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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN TREVINO, CHRISTOPHER
WARD, LINDA QUINTEROS, ROMEO
PALMA, BRITTANY HAGMAN,¹
ALBERTO GIANINI, and JUAN C.
AVALOS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

GOLDEN STATE FC LLC, a Delaware
Limited Liability Company;
AMAZON.COM INC., a Delaware
Corporation, AMAZON FULFILLMENT
SERVICES, INC., a Delaware Corporation,

Defendants.

LEAD CASE NO. 1:18-cv-00120-ADA-BAM

Member Case No: 1:18-cv-00121-ADA-BAM
Member Case No: 1:18-cv-00567-ADA-BAM
Member Case No: 1:18-cv-01176-ADA-BAM
Member Case No: 1:17-cv-01300-ADA-BAM

**AMENDED FINDINGS AND
RECOMMENDATIONS REGARDING (1)
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND (2) DEFENDANTS'
MOTION IN LIMINE**

(Docs. 96, 98, 125)

¹ On December 9, 2019, pursuant to the parties' stipulation, Plaintiff Brittany Hagman was dismissed from this action as a putative class representative without prejudice. (Docs. 106, 109.)

1 **AMENDED**

2 **Findings and Recommendations**

3 **I. INTRODUCTION**

4 Plaintiffs Juan Trevino, Christopher Ward, Linda Quinteros, Romeo Palma, Alberto
5 Gianini and Juan C. Avalos, on behalf of themselves and all others similarly situated, bring this
6 consolidated class action against defendants Golden State FC, LLC (now known as
7 Amazon.com Services LLC), Amazon.com, Inc., and Amazon Fulfillment Services, Inc. (now
8 known as Amazon.com Services LLC) (collectively, “Amazon”). Plaintiffs moved for class
9 certification pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). (Docs. 96, 98.)
10 The motion was referred to United States Magistrate Judge Barbara A. McAuliffe for issuance
11 of findings and recommendations in accordance with 28 U.S.C. § 636(b)(1)(B) and (C). (Doc.
12 112.) Amazon relatedly moved to exclude the testimony and opinions of Plaintiffs’ expert, Dr.
13 Brian Kriegler, which Plaintiffs had submitted in support of their motion for class certification.
14 (Doc. 125.) Amazon’s motion was heard in conjunction with Plaintiffs’ motion for class
15 certification. (Doc. 126.)

16 On June 8, 2021, the undersigned issued findings and recommendations, recommending
17 that Plaintiffs’ motion for class certification be granted in part and denied in part and that
18 Amazon’s motion to exclude plaintiffs’ expert Dr. Kriegler be denied as having been rendered
19 moot. (Doc. 166.) Plaintiffs filed objections on June 22, 2021, and Amazon filed a response to
20 those objections on July 2, 2021. (Docs. 168, 170.) Additionally, Plaintiffs filed a notice of
21 supplemental authority on August 9, 2021, in which they pointed out that on August 3, 2021, the
22 Ninth Circuit vacated its original decision in *Olean Wholesale Grocery Cooperative, Inc. v.*
23 *Bumble Bee Foods LLC*, 993 F.3d 774 (9th Cir. 2021) (*Olean I*) and granted a rehearing *en*
24 *banc*. (Doc. 171.) Plaintiffs contended that the findings and recommendations relied extensively
25 on the now vacated decision in *Olean I*, which had vacated and remanded the district court’s
26 granting of motions for class certification, in recommending the denial of certification as to
27 certain classes in this case. (*Id.*)

1 On August 27, 2021, the district judge issued an order staying the action pending the
2 final decision from the Ninth Circuit in *Olean*. (Doc. 173.) On April 8, 2022, the Ninth Circuit
3 issued the *en banc* opinion *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods*
4 *LLC* (No. 19-56514) (*Olean II*). See *Olean Wholesale Grocery v. Bumble Bee Foods LLC*, 31
5 F.4th 651 (9th Cir. 2022) (*en banc*). As a result of the potential changed circumstances
6 stemming from the *Olean II* decision, the district court declined to adopt the findings and
7 recommendations, and instead referred Plaintiffs’ motion for class certification and Defendants’
8 motion to exclude the testimony of Dr. Kriegler back to the undersigned for the issuance of
9 amended findings and recommendations in light of the Ninth Circuit’s *en banc* decision in
10 *Olean II*. (Doc. 181.)

11 On June 2, 2022, Plaintiffs submitted supplemental briefing on the effect of *Olean II* on
12 Plaintiffs’ motion for class certification. (Doc. 185.) Defendants responded on June 16, 2022,
13 (Doc. 186), and Plaintiffs replied on June 23, 2022, (Doc. 187.) On June 28, 2022, Defendants
14 requested leave to file a one-paragraph surreply, which was unopposed. (Doc. 188.) In the
15 absence of any opposition, and given its limited scope, Defendants’ request is GRANTED.

16 On August 6, 2022, the Court issued a Minute Order noting that a petition for certiorari
17 of the *en banc* decision in *Olean II* was filed with the United States Supreme Court. (Doc. 192.)
18 The Court indicated that it would not address the referral of the motion for class certification
19 until the petition for certiorari was denied or the Supreme Court decided the merits of the case.
20 The parties did not object to waiting for a decision pending the Supreme Court’s ruling on the
21 petition for certiorari. Certiorari was denied on November 14, 2022. See *Olean Wholesale*
22 *Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 674 (9th Cir.), cert. denied sub
23 nom. *StarKist Co. v. Olean Wholesale Grocery Coop., Inc.*, 143 S. Ct. 424 , 214 L. Ed. 2d 23,
24 (2022).

25 Having considered the parties’ briefing and arguments, including supplemental briefing
26 following the Ninth Circuit’s *en banc* decision in *Olean II*, and for the reasons that follow, it is
27 recommended that Plaintiffs’ Motion for Class Certification be granted in part and denied in
28

1 part, and that Amazon’s motion to exclude the testimony and opinions of Dr. Kriegler be denied
2 as moot.

3 **II. BACKGROUND**

4 **A. Factual and Procedural Background**

5 This matter is a consolidated action comprised of five wage and hour lawsuits originally
6 filed in the Central and Eastern Districts of California. On March 28, 2019, Plaintiffs filed a
7 First Amended Consolidated Class Action Complaint (the “Complaint”) seeking to bring wage
8 and hour claims on behalf of all current and former non-exempt hourly workers employed by
9 Amazon in California for the period of four (4) years prior to July 12, 2017 to the present.
10 (Doc. 65, Complaint at ¶ 21.)

11 Amazon.com, Inc. (“Amazon.com”) is one of the world’s largest and well-known on-
12 line retailers. Amazon.com fills customer orders and ships them based out of a network of
13 fulfillment, sorting, distribution, and shipping centers. (Doc. 98-1 at 6.)² According to the
14 allegations in the Complaint, Amazon operates at least nine different fulfillment centers for
15 Amazon.com in California, which are located in San Bernardino, Rialto, Eastvale, Tracy,
16 Moreno Valley, Redlands, and Patterson City. They are in San Bernardino, Riverside, San
17 Joaquin, Stanislaus, and Riverside counties. (Complaint at ¶ 17.)

18 Plaintiff Juan Trevino worked as a Fulfillment Associate in Amazon’s fulfillment center
19 located in Tracy, California, from March 14, 2017 through May 6, 2017. (Complaint at ¶ 8.)
20 Plaintiff Christopher Ward worked in various positions at Amazon’s fulfillment center located
21 in San Bernardino, California, from May 24, 2015 to November 23, 2016. (*Id.* at ¶ 9.) Plaintiff
22 Linda Quinteros worked in various positions at Amazon’s fulfillment center located in
23 Patterson, California, from October 17, 2013 to December 13, 2016. (*Id.* at ¶ 10.) At the time
24 of briefing on the certification motion, Plaintiff Romeo Palma was employed at Amazon’s
25 fulfillment center in Patterson, California. (*Id.* at ¶ 11.) Plaintiff Alberto Gianini worked as a
26 Warehouse Associate in Amazon’s fulfillment center located in San Bernardino, California from
27 _____

28 ² Page number citation is based on the Court’s CM/ECF pagination.

1 October 2014 through August 2016.³ (*Id.* at ¶ 13.) Plaintiff Juan C. Avalos worked in the
2 outbound department, processing packages that were going to be shipped out in Amazon’s
3 fulfillment center located in Moreno Valley, California from July 2016 through May 2017. (*Id.*
4 at ¶ 14.)

5 Plaintiffs forward claims for the following wage and hour violations: (1) failure to pay
6 wages for all hours worked, including overtime, (2) meal period violations, (3) rest period
7 violations, (4) wage statement violations, (5) failure to pay wages under California Labor Code
8 § 203, (6) unfair business practices, and (7) violations of the California Business and
9 Professions Code (Private Attorneys General Act claim). (Doc. 65.)

10 With regard to the claim for failure to pay for all hours worked, Plaintiffs allege that
11 Amazon instituted a variety of policies resulting in violations. These policies include: (1)
12 scheduling employees for 10-hour shifts, but during pre-holiday periods, requiring Plaintiffs and
13 putative class members to work 11 or 12-hour shifts (Complaint at ¶ 31); (2) a uniform policy of
14 rounding actual time entries down to the nearest total one-tenth hour to conform to shift
15 schedule, not actual time worked (*Id.* at ¶ 32); (3) a uniform policy of providing a five-minute
16 grace period excusing an employee who clocks in late for a work shift if he or she clocked in
17 during that five-minute window, but if the employee was more than five minutes late, not
18 compensating the employee for the remainder of the first hour worked and deducting an hour of
19 unpaid time from the employee’s accumulated unpaid time hours (*Id.* at ¶ 34); (4) failing to pay
20 shift premiums to all employees who worked shifts eligible to receive them (*Id.*); (5) an
21 alternative workweek and shift scheduling policy and practice that required a four-day
22 workweek and ten-hour workdays that undercompensated employees for two hours of their
23 working time and systematically reflected fewer overtime hours than they worked (*Id.* at ¶ 36);
24 (6) a policy requiring Plaintiffs and putative class members to routinely work shifts over eight
25 (8) hours in a day and over forty (40) hours in a work week, but not paying appropriate overtime

26 ³ The Complaint alleges that Plaintiff Gianini was employed by Amazon “from October 2104.”
27 (Complaint at ¶ 13.) The year “2104” is an apparent typographical error, which the Court construes as
28 “2014.”

1 rate for all such hours (*Id.* at ¶ 37); and (7) failing to compensate Plaintiffs and putative class
2 members for time spent going through Amazon’s security procedures⁴ (*Id.* at ¶ 38).

3 With regard to the claim for failure to provide lawful meal periods, Plaintiffs allege that
4 Amazon engaged in a number of policies and practices that resulted in violations. These
5 policies and practices include: (1) requiring fulfillment center employees to work shifts greater
6 than five (5) hours without providing them with timely, uninterrupted duty-free meal periods of
7 not less than thirty (30) minutes because they were required to clock-out at the beginning of
8 their meal periods and were then subject to security procedures both to leave the work site and,
9 if they left the work site, were subject to security procedures to re-enter the work site before
10 they could clock-in (Complaint at ¶ 33); (2) failing to provide Plaintiffs and putative class
11 members with a second 30-minute meal period on the shifts in which they worked over ten (10)
12 hours and being provided with a purported “California Meal Period Waiver Agreement” that did
13 not clearly state the terms and conditions under which the waiver would apply (*Id.* at ¶ 44); (3)
14 shortening of meal periods due to off-the-clock work and rounding and untimely meal periods
15 after the fifth hour of work on shift (*Id.* at ¶ 45); and (4) failing to compensate employees for
16 each meal period not provided or inadequately provided (*Id.* at ¶ 46).

17 With regard to the claim for failure to provide rest periods, Plaintiffs allege that Amazon
18 engaged in a number of policies and practices that resulted in violations. These policies and
19 practices include: (1) uniformly failing to authorize and permit Plaintiffs and putative class
20 members to take their required ten (10) minute rest periods for every four (4) hours of work or
21 major fraction thereof or to take a third ten-minute rest break when they worked shifts over ten
22 (10) hours in a day (Complaint at ¶ 48); (2) failing to relieve employees of all duties and
23 relinquish control over how employees spend time during rest periods by requiring them to walk
24 to remote break room locations during rest breaks (*Id.* at ¶ 49); (3) enforcing a uniform policy
25 preventing Plaintiffs and the putative class members from leaving the fulfillment center
26 premises during their rest breaks under a uniformly applied policy that admonished that “leaving

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28 ⁴ The Court will refer to Amazon’s exit security procedures as both “exit security procedures” and “exit security process,” as the parties use these terms interchangeably.

1 company premises without permission during assigned work hours” is “extremely serious” and
2 may result in “termination of employment” (*Id.* at ¶ 50); and (4) failing to compensate
3 employees with an additional hour of pay for each day Amazon failed to provide them with
4 adequate rest breaks (*Id.* at ¶ 53).

5 With regard to the claim for wage statement violations, Plaintiffs allege that Amazon
6 violated California Labor Code § 226(a) by failing to provide Plaintiffs and putative class
7 members with wage statements that accurately showed (1) gross wages actually earned, (2) total
8 hours worked, (3) net wages actually earned, and (4) applicable hourly rates and the
9 corresponding number of hours worked at each hourly rate (Complaint at ¶¶ 57-60).

10 With regard to the claim for failure to timely pay wages due at termination, this is a
11 derivative claim. Plaintiffs allege that members of the putative class that were terminated
12 during the relevant time period were not timely paid the wages earned and unpaid that were due
13 to them, including wages at the appropriate rate for all hours worked and meal and rest period
14 premiums as alleged in the Complaint. (Complaint at ¶ 68.)

