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8 **United States District Court**  
9 **Central District of California**

10 NEDA FARAJI,

11 Plaintiff,

12 v.

13 TARGET CORPORATION; DOES 1  
14 through 50, inclusive,

15 Defendants.

Case No 5:17-CV-00155-ODW-SP

**ORDER DENYING PLAINTIFF'S  
MOTION FOR CLASS  
CERTIFICATION [45]**

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17 **I. INTRODUCTION**

18 Plaintiff Neda Faraji moves to certify this putative class action seeking relief for  
19 Defendant Target Corporation's failure to pay overtime wages and provide meal and  
20 rest periods to Plaintiff and Target's other salaried California executive team leaders  
21 in asset protection ("ETL-APs"). Plaintiff argues that Target incorrectly classified its  
22 ETL-APs as exempt executives and administrators. Target disputes this contention  
23 and opposes the Motion for Class Certification. After a thorough review of the  
24 parties' submissions and for the following reasons, the Court **DENIES** Plaintiff's  
25 Motion.<sup>1</sup> (ECF No. 45.)  
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28 <sup>1</sup> After considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

## II. BACKGROUND<sup>2</sup>

Target is a national retailer with approximately 283 stores in California, with some stores located in downtown shopping districts and others in suburban shopping malls, strip malls, or remote locations. (Decl. of Michael Brewer (“Brewer Decl.”) ¶¶ 3–4, ECF No. 65-2.) Some stores are smaller than 50,000 square feet and others are as large as 200,000 square feet. (*Id.* ¶ 5.)

Target hired Plaintiff as an ETL-AP in November 2014. Target paid Plaintiff on a salaried basis and did not increase her pay when she worked forty hours or more per week or eight or more hours per day. (Decl. of Neda Faraji (“Faraji Decl.”) ¶ 3, ECF No. 48-3). Target classifies all of its ETL-APs as exempt executives/administrators. (Brewer Decl. ¶ 11.) ETL-APs are the highest-ranking managers in the assets protection division of their store, and they manage “all major aspects of Target’s store operations involving safety and security.” (*Id.* ¶ 12.) ETL-APs report directly to the Store Team Leader (“STL”), who is in charge of the store. (*Id.* ¶ 13.) ETL-APs directly supervise Assets Protection Team Leaders (“APTLs”), Assets Protection Specialists (“ASPs”), Target Protection Specialists (“TPSs”), and, in some stores, team members and team leaders in divisions outside of assets protection. (*Id.* ¶ 14.) Almost all ETL-APs work several shifts each week as their store’s Leader on Duty (“LOD”), when they are responsible for managing the entire store. (*Id.* ¶¶ 27–28.) To qualify for an ETL-AP position, an applicant at a minimum must have a college degree or equivalent work experience. (*Id.* ¶ 15.)

Plaintiff claims that, while she did manage and train hourly employees, the majority of the work she performed as an ETL-AP was non-managerial. (Mot. 2–3.) During her shifts as LOD, she was required to: inspect aisles and alert the system of products that needed replenishing; shelves moved, returned, or sold-out products;

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<sup>2</sup> Both parties lodged numerous objections to the other side’s evidence submitted in support of, or in opposition to, the Motion for Class Certification. (*See* ECF Nos. 70, 71, 72, 79-3.) The Court ruled on these evidentiary objections in a separate Order (ECF No. 109) and incorporates those evidentiary rulings herein.

1 organize aisles; inspect for, and discard, trash; push pallets of merchandise from the  
2 back room to the sales floor; sweep and mop the trash area; perform cashier duties;  
3 locate customers' online orders from the back room; and collect shopping carts from  
4 the parking lot and return them to the store. (Faraji Decl. ¶ 4.) On the days when she  
5 was not LOD, she spent most of her time performing such work. (*Id.*) Target  
6 characterizes the duties of LOD as overseeing and directing all store operations,  
7 supervising all team members, including team leaders and specialists, handling  
8 personnel and customer issues as they arise, and responding to emergencies. (Brewer  
9 Decl. ¶ 29.) LODs are also responsible for reviewing the store's financial metrics and  
10 walking the store to identify the objectives and priorities for the day. (*Id.* ¶ 28.)

11 Target communicates its expectations for ETL-APs and their respective duties  
12 through a job description document describing the "Core Roles." (Brewer Decl.  
13 ¶¶ 34–35; Decl. of David Spivak ("Spivak Decl") ¶ 37, ECF No. 48-4; Spivak Decl.  
14 Ex. 26, ECF No. 49-15.) Plaintiff argues that Target's descriptions of the ETL-AP  
15 position are vague, and the ETL-APs do not know what they actually mean. (Mot. 3.)  
16 Among the descriptors Plaintiff points to are: "Collaborate and work as one team,"  
17 and "Model and drive a sales and service culture to deliver an exceptional guest  
18 experience." (Mot. 3 (citing Spivak Decl. Ex. 26).) Other Core Roles include: "Hold  
19 team members accountable," "Effectively execute and lead the team," and "Build and  
20 lead a safe and secure culture." (Spivak Decl. Ex. 26; *see also* Brewer Decl. ¶ 34.)

