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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LEE BOND, individually and on )  
behalf of all others similarly )  
situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FERGUSON ENTERPRISES, INC., a )  
corporation, and DOES 1-50, )  
inclusive, )  
 )  
Defendants. )

1:09-cv-1662 OWW SMS  
SCHEDULING CONFERENCE ORDER  
Motion to Amend Complaint  
Filing Deadline: 7/23/10  
Motion for Class  
Certification Filing  
Deadline: 9/20/10  
Opposition Thereto Filing  
Deadline: 10/12/10  
Reply Thereto Filing  
Deadline: 10/25/10  
Motion for Class  
Certification Hearing Date:  
11/22/10 10:00 Ctrm. 3  
(extended time reserved)

I. Date of Scheduling Conference.

February 11, 2010.

II. Appearances Of Counsel.

Ackermann & Tilajef, P.C. by Craig Ackermann, Esq., and  
Wasserman, Comden & Casselman, L.L.P. by Melissa M. Harnett,  
Esq., appeared on behalf of Plaintiffs.

Curiale Hirschfeld Kraemer, L.L.P. by Reed E. Schaper, Esq.,  
and Kimberly G. Brener, Esq., appeared on behalf of Defendant.

1 III. Summary of Pleadings.

2 1. Plaintiff alleges that, over the period from four years  
3 prior to the filing of the Complaint and continuing through the  
4 present, Defendant failed to comply with California law requiring  
5 that drivers be provided timely off-duty meal periods and pay for  
6 missed, on-duty and untimely meal periods (Cal. Labor Code  
7 §§ 226.7, 512).

8 2. As a result of Defendant's violations of California  
9 statutory laws, Plaintiff asserts derivative claims for penalties  
10 associated with the issuance of inaccurate pay stubs (lacking  
11 accurate information about wages earned and hours worked) (Cal.  
12 Labor Code § 226); waiting time penalties for all former drivers  
13 who did not receive all wages owed to them on separation of  
14 employment (Cal. Labor Code §§ 201-203); Unfair Competition Law  
15 claims under § 17200 of the California Business and Professions  
16 Code, based on the foregoing.

17 3. Finally, Plaintiffs believe that their claims are  
18 amenable to treatment on a class-wide basis under Fed. R. of Civ.  
19 Proc. Rule 23. Several federal district courts have recently  
20 certified similar class actions for truckers' claims under Labor  
21 Code §§ 203 and 226 and the UCL claim. *See, e.g., Espinoza v.*  
22 *Domino's Pizza, LLC*, 2009 WL 882845 (C.D. Cal. 2009); *Ortega v.*  
23 *JB Hunt Transport, Inc.*, 2009 W.L. 1851330 (C.D. Cal. 2009).

24 4. Defendant contends that it provided Plaintiff and all  
25 putative class members with timely off-duty meal periods as  
26 required by California law. Because Defendant has complied with  
27 its statutory obligation to provide its California employees with  
28 meal periods pursuant to California Labor Code §§ 226.7 and 512,

1 the itemized wage statements Defendant issued to Plaintiff and  
2 all putative class members were accurate and there is no  
3 violation of California Labor Code § 226. Furthermore, because  
4 Defendant properly provided meal periods in compliance with  
5 California law, Plaintiff's unfair competition claim (pursuant to  
6 Cal. Bus. & Prof. Code § 17200) and claim for waiting time  
7 penalties, both of which are premised solely on Plaintiff's meal  
8 period violation claims, must fail.

9 5. Defendant further contends that Plaintiffs' claims are  
10 inappropriate for class treatment under Federal Rule of Civil  
11 Procedure Rule 23 because highly individualized considerations  
12 predominate. The differences between and among putative class  
13 members' working conditions require an individualized inquiry  
14 rendering class certification inappropriate in this action. See,  
15 e.g. *Brown v. Federal Express Corp.*, 249 F.R.D. 580 (C.D. Cal.  
16 2008) (denying class certification for meal and rest period  
17 claims of employee drivers); *Seymour v. McLane, Inc.*, No. EDCV-  
18 08-07-SGL, Order Denying Motion for Class Certification (March  
19 30, 2009) (same).