15 With regard to the unfair business practices and PAGA claims, these also are derivative
16 claims based on the alleged Labor Code violations. (Complaint at ¶¶ 74, 80.)

17 On November 22, 2019, Plaintiffs moved to certify eleven classes pursuant to Fed. R.
18 Civ. P. 23(a) and (b). (Doc. 96 [Sealed].) Pursuant to a sealing order, Plaintiffs filed redacted
19 briefing on November 26, 2019, and December 10, 2019. (Docs. 98, 110.) Amazon opposed the
20 motion by redacted briefing on January 13, 2020, and Plaintiffs replied on January 30, 2020.
21 (Docs. 119, 128.) On January 24, 2020, Amazon filed a separate motion to exclude the
22 testimony of Plaintiffs’ expert witness, Dr. Kriegler. (Doc. 125.) Plaintiffs opposed the motion
23 to exclude (Doc. 133), and Amazon replied, (Doc. 135). Subsequent to the completed briefing,
24 the parties filed notices of new authority addressing various Ninth Circuit and state law
25 decisions. (Doc. 137, 140, 149, 154, 158, 163.)

26 On June 8, 2021, after a hearing, the undersigned issued findings and recommendations,
27 which recommended that Plaintiffs’ Motion for Class Certification be granted in part and denied
28

1 in part, and that Amazon’s motion to exclude the testimony and opinions of Dr. Kriegler be
2 denied as moot. (Doc. 166.)

3 On May 5, 2022, the district judge declined to adopt the findings and recommendations.
4 Instead, the District Court referred the motions back to the undersigned for the issuance of
5 amended findings and recommendations in light of the Ninth Circuit’s decision in *Olean II*.
6 (Doc. 181.)

7 The parties filed supplemental briefing addressing the effect of *Olean II* on Plaintiffs’
8 motion for class certification. (Docs. 185-188.) Subsequent to that briefing, the parties filed
9 notices of supplemental authority relating to certification of the exit security screening classes
10 and the rounding classes. (See Docs. 189, 190, 193, 194.)

11 **B. Proposed Classes**

12 As indicated, Plaintiffs seek certification of eleven classes. They are as follows:

13 **Class 1. Unpaid Wages Class (Hours Worked Claim Based on Control of**
14 **Employees through Mandatory Exit Security Procedures)**

15 All non-exempt employees employed by Amazon.com Services, Inc.⁵ or
16 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
17 the period from July 12, 2014 and ending on the date of certification or as
18 otherwise determined by the Court who were required to go through a metal
19 detector security process to exit the facility. (Doc. 98-1 at 10.)

18 **Class 2. Unpaid Wages Class (Controlled Meal Periods)**

19 All non-exempt employees employed by Amazon.com Services, Inc. or
20 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
21 the period from July 12, 2014 and ending on the date of certification or as
22 otherwise determined by the Court who took a meal period and who were
23 required to go through a metal detector security process to leave the facility
24 during such meal period and were not paid for the time of such meal period.
(Doc. 98-1 at 15.)

24 **Class 3. Meal Period Violations for Controlled Meal Periods**

25 All non-exempt employees employed by Amazon.com Services, Inc. or
26 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
27 the period from July 12, 2014 and ending on the date of certification or as

28 ⁵ This class would include Golden State FC, LLC employees as this company merged with Amazon.com Services, Inc.

1 otherwise determined by the Court who worked a shift longer than six hours and
2 who were required to go through a metal detector security process to leave the
3 facility during such meal periods and were not paid a meal period premium for
such shifts. (*Id.* at 16-17.)

4 **Class 4. Rest Periods Violations for Controlled Rest Periods**

5 All non-exempt employees employed by Amazon.com Services, Inc. or
6 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
7 the period from July 12, 2014 and ending on the date of certification or as
8 otherwise determined by the Court who worked a shift longer than three and one-
9 half hours and were subject to a policy that leaving company premises without
10 permission during assigned work hours was a serious infraction that subjected
them to termination or who were required to go through a metal detector security
process to leave the facility during the rest period and were not paid a rest period
premium for all such shifts. (*Id.* at 18.)

11 **Class 5. Improper Rounding Class**

12 All non-exempt employees employed by Amazon.com Services, Inc. or
13 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
14 the period from July 12, 2014 and ending on the date of certification or as
15 otherwise determined by the Court who were subject to a rounding practice that
resulted in them being paid less than they would have received had no such
rounding practice been utilized for such employees. (*Id.* at 19.)

16 **Class 6. Invalid Second Meal Period Waiver Class**

17 All non-exempt employees employed by Amazon.com Services, Inc. or
18 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
19 the period from July 12, 2014 and ending on the date of certification or as
20 otherwise determined by the Court who signed any meal period waiver in the
21 forms attached as Exhibit 12 to the Declaration of Peter R. Dion-Kindem in
22 Support of Motion for Class Certification and worked more than 10 hours in a
day, did not receive a second 30 minute meal period, and did not receive one hour
of pay at the class member's regular rate of compensation for such day. (*Id.* at
20.)

23 **Class 7. Third Rest Period Class**

24 All non-exempt employees employed by Amazon.com Services, Inc. or
25 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
26 the period from July 12, 2014 and ending on the date of certification or as
27 otherwise determined by the Court who were scheduled to work a 10-hour shift
28 and worked more than 10 hours and who were not authorized or permitted to take
a third uninterrupted, duty-free, and control-free 10-minute rest period and did not
receive one hour of pay at the class member's regular rate of compensation for
such day. (*Id.* at 20-21.)

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2 **Class 8. Direct Violation of Section 226(a)(2) Wage Statement Class**

3 All non-exempt employees employed by Amazon.com Services, Inc. or
4 Amazon.com, Inc. in California at any time during the period from July 12, 2016
5 and ending on the date of certification or as otherwise determined by the Court
6 who did not receive an itemized statement in writing accurately showing the total
7 hours worked by the employee where the wage statements reflect a line item for
8 regular hours worked and at least one other line item for other types of hours
9 worked other than regular overtime or double time, such as shift differential hours
10 worked. (*Id.* at 21.)

11 **Class 9. Derivative Wage Statement Class**

12 All members of any of Classes 1 through 7 who, during the period from July 12,
13 2016 and ending on the date of certification or as otherwise determined by the
14 Court, were not provided with accurate itemized wage statements with all the
15 information required by Labor Code Section 226(a)(1), (2), (5) and (9).

16 **Class 10. Section 203 Subclass**

17 All members of any of Classes 1 through 7 who, during the period from July 12,
18 2014 and ending on the date of certification or as otherwise determined by the
19 Court, were either voluntarily or involuntarily separated from their employment
20 and did not timely receive all wages owing pursuant to Labor Code Section 201 or
21 202.

22 **Class 11. UCL Class**

23 All non-exempt employees employed by Amazon.com Services, Inc. or
24 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
25 the period from July 12, 2013 and ending on the date of certification or as
26 otherwise determined by the Court who are owed restitution as a result of
27 Defendants' business acts and practices that are found to be unlawful, deceptive,
28 and/or unfair. (*Id.* at 24.)

C. Challenged Policies

Many of the challenged policies overlap within and among the various classes.
The Court provides a summary of the policies along with a reference to the particular
class or classes.

1. Payment of Lawful Wages

Exit Security Procedures (Classes 1-4)

1 Plaintiffs contend that Amazon implemented uniform exit security procedures at all the
2 facilities where Plaintiffs and putative class members worked, which required all of the putative
3 class members to pass through metal detectors and undergo security procedures to exit the
4 facilities at the end of their shifts, for their meal periods or to exit for any other reason.
5 Plaintiffs contend that employees were under Amazon’s “control” from the time of facility
6 entrance (swipe-in) until the time employees passed through the metal detectors and exited
7 (swipe-out). Plaintiffs further contend that by Amazon’s uniform policy, Amazon failed to pay
8 Plaintiffs and putative class members for all hours worked, including the time they were under
9 Amazon’s control after clocking out while they were subjected to Amazon’s exit security
10 procedures.

11 Rounding Policy (Classes 5 and 7)

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] Plaintiffs claim that Amazon underpaid putative
19 class members in the aggregate due to rounding.

20 **2. Meal and Rest Periods (Classes 3-7)**

21 Plaintiffs contend that by requiring mandatory security screening exit procedures to
22 leave the facilities, Amazon failed to relinquish all control over employees’ activities during
23 meal and rest periods, including control over where such breaks are taken. Plaintiffs second
24 theory of liability is that Amazon’s written uniform policies prohibit employees from leaving
25 the premises for rest periods without permission.

26 Amazon allegedly also failed to authorize and permit a third, 10-minute rest period for
27 many of the shifts worked over 10 hours. Class members were also not provided with a second
28 30-minute meal period on the shifts they worked over 10 hours. Plaintiffs admit that Amazon

1 obtained meal period waivers from some employees, but claim that certain of those waivers are
2 invalid and unenforceable, as they are ambiguous and self-contradictory, misrepresent and fail
3 to fully disclose class members' rights, and unlawfully purport to waive more than just second
4 meal periods. (Doc. 98 at 7-8.)

5 **3. Wage Statements (Class 8)**

6 Plaintiffs' claims regarding Amazon's failure to provide accurate wage statements derive
7 both from the face of the wage statements and from Plaintiffs' substantive claims. As to the
8 wage statements themselves, Plaintiffs assert that Amazon provided wage statements that did
9 not have a line item for "total hours worked" in violation of California Labor Code section
10 226(a)(2). As to the derivative claims, they stem from Plaintiffs' assertions of substantive wage
11 violations.

12 **4. Payment of Timely Wages and UCL Claims (Classes 9-11)**

13 Plaintiffs' claims for failure to pay timely wages under Labor Code § 203 at the
14 termination of employment and their claims under the UCL are derivative and based on
15 Amazon's alleged substantive violations.

16 **III. MOTION FOR CLASS CERTIFICATION**

17 **A. Legal Standards**

18 **1. Federal Rule of Civil Procedure 23**

19 Class certification of Plaintiffs' claims is governed by Federal Rule of Civil Procedure
20 23. Whether or not to certify a class is within the discretion of the Court. *United Steel, Paper &*
21 *Forestry, Rubber, Mfg. Energy, Allied Indus. & Service Workers Int'l Union, AFL-CIO CLC v.*
22 *ConocoPhillips Co.*, 593 F.3d 802, 807 (9th Cir. 2010).

23 A class may be certified only if: (1) the class is so numerous that joinder of all members
24 is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or
25 defenses of the representative parties are typical of the claims or defenses of the class; and (4)
26 the representative parties will fairly and adequately protect the interests of the class. Fed. R.
27 Civ. P. 23(a). These requirements are "commonly referred to as the numerosity, commonality,
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1 typicality, and adequacy requirements.” *Norris–Wilson v. Delta–T Group, Inc.*, 270 F.R.D. 596,
2 601 (S.D. Cal. 2010).

3 In addition to the requirements imposed by Rule 23(a), Plaintiffs bear the burden of
4 demonstrating that the class is maintainable pursuant to Rule 23(b). *Narouz v. Charter*
5 *Commc’ns, LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010). In this case, Plaintiffs seek class
6 certification under Rule 23(b)(3). To certify a class under Rule 23(b)(3), Plaintiffs must
7 demonstrate: (1) “questions of law or fact common to class members predominate over any
8 questions affecting only individual members,” and (2) a class action is “superior to other
9 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.
10 23(b)(3). Plaintiffs bear the burden of satisfying the elements of Rules 23(a) and 23(b)(3). *See*
11 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

12 Rule 23 is not a mere pleading standard. “A party seeking class certification must
13 affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove
14 that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” *Wal-*
15 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (“*Dukes*”) (emphasis in original). When
16 considering a motion for class certification, a court must conduct a “rigorous analysis” to
17 determine “the capacity of a class-wide proceeding to generate common *answers* apt to drive the
18 resolution of the litigation.” *Id.* at 350-51 (citation omitted); *Ellis v. Costco Wholesale Corp.*,
19 657 F.3d 970, 980 (9th Cir. 2011). Because the “class determination generally involves
20 considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause
21 of action,” this rigorous analysis may include “prob[ing] behind the pleadings” and “overlap
22 with the merits of the plaintiff’s underlying claim.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33-
23 34 (2013).

24 **2. Wage and Hour Claims**

25 “In California, wage and hour claims are ... governed by two complementary and
26 occasionally overlapping sources of authority: the provisions of the Labor Code, enacted by the
27 Legislature, and a series of 18 wage orders, adopted by the [Industrial Welfare Commission
28 (“IWC”).]” *Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 839 (2018), as modified on denial of

1 reh'g (Aug. 29, 2018) (citation and quotation omitted). “The IWC’s wage orders are to be
2 accorded the same dignity as statutes. They are presumptively valid legislative regulations of the
3 employment relationship, regulations that must be given independent effect separate and apart
4 from any statutory enactments.” *Id.* (citations and quotations omitted).

5 Relevant here, IWC Order No. 2001-7 (“Wage Order No. 7”) defines “hours worked” as
6 “the time during which an employee is subject to the control of an employer, and includes all
7 the time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
8 Code Regs., tit. 8, § 11070(2)(G). “Hours worked” by an employee are compensable. *See id.* §
9 11070(3)(A)(1), 4(B); *see also Troester*, 5 Cal. 5th at 840; *Morillion v. Royal Packing Co.*, 22
10 Cal. 4th 575, 587 (2000).

