Prohibiting
27 all personal activities during the workday is therefore the
28 equivalent of eliminating meal periods.

1 Last, evidence that USIS instructed employees to fill each
2 work day in a given geographic area with relevant job duties - and
3 considered any time off "a waste and a failure" - provides some
4 support for the conclusion that USIS unlawfully discouraged duty-
5 free meal periods.

6 In sum, Ricaldai offers evidence that she was implicitly
7 trained to take working lunches, expressly told that personal
8 errands were prohibited without prior authorization, specifically
9 directed to fill her entire day in each geographic area with job
10 duties, and correspondingly discouraged from taking any time off.
11 Viewing this evidence in the light most favorable to Ricaldai, a
12 rational trier of fact could conclude that USIS pressured her to
13 take working lunches instead of duty-free meal periods, in
14 violation of California meal period law under Brinker.

15 Contrary to USIS' argument, it does not change the summary
16 judgment analysis that USIS exerted no direct control over Ricaldai
17 during her work day and allowed for overtime, and that Ricaldai
18 therefore admitted at deposition that she technically could have
19 scheduled her work day to incorporate a duty-free meal period while
20 still completing her tasks. As discussed, there is sufficient
21 evidence that, viewed in the light most favorable to Ricaldai, USIS
22 nonetheless unlawfully discouraged Ricaldai from scheduling a meal
23 period during her workday.

24 Nor is USIS entitled to summary judgment simply because
25 Ricaldai admitted at deposition that, if she had read the employee
26 handbook section on timekeeping, she would have known not to work
27 during meal periods. Throughout the deposition, Ricaldai insisted
28 that the aforementioned USIS policies and practices pressured her

1 to instead always work through meal breaks. It is therefore
2 unclear whether Ricaldai's admission meant that, if she had read
3 the relevant handbook statement, it would have overridden the
4 countervailing employer pressure. Indeed, the opposite conclusion
5 is particularly plausible given that the employee handbook
6 contained only a single statement as to meal periods - not to work
7 during them - and did not inform employees of their other essential
8 meal period rights - i.e. to take a 30-minute meal break every
9 workday of five hours or more, and to do so prior to the fifth hour
10 of work. In any event, this ambiguity, and the question of whether
11 any USIS pressure undermined its limited formal policy as to meal
12 periods, is for the trier of fact to resolve.

13 **B. Derivative Claims**

14 Because the court finds that USIS is not entitled to summary
15 judgment on Ricaldai's meal period claim, none of her other claims
16 fail simply because they are derivative of this claim.

17 **C. PAGA & Labor Code Section 226 Claims**

18 **1. Statute of Limitations**

19 Ricaldai concedes that her PAGA claim is barred by
20 California's one-year statute of limitations for statutory claims
21 seeking a penalty or forfeiture. See Cal. Civ. Proc. Code §
22 340(a). USIS is therefore entitled to summary judgment on
23 Ricaldai's fifth cause of action.

24 Ricaldai argues that her Labor Code section 226 ("Section
25 226") claim is not similarly time-barred, however, because she is
26 also seeking actual damages under the statute. See id. § 338(a)
27 (providing a three-year statute of limitations for all other
28 statutory claims). Ricaldai cites to a district court decision in

1 this Circuit that thoroughly addresses this legal issue and
2 directly supports her position. See Singer v. Becton, Dickinson
3 and Co., No. 08cv821, 2008 WL 2899825, at *4-5 (S.D. Cal. July 25,
4 2008). The court agrees with the well-reasoned decision and finds
5 no need to repeat the analysis here. Also, contrary to USIS'
6 contentions, Ricaldai does adequately seek and allege actual
7 damages in her Complaint,³ and does not concede the absence of such
8 damages in her deposition, as discussed more below.

9 2. Injury & Intent Requirements

10 Finally, USIS argues that it is entitled to summary judgment
11 on Ricaldai's Section 226 claim, because Ricaldai has failed to
12 show that she suffered an "injury" from any violation of the
13 statute, or that any such violation was "knowing and intentional."
14 Cal. Labor Code § 226(e). The court disagrees.

15 USIS is correct that "an employee may not recover for
16 violations of Section 226(a) unless he or she demonstrates an
17 injury arising from the missing information." Price v. Starbucks
18 Corp., 192 Cal. App. 4th 1136, 1142-43 (2011) (stating also that
19 "'deprivation of that information,' standing alone is not
20 cognizable injury"). However, as the court helpfully summarized in
21 McKenzie v. Fed. Express Corp.:

22
23 ³ (See Compl. ¶ 51 ("As a result of Defendants' violation of
24 California Labor Code Section 226(a), Plaintiff and Class Members
25 suffered injuries, including employee confusion over whether they
26 received all wages owed to them, difficulty and expense involved in
27 reconstructing pay records, and forcing employees to make
28 mathematical computations to analyze whether the wages paid in fact
properly compensated them."); id. ¶ 52 ("Pursuant to California
Labor Code Section 226(e), Plaintiff and Class Members are entitled
to recover . . . all actual damages . . ."); id. at 24 ¶ 5(b)
(seeking, among other relief, "[a] monetary award as damages . . .
pursuant to Labor Code Section 226(e)").)