#### 20 IV. Orders Re Amendments To Pleadings.

21 1. Plaintiff will seek leave to file a First Amended  
22 Complaint in order to conform venue and jurisdictional bases of  
23 the original Complaint to federal court. In addition, Plaintiff  
24 may seek to add a class representative and a claim for unlawful  
25 deductions from wages for meal periods never taken in violation  
26 of Cal. Labor Code §§ 1194, 1194.2. Defendant reserves the right  
27 to oppose any motion for leave to file an Amended Complaint.  
28 Plaintiff does not presently contemplate adding any new

1 Defendants.

2 V. Factual Summary.

3 A. Admitted Facts Which Are Deemed Proven Without Further  
4 Proceedings.

5 1. Plaintiff Lee Bond was employed as a driver by  
6 Defendant and was based at Defendant's Bakersfield facility.

7 2. Defendant Ferguson Enterprises, Inc. is a  
8 corporation formed under the laws of Virginia.

9 B. Contested Facts.

10 1. All remaining facts are disputed.

11 VI. Legal Issues.

12 A. Uncontested.

13 1. Jurisdiction exists under 28 U.S.C. § 1332(d)(2)  
14 and the parties invoke diversity jurisdiction because this is a  
15 putative class action with at least one putative class member who  
16 is a citizen of a state different from that of the Defendant and  
17 the amount in controversy, as alleged by Plaintiff, exceeds \$5  
18 million, exclusive of interest and costs.

19 2. Venue is proper under 28 U.S.C. § 1391 because a  
20 substantial part of the events or actions giving rise to the  
21 claims occurred in the Fresno Division of the Eastern District of  
22 California.

23 3. In this diversity action, the substantive law of  
24 the State of California provides the rule of decision.

25 B. Contested.

26 1. Whether this action is appropriately maintainable  
27 as a class action and should be so certified.

28 2. Whether this case meets the requirements for class

1 certification pursuant to Federal Rule of Civil Procedure Rule  
2 23.

3 3. Whether Plaintiff can establish claims set forth  
4 in the Complaint and enumerated below:

5 a. Failure to provide timely off-duty meal  
6 breaks.

7 b. Failure to pay for missed, untimely or on-  
8 duty meal periods.

9 c. Failure to provide accurate itemized wage  
10 statements.

11 d. Failure to pay wages due at time of  
12 termination.

13 e. Unfair/unlawful/fraudulent business  
14 practices.

15 4. Whether Defendant can establish its affirmative  
16 defenses set forth in the Answer, a subset of which are set forth  
17 below:

18 a. Failure to state a claim upon which relief  
19 can be granted.

20 b. Good faith; no knowing, intentional and/or  
21 willful acts.

22 c. Claims barred by statute of limitations.

23 5. The issue of whether Plaintiff Bond is a proper  
24 representative of the purported class.

25 6. Any and all other issues of ultimate liability.

26 7. The issue of whether Plaintiff suffered any  
27 damages.

28 8. Any and all other issues relating to damages.

1 VII. Consent to Magistrate Judge Jurisdiction.

2 1. The parties have not consented to transfer the  
3 case to the Magistrate Judge for all purposes, including trial.

4 VIII. Corporate Identification Statement.

5 1. Any nongovernmental corporate party to any action in  
6 this court shall file a statement identifying all its parent  
7 corporations and listing any entity that owns 10% or more of the  
8 party's equity securities. A party shall file the statement with  
9 its initial pleading filed in this court and shall supplement the  
10 statement within a reasonable time of any change in the  
11 information.

12 IX. Discovery Plan and Cut-Off Date.

13 1. The parties have made their initial disclosures under  
14 Federal Rule of Civil Procedure 26(a)(1).

15 A. Subjects of Discovery.

16 1. The parties agree in principle that they will  
17 first focus on class-oriented discovery (i.e., toward determining  
18 whether certification of a class is appropriate). It is not the  
19 parties' intent, by this paragraph, to limit any discovery to  
20 class-oriented issues alone.

21 2. The subjects of discovery will include, but are  
22 not limited to, all outstanding factual issues enumerated in the  
23 parties' pleadings. Those issues include, but are not limited  
24 to, facts relevant to the named Plaintiff, the individuals  
25 Defendant identifies as persons most knowledgeable, a  
26 statistically relevant sample of driver information of the  
27 members of the putative class related to the issues enumerated in  
28 the parties' pleadings.

1           B.    Issues About Discovery of Electronically-Stored  
2                    Information.

3            1.    Counsel for both parties have discussed the  
4 preservation and production of any discoverable information,  
5 including electronically-stored information. To the extent such  
6 information is reasonably available, the parties may produce the  
7 information in electronic format via CD Rom.