11 California’s compensable-time standard encompasses two categories of time. *Walter v.*
12 *Leprino Foods Co.*, No. 2:20-CV-00700-AWI-BAM, 2023 WL 3076786, at * 8 (E.D. Cal. Apr.
13 24, 2023). First, time is compensable if an employee is “under the control” of his or her
14 employer, whether or not he or she is engaging in work activities, such as by being required to
15 remain on the employer’s premises or being restricted from engaging in certain personal
16 activities. *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1010 (9th Cir. 2018) (citing *Morillion*,
17 22 Cal. 4th at 579 and *Aguilar v. Assn. of Retarded Citizens*, 234 Cal. App. 3d 21 (1991)); *see*
18 *also Frlekin v. Apple Inc.*, 8 Cal. 5th 1038, 1046 (2020). Second, time is compensable if an
19 employee “is suffered or permitted to work, whether or not required to do so.” *Sali*, 909 F.3d at
20 1010 (citing *Morillion*, 22 Cal. 4th at 578). This may include “time an employee is working but
21 *is not* subject to an employer’s control,” such as “unauthorized overtime, which the employer
22 has not requested or required.” *Sali*, 909 F.3d at 1010 (citing *Morillion*, 22 Cal. 4th at 584-85);
23 *see also Frlekin*, 8 Cal. 5th at 1046.

24 **IV. DISCUSSION**

25 **A. Rule 23(a) Numerosity, Typicality and Adequacy**

26 As a preliminary matter, the parties do not dispute the numerosity, typicality, and
27 adequacy requirements of Rule 23(a). The Court briefly addresses these requirements.

28 **1. Numerosity**

1 Rule 23(a)(1) requires the proposed class to be so numerous that joinder of all of the
2 class members would be impracticable. Fed. R. Civ. P. 23(a). “[I]mpracticability’ does not
3 mean ‘impossibility,’ but only the difficulty or inconvenience in joining all members of the
4 class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964)
5 (quoting *Advert. Specialty Nat’l Ass’n v. Fed. Trade Comm’n*, 238 F.2d 108, 119 (1st
6 Cir.1956)). The exact size of the class need not be known so long as “general knowledge and
7 common sense indicate that it is large.” *Perez-Funez v. Dist. Dir.*, 611 F. Supp. 990, 995 (C.D.
8 Cal. 1984). In general, courts find the numerosity requirement satisfied when a class includes at
9 least 40 members. *Pena v. Taylor Farms Pac., Inc.*, 305 F.R.D. 197, 213 (E.D. Cal. 2015)
10 (citing *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010)); *Collins v. Cargill Meat Sols.*
11 *Corp.*, 274 F.R.D. 294, 300 (E.D. Cal. 2011).

12 For the security screening classes (Classes 1-4), Plaintiffs posit that there are between
13 70,000 and 80,000 people who worked at Amazon facilities in California that had mandatory
14 metal detector security exit procedures. (Doc. 98-1 at 26.) For the wage statement class (Class
15 8), Plaintiffs have identified hundreds of thousands of wage statements for the relevant time
16 period. Further, Plaintiffs have identified Amazon’s admission that over 40,000 employees’
17 employment ended during the class period. (*Id.*) Amazon does not dispute that Plaintiffs have
18 met the numerosity requirement, suggesting that Plaintiffs’ proposed classes cover “over
19 200,000 current and former employees who worked in over fifty facilities of various types
20 throughout California.” (Doc. 119 at 6.) Absent a substantive, compelling dispute regarding
21 numerosity, the Court finds the numerosity requirement satisfied.

22 **2. Typicality**

23 To meet the typicality requirement, Rule 23(a)(3) requires the claims or defenses of the
24 representative parties be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3).
25 The purpose of Rule 23(a)(3) is “to assure that the interest of the named representative aligns
26 with the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992).
27 “The test of typicality ‘is whether other members have the same or similar injury, whether the
28

1 action is based on conduct which is not unique to the named plaintiffs, and whether other class
2 members have been injured by the same course of conduct.” *Id.*

3 Plaintiffs contend that the typicality requirement is met because Plaintiffs and the
4 putative class seek recovery based upon the same legal theories and Amazon’s course of
5 conduct. Plaintiffs have not made claims based on conduct that is alleged to be unique to them.
6 Amazon does not argue that the typicality requirement is not satisfied here. Thus, the Court
7 finds that Plaintiffs’ allegations and evidence satisfy the typicality requirement.

8 **3. Adequacy of Representation**

9 Rule 23(a)(4) provides that the court may certify a class only if “the representative
10 parties will fairly and adequately protect the interests of the class.” The two key inquiries are
11 whether: (1) the named plaintiffs and their counsel have any conflicts of interest with other class
12 members; and (2) the named plaintiffs and their counsel will vigorously prosecute the action on
13 behalf of the class. *Ellis*, 657 F.3d at 985.

14 Plaintiffs contend that the adequacy requirement is met. In particular, Plaintiffs aver that
15 neither they nor their counsel have conflicts of interest with other class members. Plaintiffs also
16 aver that they are fully prepared to take all necessary steps to fairly and adequately represent the
17 classes, and they have agreed to abide by all the necessary duties of class representatives,
18 including assisting counsel in the litigation. (Doc. 98 at 26-27.) Plaintiffs also state that counsel
19 representing the named Plaintiffs are competent and experienced in handling class action
20 lawsuits and have done extensive factual and legal research regarding the asserted claims. (*Id.*
21 at 27.) Amazon does not challenge that the adequacy requirement has been met.

22 **B. Rule 23(a) Commonality and Rule 23(b)(3) Commonality - Predominance**

23 Rule 23(a)(2) requires “questions of law or fact common to the class.” Fed. R. Civ. P.
24 23(a)(2). Although “any competently crafted class complaint literally raises common
25 questions,” commonality “requires the plaintiff to demonstrate that the class members have
26 suffered the same injury.” *Dukes*, 564 U.S. at 349-50. As noted, “[w]hat matters to class
27 certification ... is not the raising of common ‘questions’—even in droves—but, rather the
28 capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of

1 the litigation.” *Id.* at 350 (internal citations omitted). A class claim “must depend upon a
2 common contention ... of such a nature that it is capable of classwide resolution—which means
3 that determination of its truth or falsity will resolve an issue that is central to the validity of each
4 one of the claims in one stroke.” *Id.* In assessing commonality, a court’s rigorous analysis may
5 entail some overlap with the merits of the plaintiff’s underlying claim, and class determinations
6 generally involve “considerations that are enmeshed in the factual and legal issues comprising
7 the plaintiff’s cause of action.” *Id.* at 351.

8 Under Rule 23(b)(3), the predominance requirement is similar to the Rule 23(a)(2)
9 commonality requirement, but the standard is much higher. *Dukes*, 564 U.S. at 359; *Amchem v.*
10 *Windsor*, 521 U.S. 591, 624-25 (1997) (predominance criterion far more demanding than Rule
11 23(a)’s commonality requirement). “[P]laintiffs wishing to proceed through a class action must
12 actually *prove*—not simply plead—that their proposed class satisfies . . . the predominance
13 requirement of Rule 23(b)(3),” and must carry their burden of proof “before class certification.”
14 *Olean II*, 31 F.4th at 664 (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258,
15 275–76 (2014).) Plaintiffs must prove the facts necessary to carry the burden of establishing
16 that the prerequisites of Rule 23, including predominance, are satisfied by a preponderance of
17 the evidence. *Id.* at 665. For plaintiffs to carry their burden of proving that a common question
18 predominates, they must show that the common question relates to a central issue in the
19 plaintiffs’ claim. *Id.*

20 Here, Plaintiffs present four sets of common questions – one set concerning their exit
21 screening classes (classes 1-4), one set concerning their rounding classes (classes 5 and 7), one
22 set concerning their meal period waiver class (class 6), and one set concerning their wage
23 statement class (class 8).⁶ The Court analyzes each in turn below.

24 **1. Exit Screening Classes**

25 Plaintiffs’ proposed classes, 1 through 4, with one limited exception discussed below,
26 are comprised of persons who were subject to a “metal detector security process to exit the
27 _____

28 ⁶ The derivative classes, classes 9-11, are not analyzed separately as they are derivatives of classes 1-8.

1 facility.” The security process, as generally described by Plaintiffs, requires that to gain access
2 to the production area of a facility, employees were required to “swipe-in” at a security turnstile
3 near the entrance to the facility using an ID badge. The entrance to the facility did not have a
4 metal detector to gain entry. After “swipe-in,” employees clocked in by walking to a time clock
5 and clocking in by using their ID badges. After their shifts ended, they were required to clock
6 out and then exit the facility through the mandatory security exit process, which consisted of
7 going through a metal detector and bag check and then “swiping out” at the security turnstile
8 before they could leave the facility. (*See, e.g.*, Doc. 98-14, Gianini Decl. at ¶ 3; 98-15, Palma
9 Decl. at ¶ 3; 98-18, Ward Decl. at ¶ 4 (“In order to gain access to the production area of the
10 facility, I was required to ‘swipe-in’ at a security turnstile near the entrance to the facility using
11 my ID badge. To clock in, I went to a timeclock and clocked in using my ID badge. After my
12 shift was over, I was required to clock out and then exit the facility through the mandatory
13 security exit process, which consisted of going through a metal detector and bag check,
14 including standing for a wand scanner and having my pockets checked, then ‘swiping out’ at the
15 security turnstile before I could leave the facility.”). Similarly, Amazon’s expert, Dr. Michael
16 Ward, generally understood the process as follows:

17 [A]t the start of the workday employees entering a facility may have their entry
18 arrival time recorded at a turnstile or other sensing device at the entry to the work
19 facility. They then “punch in” to a separate “clock” that records time for payroll
20 purposes. At the end of the day, the process is reversed, in that the employee first
“punches out” ending their workday. They then proceed to exit the facility and, if
a turnstile exists at the facility, this time is also recorded.

21 (Doc. 123 at 10, Ex. A, Expert Report of Michael P. Ward, Ph.D. (“Ward Expert Report”).

22 According to the evidence, Amazon appears to operate two main types of facilities in
23 California with exit security screening in the form of metal detectors: Sorting Facilities and
24 Fulfillment Centers.⁷ (Doc. 119-4, Declaration of Cody Carr (“Carr Decl.”) at ¶ 3.)

25
26 ⁷ Plaintiffs have not clearly identified the total number of facilities at issue for purposes of class
27 certification, and Plaintiffs’ counsel was unable to provide such information when questioned at oral
28 argument. Plaintiffs’ expert understood that there were 12 facilities with metal detectors at the security
checkpoint: LGB8, OAK3, OAK4, OAK6, ONT2, ONT3, ONT6, ONT8, ONT9, PCA1, SJC7 and SMF1. (Doc. 107-1 at 13.) Plaintiffs also were unable to account for variations of the exit screening

1 The Court now turns to the specific proposed exit security screening classes for
2 certification.

3 **Class 1: All non-exempt employees employed by Amazon.com Services, Inc.
4 or Amazon.com, Inc. at any of Defendants’ facilities in California at any time
5 during the period from July 12, 2014 and ending on the date of certification
6 or as otherwise determined by the Court who were required to go through a
7 metal detector security process to exit the facility.**

8 For this class, Plaintiffs claim that “whether the time spent by employees after entering
9 the secured premises and before leaving the secured premises constitutes ‘hours worked’ under
10 California law and whether [Amazon] paid for all hours worked are common issues” that the
11 Court can resolve on a class-wide basis. (Doc. 98-1 at 11-12.) Plaintiffs also assert that the
12 issue of whether “off-the-clock” time spent by class members while they were within Amazon’s
13 facilities is compensable under the “control” test of Wage Order No. 7 is a common question
14 that can be resolved on a class-wide basis.

15 Plaintiffs’ specific theory of “control” is that after entering the facilities, class members
16 could not choose to leave without exiting through the mandatory security exit procedures, and
17 employees were therefore under Amazon’s “control” once they entered the secured facilities
18 until they left the secured facilities after passing through the metal detectors. Plaintiffs argue
19 they should be compensated for that time under Amazon’s “control.” (Doc. 98-1 at 14; Doc.
20 123 at 10, Ex. A, Ward Expert Report (“plaintiffs maintain that all time spent by employees
21 inside of a facility should be compensated—not just the time that they are clocked into and out
22 of work.”). This would include the time from when employees “swiped in” (entry turnstile or
23 other sensing device) to the time they “swiped out” (exit turnstile). According to Amazon’s
24 evidence, Fulfillment and Sorting Centers, which have metal detectors, use turnstiles to enter
25 and exit the facility. (Doc. 119-4, Carr Decl. at ¶ 3.) Plaintiffs contend that whether they were

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27
28 procedures among the facilities, such as variations in the number of lanes, seasonal variations of
screening, or which facilities turned off the metal detectors.

1 under Amazon’s control “throughout the entirety of time they were on Amazon’s premises is a
2 common issue.”⁸ (Doc. 98-1 at 12.)