1 [Price] went on to explain that "mathematical injury that
2 requires computations to analyze whether the wages paid in
3 fact compensated [the employee] for all hours worked" is
4 sufficient to establish injury. [192 Cal. App. 4th at
5 1143] (internal quotation omitted). Specifically, the
6 court noted that this can be proven if the injury arises
7 "from inaccurate or incomplete wage statements," which
8 require the plaintiff to engage "in discovery and
9 mathematical computations to reconstruct time records to
10 determine if they were correctly paid." Id. (citations
11 omitted). Likewise, the California Court of Appeals in
Jaimez v. DAIOHS USA, Inc., noted that "[w]hile there must
be some injury in order to recover damages [under §
226(e)], a very modest showing will suffice." 181 Cal.
App. 4th 1286, 105 Cal. Rptr. 3d 443, 460 (2010). The
court further explained that "'this lawsuit, and the
difficulty and expense [the plaintiff has] encountered in
attempting to reconstruct time and pay records,' may well
be 'further evidence of the injury' he has suffered." Id.
(quoting Wang v. Chinese Daily News, Inc., 435 F. Supp. 2d
1042, 1050 (C.D. Cal. 2006)).

12 275 F.R.D. 290, 294 (C.D. Cal. 2011); see also Elliot v.
13 Spherion Pac. Work, LLC, 572 F. Supp. 2d 1169, 1181 (C.D. Cal.
14 2008) (cited approvingly in Price and citing cases finding
15 injuries such as "the possibility of not being paid overtime"
16 and "employee confusion over whether they received all wages
17 owed them").

18 Applying this standard, the court finds that there is a
19 genuine issue of material fact as to the injury requirement.
20 Contrary to USIS' characterization, Ricaldai has provided
21 evidence of more than mere technical violations of Section
22 226. According to Ricaldai, USIS not only failed to list her
23 overtime rate on her wage statements, but was in fact paying
24 her an incorrect and reduced overtime rate: "As shown on my
25 wage statements, I received a 'Spanish Incentive' as part of
26 my wages. Based on my computations, I do not believe that the
27 'Spanish Incentive' income was included when calculating my
28 overtime pay." (Decl. of Catalina Ricaldai in Supp. of Pl.'s

1 Opp'n to Mot. ¶¶ 3-4.) Ricaldai claims that she therefore
2 "had to perform mathematical computations to determine whether
3 her paychecks were accurate." (Id. ¶ 3; see also supra note 3
4 (describing the alleged injury in more detail).)⁴ A rational
5 trier of fact could believe Ricaldai, and conclude that she
6 suffered an actual injury from having to make these
7 calculations, and from not knowing that she was being
8 underpaid. Nor is Ricaldai's deposition testimony clearly
9 inconsistent with her declaration. Although Ricaldai at one
10 point responded affirmatively that she was not confused by her
11 wage statements and could not recall inaccuracies, there is no
12 indication that she was referring to all aspects of the
13 statements - in particular, the missing and erroneous overtime
14 rates. (See Strauss Decl., Ex. C at 182-86.)

15 With regard to Section 226(e)'s "knowing and intentional"
16 requirement, USIS cites to decisions granting summary judgment
17 to defendants because the court found a "good faith dispute"
18 as to whether the employees were exempt from Section 226's
19 coverage. See, e.g., Hurst v. Buczek Enters., LLC, No.
20 C-11-1379, 2012 WL 1564733, at *17 (N.D. Cal. May 2, 2012).
21 Here, USIS does not contend that Ricaldai is exempt from
22 statutory coverage. Instead, it maintains that Ricaldai
23 "cannot possibly demonstrate that USIS knowingly violated wage
24 statement obligations since the reason USIS did not include
25 the meal period premium on [her] wage statements is because it

26
27 ⁴ As discussed, USIS also failed to record meal periods. If
28 Ricaldai succeeds on her meal period claim, USIS further violated
Section 226 by failing to include premium pay for each missed meal
period.

1 did not believe (and still does not believe) that it owes
2 [her] for any alleged meal period violations." (Mot. at 21.)
3 The court disagrees. As numerous courts have recognized under
4 similar circumstances, the factual question of whether an
5 employer had a good faith belief that it was not violating
6 Section 226 is generally for the factfinder to resolve at
7 trial. See, e.g., Lopez v. United Parcel Serv., Inc., No. C
8 08-05396, 2010 WL 728205, at *9 (N.D. Cal. Mar. 1, 2010) ("UPS
9 cannot carry its burden on summary judgment simply by
10 asserting in a conclusory fashion in an argumentative pleading
11 that it acted under a good faith belief plaintiff was exempt.
12 The presence or absence of a good faith belief on UPS's part
13 is a factual question that must be resolved at trial."); Rieve
14 v. Coventry Health Care, Inc., No. SACV 11-1032, 2012 WL
15 1441341, at *19 (C.D. Cal. Apr. 25, 2012); Perez v.
16 Safety-Kleen Sys., Inc., 253 F.R.D. 508, 517 (N.D. Cal. 2008);
17 Cornn v. United Parcel Serv., No. C03-2001, 2006 WL 449138, at
18 *3 (N.D. Cal. Feb. 22, 2006).

19 Here, even if the court were convinced that any wage
20 statement meal period omissions were made in good faith, it is
21 still entirely unclear whether USIS acted in good faith with
22 regard to the alleged overtime errors. A reasonable trier of
23 fact could therefore conclude, as Ricaldai alleges, that USIS
24 "knowingly and intentionally failed to provide" Ricaldai with
25 accurate and itemized wage statements, "and did so in order to
26 conceal [its] liability from [Ricaldai]." (Compl. ¶ 53.)

27 **IV. CONCLUSION**

28

1 In sum, and for all the foregoing reasons, the court
2 DENIES USIS' Motion for Partial Summary Judgment as to
3 Ricaldai's first, third, fourth, and sixth causes of action,
4 for meal period violations, failure to timely pay wages,
5 Section 226 violations, and unfair business practices. The
6 court, however, GRANTS USIS' Motion for Partial Summary
7 Judgment as to Ricaldai's fifth cause of action, for
8 enforcement of the Private Attorneys General Act.

9

10 IT IS SO ORDERED.

11

12

13 Dated: May 25, 2012



DEAN D. PREGERSON
United States District Judge

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28