8           C.    Claims of Privilege or Protection of Trial Preparation  
9                    Materials.

10           1.    Defendant will pursue the court's grant of a  
11 protective order over documents to the extent that they reveal  
12 confidential, private and/or proprietary information of Defendant  
13 or of third parties to which Defendant owes a duty to keep such  
14 information confidential and private. The parties agree in  
15 principle that a protective order regarding the foregoing may be  
16 appropriate, and further agree to properly meet and confer prior  
17 to the filing of any motion for such an order. Plaintiff,  
18 however, reserves his right to object to any such motion.

19           D.    Changes to Limitations on Discovery.

20            1.    The parties agreed that no changes are needed to  
21 the applicable federal and local rules governing civil discovery  
22 in this case, except that in this putative class action, the  
23 parties may need to take more than 10 depositions per side, and  
24 Defendant should not be limited from taking discovery of  
25 individual member(s) of the purported class; and that some  
26 depositions, namely Fed. R. Civ. Proc. Rule 30(b)(6) depositions  
27 may need to exceed the seven and one-half hour limitation.

28    ///

1 X. Pre-Trial Motion Schedule.

2 A. Class Certification.

3 1. Plaintiff's deadline to seek leave to amend the  
4 Complaint will be July 23, 2010.

5 2. The Court sets, as the filing date for a motion  
6 for class certification, September 20, 2010.

7 3. Defendant's opposition to the motion to be filed  
8 on or before October 12, 2010.

9 4. Plaintiff's reply shall be filed on or before  
10 October 25, 2010.

11 5. The hearing on the motion for class certification  
12 is scheduled for November 22, 2010 at 10:00 a.m. in Courtroom 3.  
13 The Court reserves extended time for oral argument.

14 XI. Motions - Hard Copy.

15 1. The parties shall submit one (1) courtesy paper copy to  
16 the Court of any motions filed. Exhibits shall be marked with  
17 protruding numbered or lettered tabs so that the Court can easily  
18 identify such exhibits.

19 XII. Request For Bifurcation, Appointment Of Special Master,  
20 Or Other Techniques To Shorten Trial.

21 1. To be determined.

22 XIII. Related Matters Pending.

23 1. On December 29, 2009, a First Amended Complaint was  
24 filed in the case of *Daniel Branch v. The Plumbers Warehouse*  
25 (Case No. BC425627) in Los Angeles County Superior Court adding  
26 Ferguson Enterprises, Inc. as a Defendant. This action is a  
27 putative class action alleging, among other things, failure to  
28 provide meal periods, failure to pay wages upon termination,



1 failure to keep accurate payroll records and unfair competition  
2 pursuant to Cal. Business & Prof. Code § 17200. The proposed  
3 Plaintiff Class in this action consists of persons working in  
4 hourly positions for The Plumbers Warehouse and Ferguson  
5 Enterprises, Inc., including drivers.

6 XIV. Further Scheduling.

7 1. Following decision on class certification and class  
8 dispositive motions, the parties and the Court will schedule a  
9 Further Scheduling Conference to set a final schedule for the  
10 case.

11 XV. Compliance With Federal Procedure.

12 1. The Court requires compliance with the Federal  
13 Rules of Civil Procedure and the Local Rules of Practice for the  
14 Eastern District of California. To aid the court in the  
15 efficient administration of this case, all counsel are directed  
16 to familiarize themselves with the Federal Rules of Civil  
17 Procedure and the Local Rules of Practice of the Eastern District  
18 of California, and keep abreast of any amendments thereto.

19 XVI. Effect Of This Order.

20 1. The foregoing order represents the best  
21 estimate of the court and counsel as to the agenda most suitable  
22 to bring this case to resolution. The trial date reserved is  
23 specifically reserved for this case. If the parties determine at  
24 any time that the schedule outlined in this order cannot be met,  
25 counsel are ordered to notify the court immediately of that fact  
26 so that adjustments may be made, either by stipulation or by  
27 subsequent scheduling conference.

28 2. Stipulations extending the deadlines contained

1 herein will not be considered unless they are accompanied by  
2 affidavits or declarations, and where appropriate attached  
3 exhibits, which establish good cause for granting the relief  
4 requested.

5 3. Failure to comply with this order may result in  
6 the imposition of sanctions.

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8 IT IS SO ORDERED.

9 Dated: February 12, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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