3 Plaintiffs argue that the putative security screening classes are entitled to compensation
4 for all time on the premises after swiping in (entering the facility) and before clocking in, based
5 on the theory that employees could not exit the facility without completing Amazon’s
6 mandatory exit screening process. The Court is not convinced that Plaintiffs’ proposed
7 common questions would predominate or that Plaintiffs’ claim is even supported by the
8 evidence or record. (Doc. 98-1 at 10.) The evidence presented shows that Plaintiffs and putative
9 class members could access lockers and main breakrooms located outside security screening
10 areas. (*See, e.g.*, Doc. 120, Ex. 1, Declaration of Eric Aceves at ¶¶ 1, 31 (Sacramento (SFM1)
11 Fulfillment Center; need to exit security to access main breakroom); Ex. 2, Declaration of Ana
12 Alcala at ¶¶ 1, 7 (San Bernardino (ONT2) Fulfillment Center; “After putting my personal items
13 and storing my lunch in the cubby area near the Main Breakroom, I walk past the security
14 checkpoint . . . I then immediately walk up to a time clock just past security and check in.”); Ex.
15 4, Declaration of Alma Angeles at ¶¶ 1, 8 (Moreno Valley (ONT6) Fulfillment Center; “Once I
16 go through the turnstiles at the entrance . . . , I go straight to the Main Breakroom without
17 clocking in.”); Ex. 5, Declaration of Barbara Arana at ¶¶ 1, 29 (San Bernardino (ONT2)
18 Fulfillment Center; lockers and break room near the East doors); Ex. 6 Declaration of Nancy
19 Aviles at ¶¶ 1, 7 (Newark (OAK5) Sorting Facility; “After dropping off my lunch in the Main
20 Breakroom . . . , I go straight to the time clocks to clock in.”); Ex. 10, Declaration of Anmol
21 Bhagal at ¶¶ 1, 6-8 (Fresno (FAT1) Fulfillment Center; lockers and Main Breakroom outside of
22 security checkpoint); Ex. 15, Declaration of Suzan Butler at ¶¶ 1, 21, 23 (Tracy (OAK4)
23 Fulfillment Center; “The Main Breakroom is inside the facility, but outside of the security
24 checkpoint in the side of the building.”)). Presumptively, employees could enter and exit the

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26 ⁸ The Court recognizes that in their objections to the original findings and recommendations, Plaintiffs
27 had withdrawn their request to certify the “hours worked” claims: (1) the time from scanning in at the
28 facility entrance to clock-in and (2) the time from the completion of the security process to scan out.
(*See* Doc.168 at p. 9.) Because that withdrawal occurred in connection with the Court’s original findings
and recommendations, and in an abundance of caution, the Court, nonetheless, addresses those time
periods in these amended findings and recommendations.

1 facilities without completing the exit security screening process if they only accessed the
2 lockers, main breakrooms, or other areas outside of the security checkpoints.

3 In other words, after swiping in at the entrance turnstiles, employees could access the
4 lockers and main breakrooms outside of the security checkpoints and then swipe out and exit
5 the facilities without passing through the metal detectors, so long as they did not enter the
6 secured area beyond the security checkpoints. As a result, under Plaintiffs’ theory of control
7 and proposed class definition, the time period between swiping-in and clocking-in cannot be
8 certified in the absence of any required exit security screening. Even if employees were
9 required to swipe in and swipe out to access the facilities, such time does not amount to control.
10 *See, e.g., Griffin v. Sachs Elec. Co.*, 390 F. Supp. 3d 1070, 1091 (N.D. Cal. 2019) (finding
11 process requiring workers to badge-in and badge-out at security gate “analogous to scanning or
12 flashing an employee badge to enter a compound or campus” and finding the time spent
13 badging-in and badging-out did not equate to control). The Court notes this is a claim that
14 Plaintiffs abandoned in their Objections, but has nonetheless analyzed it here for completeness.
15 (Doc. 168, p. 9.)

16 Moreover, the evidence demonstrates that there is no uniformity in employee choices
17 made during the time period after entry and before clocking in that would make Plaintiffs’
18 theory appropriate for resolution on a class-wide basis. (*See, e.g.*, Doc. 120, Ex. 3, Declaration
19 of Michael Allgayer at ¶ 6 (“I usually arrive at ONT8 [Moreno Valley] an hour before my shift
20 starts so I can get a really good parking spot. I usually clock in five minutes before my shift start
21 time. When I arrive early, before I clock in, I hang out in the ‘fun zone’ in the facility which has
22 ping-pong tables and an arcade with video games.”); Ex. 4, Declaration of Alma Angeles at ¶ 6
23 (“I arrive at Amazon’s ONT6 [Moreno Valley] Fulfillment Center parking lot around 5:00 p.m.
24 for my 6:00 p.m. shift. I arrive early because I prefer to have dinner in the breakroom before I
25 clock in for my shift. I also like to sit and talk with my friends before starting work.”); Ex. 13,
26 Declaration of Thomas Bowlin at ¶¶ 1, 6 (San Bernardino (ONT5) Sorting Center; “I usually
27 arrive at ONT5 anywhere between one to three hours before my shift starts because I like to be
28

1 early and use the breakrooms to watch the news on television. I usually end up clocking in five
2 minutes before my shift start time.”).

3 Similarly, at the end of an employee’s workday, the time spent after passing through exit
4 security screening, but prior to swiping out to exit the facility appears to suffer from the same
5 substantive defects. As explained by Amazon’s expert, at the end of the workday, the employee
6 clocks out and then may exit the facility through a turnstile, if one exists, where the exit time is
7 recorded. (Doc. 123, Ex. A, Ward Expert Report.) The variability of activities during the time
8 period between completion of the security process and then exiting the facility suggests to the
9 Court that common issues do not predominate. Amazon has presented evidence that after
10 passing through exit security metal detectors, but before exiting, putative class members engage
11 in a variety of activities. (*See, e.g.*, Doc. 120, Ex. 2, Alcalá Decl. at ¶ 14 (“After clocking out
12 [at San Bernardino (ONT2) Fulfillment Center], I walk through security . . . [A]fter going
13 through security, I generally do not go right out the entrance doors. Instead, I go to retrieve my
14 lunch bag and any other personal items near the Main Breakroom just inside the Main Entrance.
15 I then exit the building and go home.”); Ex. 8, Declaration of Kenneth Bahena at ¶ 13 (“After
16 clocking out [and going through security screening at Moreno Valley (ONT6) Fulfillment
17 Center], I then go . . .to my locker. Once at my locker, I pick up my keys, cell phone and any
18 other personal items I left and may talk to coworkers. I then exit the building to my car.”); Doc.
19 121, Ex. 43, Declaration of Efrain Gonzalez Decl. ¶ 14 (“After clocking out [at Patterson
20 (OAK3) Fulfillment Center and] . . . after going through security, I generally do not go right out
21 the entrance doors. Instead, I go to the lockers to retrieve my personal belongings. Sometimes, I
22 sit and talk with some co-workers for a few minutes before I leave. I then exit the building and
23 go home.”); Doc. 122, Ex. 64, Declaration of Fidel Moya, Jr. at ¶ 17 (“After my work is
24 finished and I clock out [at San Bernardino (ONT2) Fulfillment Center], I usually go the
25 restroom, go through the security area, and then go to the East break room on the other side. In
26 the break room, I talk to a group of friends for a few minutes. Often we wait for our whole
27 group of co-workers to get to the break room, grab our stuff, and then leave the facility
28 together.”); Ex. 70, Declaration of Marcus Reed Decl. at ¶¶ 7, 15). (“ [O]ften after [clocking out

1 at Eastvale (LGB3) Fulfillment Center and] going through security instead of going out the
2 front doors, I go to the Main Breakroom and get my personal items . . . I will either sit for a few
3 minutes or just leave through the nearby front entrance to the building.”). The Court also notes
4 this is a claim that Plaintiffs abandoned in their Objections, but has nonetheless analyzed here
5 for completeness. (Doc. 168, p. 9.)

6 As to the two time periods addressed above—(1) the time spent after swiping in and
7 before clocking in, and (2) the time spent after passing through exit security screening, but prior
8 to swiping out to exit the premises—Plaintiffs rely on *Morillion*, 22 Cal. 4th 575, and *Ridgeway*
9 *v. Walmart Inc.*, 946 F.3d 1066 (9th Cir. 2020), to argue that an employee subject to an
10 employer’s control does not have to be working during that time to be compensated. That
11 argument is misplaced. *Morillion* involved the general question of whether the time agricultural
12 employees were required to spend traveling on their employer’s buses was compensable
13 because they were subject to control of their employer. 22 Cal. 4th at 578. The employees in
14 *Morillion* were required to travel on the buses to and from the fields where they were working
15 and were effectively prohibited from using their travel time for their own purposes. Unlike
16 *Morillion*, Amazon’s employees were not confined to the facilities with metal detectors either
17 prior to clocking in or after passing through the exit security screening while still in Amazon’s
18 facilities. Instead, the evidence suggests that employees could decide what activities to engage
19 in and when to leave at any time while outside of security checkpoints.

20 *Ridgeway* is similarly unpersuasive for the pre-clock-in and post-security screening
21 periods of time. *Ridgeway* involved Wal-Mart’s written policy requiring its truck drivers to
22 gain preapproval from management before taking a layover at home and subjecting drivers to
23 disciplinary action for taking an unauthorized layover at home. *Ridgeway*, 946 F.3d at 1079.
24 The Ninth Circuit found that because Wal-Mart’s policy dictated what drivers could do on
25 layovers and restricted employees from complete freedom of movement during breaks, the
26 policy constituted control under California law. *Id.* at 1081. Here, Amazon did not constrain
27 employees’ freedom of movement while outside of the security checkpoints and there is no
28

1 indication that they were required to obtain permission before leaving the premises prior to
2 clocking in or while outside of security checkpoints.

3 With respect to the remaining time period, i.e., time spent after clocking out and then
4 traveling to and passing through metal detectors (but before swiping out), Plaintiffs contend
5 such time constitutes “hours worked” under the “control” and/or “suffered or permitted to work”
6 prongs of the “hours worked” definition in the applicable Wage Order and that the resolution of
7 Plaintiffs’ claims presents common, certifiable issues that can be resolved for the entire class.

8 Even if Plaintiffs’ proposed exit screening classes were limited to the time spent after
9 clocking out and then traveling to and passing through metal detectors, the Court does not find
10 that the requirements of commonality and predominance have been met. Plaintiffs have not
11 presented evidence demonstrating a uniform exit security screening. In contrast, Amazon has
12 presented persuasive evidence that screening varied substantially at facilities with metal
13 detectors depending upon the number of screening lanes, the facility’s layout, the procedures
14 during busy periods, and whether metal detectors were even operational. The absence of a
15 uniform policy consistently applied throughout the class period across the variety of Amazon’s
16 facilities precludes resolution of Plaintiffs’ claims on a class-wide basis and a class cannot be
17 certified based on exit screening procedures. *See Heredia v. Eddie Bauer LLC*, No. 16-CV-
18 06236-BLF, 2020 WL 127489, at *4 (N.D. Cal. Jan. 10, 2020) (“It is doubtful that the Court
19 would have certified the class [when it did] had it understood that [Eddie Bauer] did not have a
20 single uniform policy in place” because “[i]t is no longer accurate to say that this case involves
21 ‘a uniform policy consistently applied’ throughout the class period.”); *In re Autozone, Inc.*, No.
22 3:20-md-02159-CRB, 2016 WL 4208200, at *10 (N.D. Cal. Aug. 10, 2016) (decertifying class
23 where no uniform policy consistently applied throughout the class period); *see also Hubbs v.*
24 *Big Lots Stores, Inc.*, No. LA CV15-01601 JAK (ASx), 2017 WL 2304754, at *9 (C.D. Cal.
25 May 23, 2017) (denying class certification where plaintiffs failed to present “sufficient evidence
26 to show that there was a common and consistent policy among Defendants to subject all
27 employees at all of their stores to off-the-clock bag checks”); *Quinlan v. Macy’s Corp. Servs.,*
28 *Inc.*, No. CV 12-00737 DDP (JCx), 2013 WL 11091572, at *4 (C.D. Cal. Aug. 22, 2013)

1 (denying certification of a class of employees who were subject to off-the-clock searches where
2 plaintiffs had not satisfied the commonality requirement because stores “implement[ed]
3 different strategies,” altered their strategies “depending on the time of day, day of the week,
4 season, [and] level of traffic,” and some stores had no searches at all).

5 The record includes critical evidence demonstrating that between 2014 through at least
6 January 2020, during the proposed class period, the majority of the Sorting Facilities that
7 operated with metal detectors have since turned off those detectors. (*See* Doc. 119-4, Carr Decl.
8 at ¶ 3). The record also includes evidence that there were significant periods of time when the
9 metal detectors at Sorting Facilities in Newark (OAK5) and San Bernardino (ONT5) were not
10 operational. (*See* Doc. 120, Ex. 6, Aviles Decl. at ¶ 19 (“I do not think the ‘metal detectors’
11 even work and may not even be turned [on]. For the entire time I have worked at Amazon
12 [Sorting Facility in Newark (OAK5)], I have never hear [sic] the metal detectors go off and it
13 does not even seem to me that a security person is even watching them. Nobody checks our
14 bags when we leave the building.”); Ex. 13, Bowlin Decl. at ¶ 12 (beginning two months prior
15 to October 2019 there had been “no security screening to exit ONT5”); Ex. 29, Declaration of
16 Maria Cruz ¶ 18 (“they turned off the metal detectors about one month” prior to October 2019).

17 Even if operational throughout the duration of the proposed class period, Amazon’s
18 evidence further demonstrates that there is no uniformity in application of the exit screening
19 process across Amazon’s facilities that have metal detectors because the numbers of detectors
20 and lanes vary. Some facilities have only two lanes and others have as many as ten lanes. (Doc.
21 119-4, Carr Decl. at ¶ 5.) For example, Amazon’s expert, Dr. Elizabeth Arnold, identified that
22 the OAK3 Fulfillment Center had 5 lanes, the ONT2 Fulfillment Center had 2 entrances with 4
23 lanes each, the LAX5 Sorting Center had 3 lanes, and the OAK5 Sorting Center—with non-
24 operational metal detectors—had 4 lanes.⁹ (Doc. 123, Ex. B, Declaration of Elizabeth Arnold,
25 M.S. (“Arnold Decl.”), Table 1.)