21 Plaintiff filed this action in Los Angeles County Superior Court. (ECF No. 1-  
22 1.) On January 27, 2017, Target removed the case. (ECF No. 1.) On April 19, 2017,  
23 Plaintiff filed her First Amended Complaint, alleging causes of action for: (1) Failure  
24 to pay for all hours worked at the correct rates of pay, Cal. Lab. Code §§ 510, 1194,  
25 and 1198; (2) Failure to provide meal and rest periods, Cal. Lab. Code §§ 226.7, 512,  
26 and 1198; (3) Failure to provide accurate written wage statements, Cal. Lab. Code §  
27 226(a); (4) Failure to timely pay all final wages, Cal. Lab. Code §§ 201–203; (5)

1 Unfair Competition, Cal. Bus. & Prof. Code §§ 17200 et seq.; and (6) Civil Penalties,  
2 Cal. Lab. Code §§ 2698 et seq. (First Am. Compl. (“FAC”), ECF No. 27.)

3 Plaintiff seeks to certify the following class:

4 All persons Target employed in California as salaried ETL-  
5 APs and/or other positions with similar job titles,  
6 descriptions, duties, and/or compensation arrangements, at  
7 any time during the time period beginning November 28,  
2012 and ending when final judgment is entered.

8 (Mot. 10.) Plaintiff also seeks to certify the following subclasses:

9 Waiting Time Subclass: All persons Target employed in  
10 California as salaried ETL-APs who separated from  
11 employment with Target during the period beginning three  
years before the filing of this action and ending when final  
judgment is entered.

12 Wage Statement Subclass: All persons Target employed in  
13 California as salaried ETL-APs to whom Target issued a  
14 wage statement during the period beginning one year before  
the filing of this action and ending when final judgment is  
entered.

15 Civil Penalties Subclass: All persons Target employed in  
16 California as salaried ETL-APs during the period beginning  
17 one year before Plaintiff’s written notice to the California  
18 Labor and Workforce Development Agency and ending  
when final judgment is entered.

19 (*Id.* at 10–11.)

### 20 **III. LEGAL STANDARD**

21 Whether to grant class certification is within the discretion of the court.  
22 *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978). A cause of action may  
23 proceed as a class action if a plaintiff meets the threshold requirements of Rule 23(a)  
24 of the Federal Rules of Civil Procedure: numerosity, commonality, typicality, and  
25 adequacy of representation. Fed. R. Civ. P. 23(a). In addition, a party seeking class  
26 certification must meet one of the three criteria listed in Rule 23(b). Pursuant to Rule  
27 23(b)(3) a party may maintain a class action if the court finds that the questions of law  
28 or fact common to the members of the class predominate over any questions affecting

1 only individual members, and that a class action is superior to other available methods  
2 for the fair and efficient adjudication of the controversy.

3 Courts should certify a class only if they are “satisfied, after a rigorous  
4 analysis,” that Rule 23 prerequisites have been met. *Gen. Tel. Co. of Southwest v.*  
5 *Falcon*, 457 U.S. 147, 161 (1982). “Frequently that ‘rigorous analysis’ will entail  
6 some overlap with the merits of the plaintiff’s underlying claim,” which “cannot be  
7 helped.” *Wal-Mart Inc. v. Dukes*, 564 U.S. 338, 351 (2011). However, examination  
8 of the merits is limited to determining whether certification is proper and “not to  
9 determine whether class members could actually prevail on the merits of their claims.”  
10 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011) (citation  
11 omitted).

## 12 IV. DISCUSSION

### 13 A. Numerosity

14 Rule 23 requires that the class be “so numerous that joinder of all members is  
15 impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiff contends the proposed class  
16 numbers more than 800 members and satisfies any standard for numerosity. (Mot.  
17 12.) Defendants do not contest this argument or even address this factor. Plaintiff  
18 meets the numerosity requirement.