26
27 ⁹ Additional examples: ONT8 Fulfillment Center with 6 lanes (Doc. 120, Ex. 3, Allgayer Decl. at ¶ 16; Ex. 17,
28 Cassino Decl. at ¶ 16); FAT1 Fulfillment Center with at least 8 lanes, some express (Doc. 120, Ex. 10, Bhagal
Decl.; Ex. 19, Cathcart Decl. at ¶ 27); and LGB3. Eastvale Fulfillment Center with approximately 10 lanes (Doc.
122, Ex. 70, Reed Decl. at ¶ 23; Ex. 72, Robles Decl. at ¶ 22).

1 Plaintiffs contend that minor variances in how the mandatory screening procedures at
2 facilities with active metal detectors are conducted do not defeat commonality, relying on *Lao v.*
3 *H&M Hennes & Mauritz, L.P.*, No. 5:16-cv-00333-EJD, 2019 WL 7312623, at *1 (N.D. Cal.
4 2019). *Lao* involved H&M’s “alleged policy of requiring all retail employees to undergo a
5 visual inspection by a manager (or other designated person) after they clock out—either at the
6 end of a shift or at closing—but before they leave the H&M store where they work.” *Id.* at *1.
7 H&M reportedly used “two types of security checks: (1) bag inspections, where only retail
8 employees that have a bag must allow a manager to check the bag before leaving, and (2) visual
9 inspections, where every retail employee—regardless of whether they have a bag—must inform
10 a manager of when they leave, allowing the manager to observe their person.” *Id.* The plaintiff
11 in *Lao* argued that, under California law, the time taken for the visual inspections and for any
12 waiting prior to the inspections was compensable. H&M argued that the policy’s inconsistent
13 application to various class members and across different times precluded a finding of
14 commonality. The district court rejected H&M’s argument, finding that whether retail
15 employees were required to tell a manager that they were leaving allowing the manager to see
16 them, to stand in front of a security camera so they could be inspected remotely, or to be
17 escorted to the exit had no material impact on the commonality analysis. The court found that
18 these purported inconsistencies did not negate plaintiff’s allegations that, before they are
19 permitted to leave, all class members must (1) inform a manager that they are leaving, and (2)
20 submit to a visual inspection of their person. The court also found that the purported
21 inconsistencies did not suggest that that the visual inspections were not mandatory. *Id.* at *5.

22 The instant action is distinguishable from *Lao* in two material respects.¹⁰ First, Amazon
23 has presented cogent evidence that there were significant periods of time when the metal
24 detectors at certain facilities were not operational and that multiple facilities ceased using the
25 metal detectors during the proposed class period. Second, Amazon has demonstrated that
26 facilities did not require mandatory screening of employees during certain periods, such as to

27 _____
28 ¹⁰ As discussed *infra*, this action also is distinguishable to the extent Amazon’s employees passed through the metal detectors without delay, as if passing through a “doorway.”

1 account for peak seasons when the lanes were subject to “flushing” to prevent long lines to pass
2 through security. (See Doc. 119-6, Declaration of Jimmy Oholt Decl. at ¶ 7 (During ‘Peak’
3 season . . . at ONT2 and LGB4 there is a ‘flush the line’ practice . . . “security officers would
4 “flush” the lanes and push associates through the detectors without requiring them to undergo
5 screening. If associates set off the metal detectors when security was pushing people through,
6 those associates did not have to go through secondary screening.”) In short, there were periods
7 of time in which the screening process was not mandatory, did not occur, or was not applied to
8 all putative class members. Unlike in *Lao*, the absence of any exit security screening is an
9 inconsistency in substance, not form.

10 It appears from their reply that Plaintiffs attempt to account for the cessation in the use
11 of metal detectors—at least for the Sorting Facilities—by arguing that “Defendants do not
12 dispute that employees were required to pass through the security to leave the building at the
13 end of their shifts, during meal periods, or during rest periods at facilities with **working exit**
14 **metal detectors.**” (Doc. 128 at 5) (emphasis added). The Court construes the phrase “facilities
15 with working exit metal detectors” as a proposed modification of the class definition for Classes
16 1 through 4. The Court may consider class definitions first raised in a plaintiff’s reply brief. *See,*
17 *e.g., Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D.
18 159, 161 n. 1 (C.D. Cal. 2002) (court considered amended definition proposed reply brief).
19 Moreover, the Court has the authority to redefine a class, and there is no reason the Court should
20 not consider the amended definition arguably proposed by the Plaintiffs. *See Garcia v.*
21 *Schlumberger Lift Sols.*, No. 1:18-cv-01261-DAD JLT, 2021 WL 1259737, at *18 (E.D. Cal.
22 Apr. 6, 2021). Nevertheless, the Court finds that the proposed amended definition does not
23 account for variations in the exit security screening procedures, including variations across
24 facilities, such as the number of detectors and lanes, and across time, such as when lanes were
25 “flushed” or when detectors were non-operational. The Court cannot construe these differences
26 as insignificant or, as Plaintiffs argue, related only to “damages issues,” because these
27 differences go to the very nature, scope, and breath of the challenged policy itself.

1 Amazon also suggests that the proposed exit screening classes (even as amended) cannot
2 be certified because employees were not required to bring anything that needed screening onto
3 the floor. Amazon argues that this fact matters because whether an associate had a choice in
4 dictating the amount of time spent in screening is highly relevant to, if not dispositive of, the
5 control inquiry. The Court does not find this argument wholly persuasive. In *Frlekin*, 8 Cal. 5th
6 1038, the California Supreme Court, at the request of the Ninth Circuit, decided the following
7 question of California law: “Is time spent on the employer’s premises waiting for, and
8 undergoing, required exit searches of packages, bags, or personal technology devices voluntarily
9 brought to work purely for personal convenience by employees compensable as ‘hours worked’
10 within the meaning of Wage Order 7?” *Frlekin*, 8 Cal. 5th at 1042. The California Supreme
11 Court concluded that the answer to this certified question was yes. *Id.* At issue was Apple’s
12 policy, which required all employees to undergo searches of their personal packages and bags
13 by a manager or security team member, having employees remove any type of item sold by
14 Apple, and verification of their personal technology with a personal technology log before
15 leaving the premises for any reason, including break, lunch, and end of shift. *Frlekin*, 8 Cal. 5th
16 at 1044.

17 After the California Supreme Court answered the certified question, the Ninth Circuit
18 held that time spent by class members waiting for and undergoing exit searches pursuant to
19 Apple’s policy was compensable as “hours worked” under California law. *Frlekin v. Apple,*
20 *Inc.*, 979 F.3d 639, 644 (9th Cir. 2020). The Ninth Circuit also indicated that disputed facts
21 regarding whether some class members did not bring bags or devices to work, were never
22 required to participate in checks, or worked in stores with remote break rooms where they stored
23 their belongings “pertain solely to individual remedies, not to the main legal question as to
24 class-wide relief.” *Id.*; see also *Figuroa v. Delta Galil USA, Inc.*, 2021 WL 1232695, at *4
25 (N.D. Cal. Mar. 30, 2021) (same). *Frlekin* suggests that the voluntary actions of employees to
26 avoid extensive screening is not dispositive of the main legal question.

27 To the extent Plaintiffs rely on the *Frlekin* rulings to contend that time spent waiting for
28 and undergoing exit security procedures is compensable under California law, the Court finds

1 the Ninth Circuit’s decision in *Frlekin* distinguishable in the current context because
2 individualized questions, including those involving “time spent,” will predominate over
3 common ones. In particular, as to time spent, Amazon argues that predominance cannot be met
4 because the bulk of the putative class are uninjured given that their exit screening experience
5 consisted of walking through a metal detector, as if through a doorway, with virtually no delay.
6 For those facilities with operational metal detectors, Plaintiffs submitted declarations detailing
7 their own individualized experiences with exit screening, but failed to provide the Court with
8 representative or statistical evidence demonstrating that all or nearly all putative class members
9 were injured or suffered any delay. Plaintiffs’ declarations are not sufficiently specific to
10 support their theory of injury resulting from any waiting time or actual time spent going through
11 the screening process. Instead, Plaintiffs’ statements are ambiguous, referring generally to
12 “minutes” spent from clock out through exit security, not the time waiting at the metal detectors.
13 Plaintiffs Avalos, Gianini, Palma, Trevino and Ward each declared: “I estimate that it took a
14 few minutes from the time I clocked out until I [went] through the exit security process
15 depending on the lines at the metal detectors.” (Doc. 98-13, Avalos Decl. at ¶ 6; 98-14, Gianini
16 Decl. at ¶ 6; 98-15, Palma Decl. at ¶ 6; 98-17, Trevino Decl. at ¶ 6; 98-18, Ward Decl. at ¶ 6.)
17 Plaintiff Quinteros’ declaration is equally unavailing because in alleging that the exit security
18 process “usually took a couple minutes to complete,” she lumps together all time spent exiting
19 the facility, including passing through the metal detectors and then proceeding to the break room
20 and lockers, picking up her items and then leaving the facility. (Doc. 98-16, Quinteros Decl. at
21 ¶ 5.) She also vaguely alleged that the security screening process “generally took at least two to
22 three minutes to complete.” (*Id.* at ¶ 6.) This anecdotal evidence does not support she waited
23 any amount of time at the metal detectors before exiting the premises. Plaintiffs’ expert, Dr.
24 Kriegler, also provides no representative or statistical evidence reflecting time spent in exit
25 security screening, envisioning only that a sampling of historical surveillance footage could be
26 used to measure how long it takes people to go through the mandatory security check process.
27 (Doc. 107-1, Kriegler Decl. at ¶¶ 53, 54.) He did not see surveillance footage of the facilities.
28 (*Id.* at ¶ 67.)

1 In contrast, Amazon’s expert, Dr. Ward, analyzed the time between clocking out and
2 exiting facilities and found that, over the period from July 12, 2013 to August 11, 2019, 89.5%
3 of all associates had a “minimum exit interval time . . . less than one minute.” (Doc. 123 at 14
4 and Table 5, Ex. A, Ward Expert Report.) Similarly, Amazon’s expert, Elizabeth Arnold,
5 following studies of a representative sample of the facilities, found that 81% of the employees
6 walked through the metal detectors with no delay,” and the “majority of time, passing through
7 the metal detectors takes seconds.” (Doc. 123, Ex. B, Arnold Decl. at ¶¶ 129, 133).

8 The parties dispute whether an exit security screening experience consisting of walking
9 through a metal detector, as if through a doorway, is an issue of liability or an issue of damages.
10 Plaintiffs contend that it is a question of damages such that individualized inquiries will not
11 defeat class certification. Yet, any contention that class members whose exit screening
12 experience consisted of simply walking through a metal detector without stopping are injured
13 makes little sense to the Court. The evidence presented to the Court is that only a few people
14 waited at the metal detectors and there is no evidence, as discussed above, that all or nearly all
15 putative class members waited to pass through exit security screening. Thus, whether there is
16 sufficient evidence that putative class members waited at the metal detectors or suffered any
17 delay passing through the metal detectors goes to the very heart of liability, and is not a
18 damages issue.

19 Moreover, “[w]hen individualized questions relate to the injury status of class members,
20 Rule 23(b)(3) requires that the court determine whether individualized inquiries about such
21 matters would predominate over common questions.” *Olean II*, 31 F.4th at 668. A district court
22 is in the best position to determine whether individualized questions, including those regarding
23 class members’ injury, “will overwhelm common ones and render class certification
24 inappropriate under Rule 23(b)(3). *Id.* at 669.

25 Having conducted a rigorous analysis of the evidence, the Court finds that individualized
26 inquiries about the injury status of class members passing through the metal detectors would
27 predominate over common questions. Amazon’s evidence alone suggests that *nearly all* of
28 purported class members experienced no delay – as if walking through a doorway – making it

1 clear that individualized inquiries would be required to identify the injury status of class
2 members, including at different times and different facilities. The Court finds that such
3 inquiries would overwhelm any common question concerning exit security screening.

4 ///

5 **Class 2. Unpaid Wages Class (Controlled Meal Periods)**

6 All non-exempt employees employed by Amazon.com Services, Inc. or
7 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
8 the period from July 12, 2014 and ending on the date of certification or as
9 otherwise determined by the Court who took a meal period and who were
10 required to go through a metal detector security process to leave the facility
11 during such meal period and were not paid for the time of such meal period.

12 Plaintiffs contend that during their meal periods, Amazon did not relinquish all control
13 over their activities because Amazon restrained employees from leaving the work premises
14 without passing through the mandatory security exit procedures. (Doc. 98-1 at 15.) Plaintiffs
15 rely on *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 968-72 (1995), to support
16 their position. In *Bono*, the court considered a policy where temporary workers were not given
17 a security clearance and were required to remain on the plant premises during their 30-minute
18 lunch period unless they made prior arrangements to reenter the plant after leaving for lunch. *Id.*
19 at 972. The court determined that “[w]hen an employer directs, commands or restrains an
20 employee from leaving the work place during his or her lunch hour and thus prevents the
21 employee from using the time effectively for his or her own purposes, that employee remains
22 subject to the employer’s control . . . [and] must be paid.” *Id.* at 975.

23 *Bono* is distinguishable from the instant case. According to the record, Amazon
24 associates clock out for meal breaks, cannot clock back in until 30 minutes have passed, and
25 have a three-minute grace period to clock back in. (Doc. 123, Ex. D, Carr Tr. 67:13–68:6; Ex. C,
26 Frauson Tr. 20:1–17.) Amazon’s policies also prohibit “off-the-clock” work by associates.
27 (Doc. 119-2, Ex. Y [Sealed].)

28 Additionally, there is no evidence that Amazon requires employees to remain within its
facilities during meal breaks or otherwise restrict whether those breaks can be taken outside of

1 the facility. Anecdotal evidence bears this out. (*See, e.g.*, Doc. 120, Ex. 1., Aceves Decl. at ¶
2 25 (“I normally eat my lunch outside . . . I can leave the facility during my meal break if I want
3 to”); Ex. 5, Arana Decl. at ¶ 25 (“many times I will go to my car and go buy food nearby . . .
4 and come back. Sometimes I just go sit outside.”); Doc. 121, Ex. 35, Dominguez Decl. at ¶ 13
5 (“I pick up my lunch from the Break Room where I keep my backpack, heat it up in one of the
6 microwaves, and head outside to the smoking and seating area which right outside the
7 building.”); Ex. 36, Dunn Decl. at ¶ 25 (“For my meal break, I spend it outside at the tables . . .
8 .”); Ex. 41, Garay Decl. at ¶ 14 (“I usually grab a snack from the Main Breakroom and take it to
9 my car or hang out outside on the steps and socialize.”). Further, Amazon’s expert, Dr. Ward,
10 provided evidence that Amazon’s associates take fully compliant meal breaks after passing
11 through screening. (Doc. 123 at 430, Ex. A, Ward Expert Report.) Almost all employees exited
12 the facility at least once during lunch, and more than half of the employees in the data had
13 exited the facility for “a full 30 minutes” during at least one of their meal breaks. (*Id.*)

14 The Court finds that Plaintiffs have not met their burden of demonstrating common
15 questions predominate for controlled meal period claims premised on exit security screening.
16 Amazon’s policy is facially compliant, Amazon authorizes 30 minutes for meal breaks, there is
17 no indication that the proffered 3-minute grace period would not account for any “exit
18 screening,” and it is not evident that associates were required to remain on the premises during
19 their meal period. The Court finds that individualized inquiries would be required to determine
20 which employees (associates) were not provided with compliant meal periods and that such
21 individualized inquiries would predominate over any common questions.

22 **Class 3. Meal Period Violations for Controlled Meal Periods**

23 All non-exempt employees employed by Amazon.com Services, Inc. or
24 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
25 the period from July 12, 2014 and ending on the date of certification or as
26 otherwise determined by the Court who worked a shift longer than six hours and
27 who were required to go through a metal detector security process to leave the
28 facility during such meal periods and were not paid a meal period premium for
such shifts.

1 Plaintiffs allege Amazon is liable for meal period premiums for each shift for which a
2 meal period was required under Labor Code § 226.7, i.e., shifts over six hours, by restraining
3 class members from leaving the premises for meal periods without first going through the
4 mandatory exit security screening and limiting where they can take a meal break.

5 For the reasons discussed above with respect to Class 1 and Class 2, the Court finds that
6 this class cannot be certified.

7 **Class 4. Rest Periods Violations for Controlled Rest Periods**

8 All non-exempt employees employed by Amazon.com Services, Inc. or
9 Amazon.com, Inc. at any of Defendants' facilities in California at any time during
10 the period from July 12, 2014 and ending on the date of certification or as
11 otherwise determined by the Court who worked a shift longer than three and one-
12 half hours and were subject to a policy that leaving company premises without
13 permission during assigned work hours was a serious infraction that subjected
14 them to termination or who were required to go through a metal detector security
15 process to leave the facility during the rest period and were not paid a rest period
16 premium for all such shifts.

17 The parties do not dispute that under California law, an employer must authorize and
18 permit each non-exempt employee a 10-minute rest period for each four hours of work.
19 Plaintiffs contend, however, that Amazon's use of mandatory security exit procedures prevented
20 employees from taking their rest periods off premises without going through mandatory security
21 exit procedures. Plaintiffs further contend that Amazon uniformly applied a policy and practice
22 of limiting where an employee can take a rest break and requiring employees to remain on
23 premises. Plaintiffs rely on *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269
(2016), as modified on denial of reh'g (March 15, 2017), for the proposition that during rest
24 periods employers must relieve employees of all duties and relinquish control over how
25 employees spend their time. (Doc. 98-1 at 18.)

26 Plaintiffs' arguments are not persuasive. First, representative evidence from Amazon's
27 expert, Elizabeth Arnold, demonstrated that the majority of time passing through the metal
28 detectors takes seconds. (Doc. 123, Ex. B, Arnold Decl. at ¶ 133.) Plaintiffs also do not allege
that this process took more than "a few minutes" from the time they clocked out until they went
through the exit security process, which included time to walk to the metal detectors. (Doc. 98-

1 13, Avalos Decl. at ¶ 6 (“a few minutes”); 98-14, Gianini Decl. at ¶ 6 (same); 98-15 Palma
2 Decl. at ¶ 6 (same); 98-16, Quinteros Decl. at ¶¶ 5 (“couple minutes;” “two to three minutes”);
3 98-17, Trevino Decl. at ¶ 6 (“a few minutes”); 98-18, Ward Decl. at ¶ 6 (“a few minutes”). This
4 general information, along with the undisputed fact that Amazon’s policies provided for 15-
5 minute rest breaks undercuts any inference that its exit security screening resulted in liability for
6 failing to provide fully compliant 10-minute rest periods. *See Figueroa*, 2021 WL 1232695, at
7 *6. The Court finds that even if associates were subject to brief delays while leaving the facility
8 for breaks, individualized questions about which employees did not in fact receive a full rest
9 break would predominate over any common question.

10 Second, Plaintiffs’ reliance on *Augustus* is misdirected. *Augustus* involved security
11 guards who were required to remain on call even during rest periods. 2 Cal. 5th at 260. Unlike
12 the security guards in *Augustus*, and as noted, Amazon provides longer rest breaks than required
13 by California law, authorizing 15 minutes for rest breaks, (Doc. 123, Ex. D, Carr Tr. 67:7– 9),
14 there is no evidence that Amazon employees were required to remain on call, and as discussed
15 below, rest breaks could be taken outside the facility. As Amazon argues, even if associates
16 were genuinely limited in what they could do for their breaks, individualized questions
17 predominate over any common questions.

18 The Court recognizes, however, that the proposed rest break class is alternatively
19 premised on a purported “policy that leaving company premises without permission during
20 assigned work hours was a serious infraction that subjected them to termination.” Although
21 Plaintiffs claim that Amazon has not disputed the existence of such a policy, with the exception
22 of Plaintiff Linda Quinteros, the declarations submitted by Plaintiffs do not indicate that
23 employees were required to ask permission to leave the premises during rest periods, only that
24 they had to go through exit security screening.¹¹ (*See generally* Doc. 98-13, Avalos Decl.; 98-
25 14, Gianini Decl.; 98-15, Palma Decl.; 98-17, Trevino Decl.; 98-18, Ward Decl.).

27 ¹¹ Plaintiff Quinteros, who worked at Amazon’s Patterson facility (OAK3), claims she was not permitted to leave
28 the facility during rest breaks. (Doc. 98-16, Quinteros Decl. at ¶ 13 (“we were not permitted to leave the facility
premises during rest breaks”).

1 Plaintiffs have not presented evidence that employees were terminated or otherwise
2 subject to disciplinary action if they left to take their rest breaks outside the facility without first
3 seeking permission. In other words, Plaintiffs have not persuasively demonstrated that any such
4 policy was enforced. At oral argument, Plaintiffs represented that Amazon's person most
5 knowledgeable, Michele Frauson, testified that Amazon's policies were provided to employees
6 during the on-boarding process, including its policy that leaving the premises without
7 permission was a serious infraction, and that employees were required to comply with those
8 policies. A review of the relevant testimony does not support Plaintiffs' underlying contention
9 that Amazon's policy regarding leaving the premises without permission was, in fact, enforced
10 for rest breaks. Rather, Ms. Frauson testified only generally that Amazon expects its employees
11 to adhere to its policies. (Doc. 98-3 at 51, Exhibit 4 to Dion-Kindem Decl., Frauson Tr. 62:17-
12 19.)

13 Critically, Amazon has submitted evidence from putative class members who left the
14 facility during rest breaks with no mention of permission being required or that they were
15 terminated or disciplined for doing so. (*See generally* Doc. 123, Ex. GG.) Amazon also has
16 submitted declarations from putative class members from the Patterson facility (OAK3), where
17 Plaintiff Quinteros worked, who indicated that they could leave the facility during rest breaks
18 with no mention of permission. (*See, e.g.*, Doc. 121, Jensen Decl. at ¶ 16 ("I can also go outside
19"); 122, Ex. 83, Valencia Decl. at ¶ 16 ("I could also leave the facility for my breaks and go
20 outside and/or to my car, if I wanted to."); Ex. 91, Zamarron Decl. at ¶ 14 ("For my [rest]
21 breaks, I either go to the locker room at the entrance of OAK3 or my car, depending on if I
22 drove or not"). Amazon's expert, Dr. Ward, found evidence that 51.3% of all employees exited
23 the facility outside of meal times for at least 10 minutes and, for those employees with 50 shifts
24 or more, 73.7% of those employees exited for at least 10 minutes at some time during their
25 employment over the period July 12, 2013 through August 11, 2019. Doc. 123 at 16-17, Ex. A,
26 Ward Expert Report).

27 In the absence of evidence that Amazon uniformly enforced any policy requiring
28 permission to leave the facility during rest breaks, there does not appear to be a question that

1 requires common resolution by the Court. “[T]he mere existence of a facially defective written
2 policy—without any evidence that it was implemented in an unlawful manner—does not
3 constitute significant proof ... that a class of employees was subject to an unlawful practice.”
4 *Davidson v. O’Reilly Auto Enterprises, LLC*, 968 F.3d 955, 968 (9th Cir. 2020) (internal
5 quotation marks and citation omitted). Any suggestion that requiring employees to pass through
6 metal detectors equates with requiring employees to obtain permission before leaving the
7 premises is not persuasive.

8 **2. Rounding Classes (5 & 7)**

9 **Class 5. Improper Rounding Class**

10 All non-exempt employees employed by Amazon.com Services, Inc. or
11 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
12 the period from July 12, 2014 and ending on the date of certification or as
13 otherwise determined by the Court who were subject to a rounding practice that
14 resulted in them being paid less than they would have received had no such
15 rounding practice been utilized for such employees.

14 **Class 7. Third Rest Period Class**

15 All non-exempt employees employed by Amazon.com Services, Inc. or
16 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
17 the period from July 12, 2014 and ending on the date of certification or as
18 otherwise determined by the Court who were scheduled to work a 10-hour shift
19 and worked more than 10 hours and who were not authorized or permitted to take
20 a third uninterrupted, duty-free, and control-free 10-minute rest period and did not
21 receive one hour of pay at the class member’s regular rate of compensation for
22 such day.

21 Plaintiffs contend that Amazon implemented a uniform policy and practice of
22 automatically rounding time-keeping entries, generally to conform to shift schedules, and that
23 such policy resulted in class members being paid less than all hours they worked (Class 5) and
24 denied class members who were scheduled to work 10-hour shifts, but in reality, worked more
25 than 10 hours, a third rest period (Class 7).

26 California does not have a statute or regulation expressly addressing the permissibility of
27 using a rounding policy, but state courts have followed the federal regulatory standard. *See*
28 *See’s Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 903 (2012) (“The policies

1 underlying the federal regulation—recognizing that time rounding is a practical method for
2 calculating work time and can be a neutral calculation tool for providing full payment to
3 employees—apply equally to employee-protective policies embodied in California Labor law.”).

4 The relevant regulation states:

5 It has been found that in some industries, particularly where time clocks are used,
6 there has been the practice for many years of recording the employees’ starting
7 time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or
8 quarter of an hour. Presumably, this arrangement averages out so that the
9 employees are fully compensated for all the time they actually work. For
10 enforcement purposes this practice of computing working time will be accepted,
11 provided that it is used in such a manner that it will not result, over a period of
12 time, in failure to compensate the employees properly for all the time they have
13 actually worked.

14 29 C.F.R. § 785.48(b). “[A]n employer’s rounding practices comply with § 785.48(b) if the
15 employer applies a consistent rounding policy that, on average, favors neither overpayment nor
16 underpayment.” *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1126 (C.D. Cal. 2011)
17 (citations omitted). Under California law, an employer is permitted to adopt a rounding policy
18 so long as it is “fair and neutral on its face and ‘it is used in such a manner that it will not result,
19 over a period of time, in failure to compensate the employees properly for all the time they have
20 actually worked.’” *See’s Candy*, 210 Cal. App. 4th at 907 (quoting 29 C.F.R.
21 § 785.48); *see also Sali*, 909 F.3d at 1009; *Corbin v. Time Warner Entm’t-Advance/Newhouse*
22 *P’ship*, 821 F.3d 1069, 1076 (9th Cir. 2016).

23 Plaintiffs acknowledge that Amazon rounds time punches up and down, which allows
24 associates to both punch in late and punch out early. (Doc. 110-1 at 7). Plaintiffs essentially
25 contend, however, that this rounding policy underpays employees and, in certain instances,
26 deprives employees of a third rest break. Plaintiffs provide a declaration from Brian Kriegler,
27 Ph.D., opining that 88.0% of putative class members had fewer hours on the clock based on
28 rounded timestamps and were potentially underpaid due to rounding (60.1% of employee shifts,
71.4% of employee workweeks, and 88.0% of employees had fewer hours on the clock using
rounded timestamps) and that 28.6% of putative class members had a shift length over 10 hours

1 based on unrounded timestamps, but was less than or equal to 10 hours based on rounded time
2 stamps. (Doc. 107-1 at 20-21, 23.)