### 19 B. Commonality & Predominance

20 Plaintiff argues there are numerous common questions, including: (1) Whether  
21 “Collaborate and work as one team” is an exempt duty; (2) Whether “Model and drive  
22 a sales and service culture to deliver an exceptional guest experience” is an exempt  
23 duty; (3) Whether “Developing and ensuring adherence to safe and secure programs  
24 and practices” is an exempt duty; (4) Whether the LOD duties are exempt duties; (5)  
25 Whether Target’s failure to pay all overtime and premium wages owed at the time of  
26 termination is a “willful” violation of Labor Code § 203; (6) Whether Target’s failure  
27 to provide the ETL-APs with accurate wage statements is a “knowing and intentional  
28 violation of Labor Code § 226; (7) Whether Target’s uniform meal and rest period

1 policies have failed to provide the ETL-APs with meal and rest periods required by  
2 California law; (8) Whether Target is liable for restitution of earned premium wages  
3 based on its alleged failures to provide meal and rest periods to the ETL-APs; and (9)  
4 Whether Target is liable for civil penalties under PAGA for these alleged Labor Code  
5 violations. (Mot. 14.) Plaintiff also explains that this list is not exhaustive, because  
6 the Court will also need to decide whether the rest of ETL-AP duties are exempt.  
7 (Mot. 14 n.5.)

8 Even if Plaintiff meets the commonality requirement with her assertion of  
9 common questions, Plaintiff fails to meet the predominance requirement.  
10 Predominance requires “that questions of law or fact common to class members  
11 predominate over any questions affecting only individual members.” Fed. R. Civ. P.  
12 23(b)(3). Meeting the commonality requirement is insufficient to fulfill the  
13 predominance requirement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir.  
14 1998).

15 For purposes of class certification, the Court must look to the nature of proof  
16 that would be necessary to establish the putative class members’ entitlement to relief  
17 on their claims. Plaintiff contends that she is entitled to overtime compensation, while  
18 Target contends that the ETL-APs are exempt from overtime compensation, because  
19 they are exempt executives/administrators who perform mostly managerial duties.  
20 There can be no question that this issue is the central question in determining liability  
21 in this case. To resolve this dispute, which is the basis for each of Plaintiff’s causes of  
22 action, will require the Court to consider the percentage or proportion of each ETL-  
23 AP’s time spent on tasks that qualify for the exemption. *See Smith v. Red Robin Int’l*,  
24 No. 14-cv-01432-JAH-BGS, 2017 WL 1198907, at \*3 (S.D. Cal. Mar. 31, 2017);  
25 *Deane v. Fastenal Co.*, No. 11-cv-0042-YGR, 2012 WL 12552238, at \*3 (N.D. Cal.  
26 Sept. 26, 2012). As a result, the Court will have to make some determination as to  
27 how each ETL-AP actually spends his or her time. *See Vinole v. Countrywide Home*  
28 *Loans, Inc.*, 571 F.3d 935, 945 (9th Cir. 2009). “[W]hen an employer asserts an

1 exemption as a defense . . . the resolution of which depends upon how employees  
2 spend their time at work, unless plaintiff proposes some form of common proof, such  
3 as a standard policy governing how and where employees perform their jobs, common  
4 issues of law or fact are unlikely to predominate.” *In re Wells Fargo Home Mortg.*  
5 *Overtime Pay Litig.*, 268 F.R.D. 604, 611 (N.D. Cal. 2010). Thus, Plaintiff must show  
6 that the way ETL-APs actually spend their time can be shown by common proof.  
7 Their attempt to do so here is unsuccessful.

8 Plaintiff submits evidence of common policies and job descriptions for the  
9 ETL-AP position. Plaintiff asks the Court to go through each description and classify  
10 each as either exempt or non-exempt. (Mot. 16.) But Plaintiff’s mistake the relevant  
11 inquiry for determining whether an employee is exempt—the Court must look at *how*  
12 *much* time a specific employee is spending on exempt tasks. Whether the ETL-APs  
13 actually performed the duties required of them to such an extent that their positions  
14 were misclassified as exempt is not subject to common proof. Plaintiff has not shown  
15 that any Target policy requires each ETL-AP to spend the majority of their time on  
16 non-exempt duties. Instead, submitted are declarations from Plaintiff and a number of  
17 putative class members explaining that they spent the majority of their time on non-  
18 managerial tasks. In response, Target submitted declarations from other ETL-APs  
19 testifying that they spend the majority of their time on exempt tasks. Plaintiff has not  
20 met her burden to establish that the question of whether Target misclassified the ETL-  
21 APs as exempt is subject to common proof. Therefore, Plaintiff fails to demonstrate  
22 that common questions predominate over individual questions to support the  
23 predominance requirement and fails to meet the requirements for class certification.

### 24 **C. Remaining Requirements**

25 Because the Court finds that Plaintiff fails to meet the predominance  
26 requirement, it will not address the remaining requirements for class certification.

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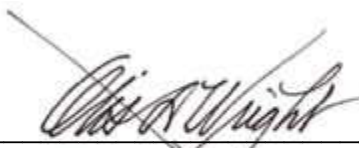
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**V. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Class Certification. (ECF No. 45.)

**IT IS SO ORDERED.**

April 30, 2018



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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**