3 Amazon does not dispute the existence of its rounding policy and instead points out that
4 Plaintiffs' rounding classes (Classes 5 and 7) rely on an assumption that Amazon's "uniform
5 rounding policy" resulted in employees being "routinely underpaid," and deprived of a third rest
6 break when their shift exceeded 10 hours. (Doc. 119 at 21-22.) Citing *See's Candy*, Amazon
7 argues that it is only liable if its policy consistently deprived employees of pay for "time they
8 have actually worked." (*Id.*) Amazon urges that the existence of an unlawful rounding policy
9 requires "foundational evidence" that employees were actually working when they were clocked
10 in and were not being paid due to rounding, thus requiring individualized inquiries. (*Id.* at 22.)
11 Amazon provides evidence that some employees clocked in early, but spent that time engaging
12 in non-work activities, such as socializing, getting coffee, grabbing a snack or using the
13 restroom. Similarly, Amazon provides evidence that some employees engaged in a variety of
14 non-work activities at the end of their shifts, but before clocking out, such as socializing or
15 visiting the breakrooms. (*Id.* at 23.)

16 Amazon asserts that district courts within this Circuit have denied certification of classes
17 that require similar individualized inquiries. For example, *In Pryor v. Aerotek Scientific, LLC*,
18 278 F.R.D. 516 (C.D. Cal. 2011), the court concluded that individual questions predominated
19 where the evidence showed that associates would log in to their work computers upon arriving
20 at work, but then spend time eating or socializing before accepting calls. *Id.* at 535–36. The
21 *Pryor* court found there appeared to be too many variations to determine if an employee was
22 paid for fewer hours than actually worked, including whether they performed non-work
23 activities. *Id.* at 536. Likewise, in *Shiferaw v. Sunrise Senior Living Management, Inc.*, 2014
24 WL 12585796, at *9–11 (C.D. Cal. June 11, 2014), the court denied certification of a rounding
25 class where variation existed as to whether employees were actually working when they had
26 clocked in before their shifts started or had clocked out after their shifts ended, where evidence
27 showed that some employees clocked in early, but spent that time talking to co-workers,
28 drinking coffee, talking on the phone, or waiting for their shifts to start. *Id.* at *9.

1 Plaintiffs contend that the Ninth Circuit in *Sali*, 909 F.3d 996, rejected an argument
2 similar to Amazon’s that employees are not working when engaging in personal activities.
3 (Doc. 128 at 13.) In *Sali*, the Ninth Circuit considered certification of a rounding-time class and
4 found that the district court erred by assuming that the only question to be decided was whether
5 employees engaged in work activities even if they were not required to do so. *Id.* at 1010. The
6 *Sali* court identified that under California law, time is compensable when an employee is
7 working *or* under the control of his or employer. Accordingly, employees were also actually
8 working if they were subject to the employer’s control even if they were not engaging in work
9 activities. In so identifying, the *Sali* court determined that the district court failed to consider
10 whether the employees could establish on a class-wide basis that they were subject to the
11 employer’s control, such as if they were required to remain on premises during the grace period,
12 even if they were not always engaged in work-related activities during that time. *Id.* The Ninth
13 Circuit indicated that the “employer control” question required “an employer-focused inquiry
14 into whether [the employer] had a policy or practice that restricted [employees] in a manner that
15 amounted to employer control during the period between their clock-in and clock-out times and
16 their rounded shift-start and shift-end times” and that determination of this question did not
17 depend on individualized factual questions. *Id.* at 1010-11.

18 As to the question of whether employees were actually working, the Court finds that
19 Amazon has demonstrated that individualized inquiries would be required to determine whether
20 its employees were actually working during those times when they clocked-in early or clocked-
21 out late. *See Shiferaw*, 2014 WL 12585796, at *9. Plaintiffs attempt to distinguish *Shiferaw* by
22 asserting that the court found common questions as to rounding. (Doc. 128 at 15.) While
23 Plaintiffs are correct, the *Shiferaw* court ultimately found that individualized inquiries
24 predominated in resolving the claims of the rounding class and denied certification on that basis.
25 *Shiferaw*, 2014 WL 12585796, at *9. Furthermore, in this case, Plaintiffs have not
26 demonstrated that the putative class members were working or expected to be working during
27 the time they were clocked in before their shifts began. Indeed, Plaintiffs’ own declarations do
28 not provide affirmative evidence that they were working after clocking-in, but before shift start.

1 (See Doc. 98-13, Avalos Decl. at ¶ 4; 98-14, Gianini Decl. at ¶ 3; 98-15, Palma Decl. at ¶ 3; 98-
2 16, Quinteros Decl. at ¶ 4 (indicating that after clocking-in, it would then take “at least five
3 more minutes to walk to my work location and prepare for the shift start-up meeting at the
4 scheduled shift start time”); 98-17, Trevino Decl. at ¶ 3; 98-18, Ward Decl. at ¶ 8 (“In order to
5 be on time for my shift start up meeting, or stand-up meeting, I would have to arrive at the
6 facility early so I could go through the above process [swiping badge to pass through the
7 turnstile to get to the production floor in the facility] and clock in and then walk to my assigned
8 work location. Amazon would not record this at time worked, as my time punches for before
9 my scheduled shift time would be rounded forward to reflect the scheduled shift start time.”).

10 Additionally, record evidence undermines assertions that employees who clocked-in
11 early were in fact working. Associates testified that they could not begin work until after the
12 stand-up meeting at shift start because the conveyor belts only begin moving after the meeting,
13 (Doc. 121. Ex. 37, Flores Decl. ¶ 12 (“I do not work before the stand-up starts and we cannot do
14 any because the conveyer belts are not functioning.”), or they do not receive their assignment
15 for the day, or receive their scanner, until the stand-up, (Doc.122, Ex. 84, Vazquez Decl. ¶ 6
16 (“There is no work for me to do until after the stand-up, because my work assignment is posted
17 on a board in the area where the stand-up meeting is held.”); Ex. 81, Tilley Decl. ¶ 6 (“There is
18 no work for me to do until after the stand-up, because at the beginning of my shift, I am
19 supposed to go to stand-up first . . . to get my scanner.”). The time entries proffered by
20 Plaintiffs are not sufficient on their own to demonstrate that the proposed class members must
21 be paid between timestamps. *Shiferaw* 2014 WL 12585796, at *10 (finding “time entries by
22 themselves do not demonstrate that proposed subclass members must be paid for the time spent
23 between the time punch and the employee’s scheduled start time”). The evidence and
24 statements evince individual actions by putative class members, indicating that the Court would
25 need to make individualized inquiries to determine whether the putative class acquired
26 compensable time from the time they clocked in up to their shift start times. *See Walter*, 2023
27 WL 3076786, at *10 (declining to certify pre-shift rounding class where evidence demonstrated,
28 among other issues, that “employees clocked in and spent the time up until the start of their

1 shifts as they pleased, such as by chatting with others, heating up their breakfast, getting coffee,
2 going to the restroom, or simply waiting for their pre-shift meetings to commence”).

3 As to compensable time based on the “employer control” theory, this case is distinct
4 from the example of control cited in *Sali*, i.e., employees required to remain on the premises
5 during the grace period. 909 F.3d at 1010. Here, there is no evidence that employees could not
6 leave during the grace period or were otherwise prevented from using the grace period to clock-
7 in late or clock-out early and leave the premises.¹² Amazon also has presented evidence that
8 employees used the five-minute rounded grace period to clock in late or clock out early without
9 consequence. (*See, e.g.*, Doc. 122, Ex. 73, Rocha Decl. ¶ 8 (clocking in after shift start “does not
10 affect my pay”); Ex. 92, Zarate Decl. ¶ 6 (“Even though I typically clock in after my 6:30 a.m.
11 shift start time, it is not a big deal. Nobody cares.”); Doc.120, Ex. 18, Castelan Decl. ¶ 9
12 (despite arriving early, “sit in my car until” after shift start)) or to leave early (*See* Doc. 120, Ex.
13 4, Angeles Decl. ¶ 14 (“My shift officially ends at 4:30 a.m. I almost always leave early.”
14 “Because of the 5 minute grace period, I can clock out at 4:25 a.m. and still get credit to
15 working to 4:30 a.m.”). In short, there is no indication that Amazon uniformly exercises control
16 over employees during the grace periods or that the rounding policy had a uniform impact on
17 employees. Accordingly, determination of the employer-control question is not readily capable
18 of class wide resolution and would instead require individualized inquiries.

19 For these reasons, the Court finds that Plaintiffs have not met their burden of
20 demonstrating common questions predominate for claims premised rounding.

21 **3. Meal Break Waiver Class**

22 **Class 6. Invalid Second Meal Period Waiver Class**

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24
25 ¹² There also is no evidence that Amazon prevented its associates from clocking out, leaving the
26 premises, and clocking back in prior to the start of their shifts. This relates to the question of whether
27 putative class members were under Amazon’s control. *See, e.g., Walter*, 2023 WL 3076786, at *10
(finding unclear whether all putative class members were under employer’s control where no evidence
28 presented that employer prohibited individuals during rounding period from clocking out, leaving the
premises, and clocking back in by the start of their shifts).

1 All non-exempt employees employed by Amazon.com Services, Inc. or
2 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
3 the period from July 12, 2014 and ending on the date of certification or as
4 otherwise determined by the Court who signed any meal period waiver in the
5 forms attached as Exhibit 12 to the Declaration of Peter R. Dion-Kindem in
6 Support of Motion for Class Certification and worked more than 10 hours in a
7 day, did not receive a second 30 minute meal period, and did not receive one hour
8 of pay at the class member’s regular rate of compensation for such day.

9 Plaintiffs seek to certify the subclass of employees who executed specific meal break
10 waiver forms and who worked more than 10 hours a day and were not provided with a second
11 30-minute meal period. (Doc. 98-1 at 20.) The specific meal break waiver forms at issue are
12 attached as Exhibit 12 to the declaration of Peter Dion-Kindem in support of the class
13 certification motion, one signed in 2017 and one signed in 2018. (Doc. 98-3, Ex. 12.) Plaintiffs
14 contend that these meal break waiver forms are facially invalid and unenforceable because, in
15 addition to being ambiguous and self-contradictory, they fail to accurately disclose employees’
16 meal break rights and also purport to waive rights which cannot be waived. (Doc. 128 at 15.)
17 Plaintiffs assert that whether such waivers are legally effective is a legal issue that the Court can
18 resolve on a class-wide basis simply by examining the waivers and applying applicable meal
19 period waiver requirements.

20 Amazon counters that whether a waiver is “ambiguous” requires an individualized
21 assessment of the waiver and each associate’s interpretation and understanding of it, citing
22 California Labor Code § 512. Because California law requires only “mutual consent”—not a
23 writing—to waive a meal period, Amazon asserts that determining whether consent was given
24 would necessitate individualized, associate-by-associate and shift-by-shift inquiries. Amazon
25 further asserts that determining the validity of the waiver is only the first step, and Plaintiffs
26 “must also show that they can prove on a classwide basis who was entitled to, but did not
27 receive, a second meal break—which Plaintiffs do not even attempt to do.” (Doc. 119 at 26.)
28 Amazon therefore concludes that these individualized issues preclude certification.

The issue of whether these specific meal break waiver forms are facially valid presents a
common question capable of class-wide resolution. *See Garcia v. Wal-Mart Stores, Inc.*, No.

1 CV 16-01645 TJH (ROAx), 2018 WL 4959824, at *2 (C.D. Cal. Sept. 28, 2018) (granting
2 certification of class composed of employees who worked a 10-hour shift but were not given a
3 second meal period based on an invalid meal waiver form; “overarching question of law is
4 whether the meal waiver form was valid”); *Saechao v. Landry’s Inc*, No. C 15-00815 WHA,
5 2016 WL 1029479, at *4 (N.D. Cal Mar. 15, 2016) (rejecting defendant’s argument that meal
6 break waiver theory relied on individual questions regarding each employee’s understanding of
7 the effect of the meal-break waiver where theory turns on “the facial validity of the meal-break
8 waiver form – a question of law capable of resolution on a class-wide basis.”); *cf. Clark v. QG*
9 *Printing II, LLC*, No. 1:18-cv-00899-AWI-EPG, 2020 WL 5604290, at *16 (E.D. Cal. Sept. 18,
10 2020) (“it appears that determinations as to the validity of QG Printing’s prospective waivers
11 and QG Printing’s failure to provide premium pay automatically will drive resolution of most—
12 if not all—claims for the Meal Break Waiver Subclass and that any individualized inquiries
13 would pertain primarily to damages (based on the number of meal breaks missed based on
14 invalid waivers and the amount of premium payment improperly withheld”). The limited
15 question of facial validity does not depend upon an individualized assessment of each
16 employee’s understanding of the waiver form and any individualized inquiries would pertain
17 primarily to damages.

18 **4. Wage Statement Class**

19 **Class 8. Direct Violation of Section 226(a)(2) Wage Statement Class**

20 All non-exempt employees employed by Amazon.com Services, Inc. or
21 Amazon.com, Inc. in California at any time during the period from July 12, 2016
22 and ending on the date of certification or as otherwise determined by the Court
23 who did not receive an itemized statement in writing accurately showing the total
24 hours worked by the employee where the wage statements reflect a line item for
regular hours worked and at least one other line item for other types of hours
worked other than regular overtime or double time, such as shift differential hours
worked.

25 California Labor Code section 226(a) requires an employer to provide his or her
26 employee with an accurate itemized statement in writing showing total hours worked by the
27 employee. Cal. Labor Code § 226(a)(2). An employee who is injured as a result of the
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1 employer’s “knowing and intentional failure” to comply with these requirements may recover
2 civil penalties. Id. § 226(e). An employee is deemed to suffer injury if the employer fails to
3 provide the required information and the employee cannot “promptly and easily determine” the
4 total amount of hours worked. Id. § 226(e)(2)(B)(i).

5 Plaintiffs allege that Amazon violated section 226(a)(2) by failing to provide Plaintiffs
6 and other class members with wage statements that accurately listed the total hours worked.
7 (Doc. 98-1 at 22.) Plaintiff Trevino provides an exemplar: his 4/21/2017 wage statement shows
8 70 regular hours, 11.53 overtime hours, and 2.6 double time hours. It also reflects that every
9 recorded hour of work qualified for a shift differential. Plaintiffs assert that although Plaintiff
10 Trevino worked a total of 84.13 hours during this pay period, when the hours listed are added
11 together, they add up to 168.26 hours. (Doc. 98-17 at 9, Trevino Decl., Ex. 2.) Plaintiffs argue
12 that the wage statement effectively “double-counted” the total hours worked when it reflected
13 shift pay hours and shift pay overtime hours in addition to regular and overtime hours. (Doc.
14 98-1 at 23.) Plaintiffs assert that whether Amazon’s wage statements comply with Section
15 226(a)(2) requirements is a legal issue that does not involve individualized issues but can be
16 resolved as a matter of law through an examination of the wage statements.

17 Amazon counters that Plaintiffs cannot establish commonality and predominance on this
18 claim. First, Amazon asserts that Plaintiffs’ bid to certify this class rests on a false presumption
19 that every class member suffered an injury because some wage statements did not include a
20 “total hours worked” line item. According to Amazon, many associates received wage
21 statements that explicitly listed total hours worked and, as of January 1, 2019, all Amazon wage
22 statements displayed a total hours worked line. (Doc. 119 at 28; Doc. 119-3, Osborne Decl. at ¶
23 5.)

24 The Court agrees and finds that the alleged inaccuracies described by Plaintiff Trevino
25 are limited to a certain subset of wage statements and, at a minimum, do not include wage
26 statements issued beginning January 1, 2019, as those statements displayed a total hours worked
27 line. Thus, the proposed class definition would need to be modified to capture wage statements
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1 listing shift pay differentials, but not listing a separate line item for “total hours worked,” and
2 also limiting the class period through December 31, 2018.

3 For those subset of wage statements that did not explicitly list total hours worked (based
4 on the above modification of the class definition), Amazon next asserts that Labor Code section
5 226(e)(2)(B) presumes injury only if the employee cannot “promptly and easily” determine
6 from the wage statement the total hours worked. Amazon avers that associates could use simple
7 arithmetic to determine the total hours worked and thus injury cannot be established. (Doc. 119
8 at 27.)

9 To the extent Amazon relies on this argument to challenge class certification, the Court
10 does not find it persuasive. Whether Amazon’s wage statements comply with § 226(a) is a
11 merits question, not a class certification question. *See Arroyo v. Int’l Paper Co.*, No. 17-cv-
12 06211-BLF, 2019 WL 1508457, at *5 (N.D. Cal. Apr. 4, 2019) (finding employer’s argument
13 that injury could not be established from wage statement because simple arithmetic allowed the
14 employee to ascertain all of the required information was a merits question, not a class
15 certification determination). It may be determined on a classwide basis whether the statements
16 complied with § 226(a). *Id.*; *see also Flores v. Dart Container Corp.*, No. 2:19-cv-0083 WBS
17 JDP, 2021 WL 107239, at *3, *6 (E.D. Cal. Jan. 12, 2021) (finding class shared common legal
18 questions, including whether defendants’ policy of failing to provide wage statements that
19 accurately identified the total hours worked during the pay period violated California Labor
20 Code section 226 and this question predominated over questions affecting only individual class
21 members); *Parker v. Cherne Contracting Corp.*, No. 18-cv-01912-HSG, 2020 WL 6822913, at
22 *11 (N.D. Cal. Nov. 20, 2020) (concluding for purposes of class certification that whether wage
23 statements at issue were legally deficient was a common question of law and fact that
24 predominated over individual issues).

25 As a final matter, Amazon asserts that even if entitled to a presumption of injury under
26 section 226, Plaintiffs must prove that all class members were actually injured for purposes of
27 Article III standing and that determining whether any class member suffered injury would
28 require individualized questioning. (Doc. 119 at p. 28.) However, whether Amazon provided

1 accurate and complete wage statements, and whether putative class members could promptly
2 and easily determine information from them, are common questions with a common form of
3 proof. *See, e.g., Fodera v. Equinox Holdings, Inc.*, 341 F.R.D. 616, 633 (N.D. Cal. 2022)
4 (rejecting employer’s argument that individualized issues over whether employees suffered
5 actual injuries would predominate over any common questions). The Court finds that
6 individualized inquiries into standing would not predominate over common questions for this
7 circumscribed class as those class members not entitled to damages may be “weeded out” at the
8 claims phase. *See Utne v. Home Depot U.S.A., Inc.*, No. 16-cv-01854-RS, 2022 WL 1443338,
9 at *8 (N.D. Cal. May 6, 2022) (citing *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2208 n.4
10 (2021) (“We do not here address the distinct question whether every class member must
11 demonstrate standing before a court certifies a class.”)).

12 **5. Derivative Classes**

13 **Class 9. Derivative Wage Statement Class**

14 All members of any of Classes 1 through 7 who, during the period from July 12,
15 2016 and ending on the date of certification or as otherwise determined by the
16 Court, were not provided with accurate itemized wage statements with all the
information required by Labor Code Section 226(a)(1), (2), (5) and (9).

17 **Class 10. Section 203 Subclass**

18 All members of any of Classes 1 through 7 who, during the period from July 12,
19 2014 and ending on the date of certification or as otherwise determined by the
20 Court, were either voluntarily or involuntarily separated from their employment
and did not timely receive all wages owing pursuant to Labor Code Section 201 or
21 202.

22 **Class 11. UCL Class**

23 All non-exempt employees employed by Amazon.com Services, Inc. or
24 Amazon.com, Inc. at any of Defendants’ facilities in California at any time during
25 the period from July 12, 2013 and ending on the date of certification or as
otherwise determined by the Court who are owed restitution as a result of
26 Defendants’ business acts and practices that are found to be unlawful, deceptive,
and/or unfair.

27 For purposes of derivative Classes 9 and 10, the Court has found class certification
28 appropriate only for Class 6 (Meal Period Waiver). For purposes of derivative Class 11, the

1 Court has found class certification appropriate only for Class 6 (Meal Period Waiver) and, as
2 modified, Class 8 (Wage Statements).

3 **C. Superiority**

4 As stated above, the second part of certification under Rule 23(b)(3) is superiority. The
5 superiority requirement tests whether “classwide litigation of common issues will reduce
6 litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d
7 1227, 1234 (9th Cir. 1996). “If each class member has to litigate numerous and substantial
8 separate issues to establish his or her right to recover individually a class action is not superior.”
9 *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1192 (9th Cir. 2001).

10 Plaintiffs argue that a class action is the superior method of adjudication because their
11 claims are based on common policies and practices and there is a strong likelihood that putative
12 class members would not bring individual actions. Plaintiffs further argue that calculating
13 damages is easily manageable, relying on the Declaration of Dr. Brian Kriegler. For Class 6
14 (Meal Period Waivers), the number of second meal periods to which class members were
15 entitled can be established by Amazon’s time records. For Class 8 (Wage Statements), statutory
16 penalties recoverable under Section 226(e) can be calculated using the class members wage
17 statements and Amazon’s payroll records. For Class 9 (Derivative Wage Statement), the
18 violations and amount of statutory penalties can be calculated using Amazon’s payroll records.
19 For Class 10 (Termination Pay Claims), damages can be calculated from Amazon’s payroll
20 records. For Class 11(UCL Claims), the UCL remedy can be calculated using the same
21 methodology used in calculating the damages recoverable for substantive wage claims. (Doc.
22 110-1).

23 Amazon counters that Plaintiffs have not presented a manageable trial plan, primarily
24 taking issue with Dr. Kriegler’s expert report and the purported failure to address how second
25 meal break waiver claims will be tried. Amazon also finds it troubling that Plaintiffs failed to
26 account for Amazon’s individual defenses, including whether various iterations of the second
27 meal period waivers were in fact ambiguous and unintelligible and whether an employee was
28 able to determine the total hours worked on his wage statement using simple arithmetic.

1 Having considered Amazon’s arguments, the Court finds that class wide litigation will
2 promote efficiency by addressing potential defenses to liability for the two non-derivative
3 classes--Class 6 (Meal Period Waiver) and Class 8 (Wage Statement). Amazon has asserted
4 defenses to the merits of these claims, arguing that the meal period waivers are valid and that
5 associates could use simple arithmetic to determine the total hours worked on their wage
6 statements. Resolution of such issues may streamline the litigation and potentially resolve the
7 entirety of the class action, including the derivative claims.

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10 **V. MOTION TO EXCLUDE PLAINTIFFS’ EXPERT DR. BRIAN KRIEGLER**

11 Amazon moves to exclude the testimony and opinions of Plaintiffs’ expert, Dr. Brian
12 Kriegler, submitted in support of Plaintiffs’ motion for class certification. (Doc. 125.) For the
13 majority of proposed classes, the Court will recommend denial of class certification. In
14 reaching that recommendation, the Court did not substantively rely on Dr. Kriegler’s testimony
15 to assess whether Plaintiffs’ claims were susceptible to class-wide resolution or whether
16 individual questions predominated. Therefore, it is unnecessary to address substantial portions
17 of Amazon’s motion seeking to exclude Dr. Kriegler’s report, particularly with respect to
18 Classes 1 through 5 and Class 7.

19 As to the remaining classes, Classes 6 (Meal Period Waiver) and 8 (Wage Statement)
20 (and the derivative Classes 9 through 11), it also was unnecessary for the Court to rely on Dr.
21 Kriegler’s report for a determination as to whether these classes are susceptible to class wide
22 resolution. Class 6 is premised on the facial validity of specific meal break waiver forms, a
23 legal question that does not require expert testimony. Class 8 is likewise premised on a legal
24 question susceptible to resolution without expert testimony; that is, whether certain wage
25 statements violated Labor Code § 226(a). Accordingly, the Court will recommend that
26 Amazon’s motion to exclude Plaintiffs’ expert be DENIED as moot.

27 **IV. CONCLUSION AND RECOMMENDATION**

28 Based on the foregoing, IT IS HEREBY RECOMMENDED as follows:

1 1. Plaintiffs' Motion for Class Certification is GRANTED IN PART and DENIED IN
2 PART as follows:

3 a. Plaintiffs' motion for class certification be DENIED as to the following
4 classes: Class 1 Unpaid Wages Class (Hours Worked Claim Based on
5 Control of Employees through Mandatory Exit Security Procedures); Class 2
6 Unpaid Wages Class (Controlled Meal Periods); Class 3 Meal Period
7 Violations for Controlled Meal Periods; Class 4 Rest Periods Violations for
8 Controlled Rest Periods; Class 5 Improper Rounding Class; and Class 7
9 (Third Rest Period Class);

10 b. Plaintiffs' motion for class certification be GRANTED as to the
11 following classes:

12 Class 6 (Invalid Second Meal Period Waiver Class) defined as:

13 All non-exempt employees employed by Amazon.com Services, Inc. or
14 Amazon.com, Inc. at any of Defendants' facilities in California at any time
15 during the period from July 12, 2014 and ending on the date of
16 certification or as otherwise determined by the Court who signed any meal
17 period waiver in the forms attached as Exhibit 12 to the Declaration of
18 Peter R. Dion-Kindem in Support of Motion for Class Certification and
19 worked more than 10 hours in a day, did not receive a second 30 minute
20 meal period, and did not receive one hour of pay at the class member's
21 regular rate of compensation for such day.

22 Class 8. Direct Violation of Section 226(a)(2) Wage Statement Class defined as:

23 All non-exempt employees employed by Amazon.com Services, Inc. or
24 Amazon.com, Inc. in California at any time during the period from July
25 12, 2016 and **December 31, 2018** who did not receive an itemized
26 statement in writing accurately showing the total hours worked by the
27 employee where the wage statements reflect a line item for regular hours
28 worked and at least one other line item for other types of hours worked
other than regular overtime or double time, such as shift differential hours
worked.

29 Class 9. Derivative Wage Statement Class defined as:

30 **All members of Class 6** who, during the period from July 12, 2016 and
31 ending on the date of certification or as otherwise determined by the
32 Court, were not provided with accurate itemized wage statements with all
33 the information required by Labor Code Section 226(a)(1), (2), (5) and (9).

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Class 10. Section 203 Subclass defined as:

All members of Class 6 who, during the period from July 12, 2014 and ending on the date of certification or as otherwise determined by the Court, were either voluntarily or involuntarily separated from their employment and did not timely receive all wages owing pursuant to Labor Code Section 201 or 202.

Class 11. UCL Class defined as:

All non-exempt employees employed by Amazon.com Services, Inc. or Amazon.com, Inc. at any of Defendants’ facilities in California at any time during the period from July 12, 2013 and ending on the date of certification or as otherwise determined by the Court who are owed restitution as a result of Defendants’ business acts and practices that are found to be unlawful, deceptive, and/or unfair.

2. Defendants’ Motion to Exclude Plaintiffs’ Expert Dr. Brian Kriegler be DENIED as moot.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these findings and recommendations, the parties may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 26, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE