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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH VIGIL, on behalf of himself and
all others similarly situated

Plaintiffs,

v.

MICHAELS STORES PROCUREMENT
COMPANY, INC., a Delaware
corporation; DAK RESOURCES, INC., a
Florida Corporation; and DOES 1 through
50, inclusive,

Defendant.

No. 2:23-cv-00163-TLN-AC

ORDER

This matter is before the Court on Defendant Michaels Stores Procurement Company, Inc.'s ("Defendant") Motion to Deny Class Certification in Part.¹ (ECF No. 17.) Plaintiff Joseph Vigil ("Plaintiff") filed a statement of non-opposition. (ECF No. 20.) Also before the Court is Defendant's Motion for Partial Summary Judgment. (ECF No. 23.) Plaintiff filed an opposition (ECF No. 25) and Defendant filed a reply (ECF No. 27). For the reasons set forth below, the Court GRANTS Defendant's Motion to Deny Class Certification in Part and GRANTS Defendant's Motion for Partial Summary Judgment.

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¹ Defendant DAK Resources, Inc. ("DAK Resources") is also a named defendant in this action but does not join in the instant motions.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 This action arises out of Defendant’s alleged wage and hour violations. (ECF No. 1-4 at
3 6–20.) Defendant contends it engaged DAK Resources to provide temporary workers to its
4 distribution center in Tracy, California. (ECF No. 17 at 6.) In October 2021, DAK Resources
5 assigned Plaintiff to work at Defendant’s distribution center. (*Id.*) Between approximately
6 October 11, 2021 to December 2, 2021, Plaintiff worked in two different roles: loading and
7 unloading trucks at the distribution center’s loading docks and as a sorter operator. (ECF No. 23
8 at 9.)

9 On November 28, 2022, Plaintiff filed the instant lawsuit, alleging Defendant and DAK
10 Resources jointly employed him. (ECF No. 1-4 at 9.) Plaintiff also alleges claims under the
11 California Labor Code for unpaid minimum and overtime wages, break violations, failure to
12 provide accurate wage statements, and failure to reimburse business expenses. (*Id.* at 14–19.)
13 Based on these alleged violations, Plaintiff also alleges a claim under the Unfair Competition
14 Law. (*Id.* at 19.) Plaintiff asserts his claims on behalf of a putative class of hourly non-exempt
15 employees of DAK Resources and Defendant in California since November 28, 2018. (*Id.* at 11.)

16 On June 18, 2024, Defendant filed a motion to deny class certification in part. (ECF No.
17 17.) On August 29, 2024, Defendant filed a motion for partial summary judgment. (ECF No.
18 23.) The Court will address each motion in turn.

19 **II. MOTION TO DENY CLASS CERTIFICATION**

20 A court may certify a class if a plaintiff demonstrates that all of the prerequisites of
21 Federal Rule of Civil Procedure (“Rule”) 23(a) have been met, and that at least one of the
22 requirements of Rule 23(b) have been met. Fed. R. Civ. P. 23; *see also Valentino v. Carter-*
23 *Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(a) requires numerosity, commonality,
24 typicality, and adequacy. Fed. R. Civ. P. 23(a). Rule 23(b) requires a plaintiff to establish one of
25 the following: (1) that there is a risk of substantial prejudice from separate actions; (2) that
26 declaratory or injunctive relief benefitting the class as a whole would be appropriate; or (3) that
27 common questions of law or fact predominate and the class action is superior to other available
28 methods of adjudication. Fed. R. Civ. P. 23(b).

1 The defendant may file a preemptive motion to deny class certification or to strike the
2 class allegations from the complaint even if the plaintiff has not moved to certify the class.
3 *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 939 (9th Cir. 2009). Even in cases where
4 the defendant files the motion to deny class certification, the plaintiff bears the burden of
5 demonstrating that each of Rule 23(a)'s four requirements and at least one requirement of Rule
6 23(b) are met. *Narouz v. Charter Comm'n, LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010).

7 Defendant argues the Court should deny certification of the proposed class because
8 Plaintiff cannot satisfy the Rule 23(a)'s typicality or adequacy requirements. (ECF No. 17 at 9.)
9 Specifically, Defendant contends, at all relevant times, it required applicants for employment to
10 agree to arbitrate claims arising from their employment if hired. (*Id.* at 7.) Thus, Defendant
11 argues most of the putative class members — distribution center workers who Defendant directly
12 hired — have entered into agreements to resolve the claims like those alleged by Plaintiff in
13 arbitration. (*Id.* at 6–7.) Defendant further contends that unlike the majority of the putative class
14 members, Plaintiff is not bound by any arbitration agreement with Defendant because Plaintiff
15 did not apply for work directly with Defendant. (*Id.* at 7.) As such, Defendant argues Plaintiff
16 cannot represent individuals who are bound by agreements requiring arbitration of the claims at
17 issue because Defendant has defenses against them that Plaintiff has no basis to oppose. (*Id.* at
18 12.) Defendant contends the divergence of interests between Plaintiff and these putative class
19 members destroys typicality and renders Plaintiff an inadequate representative. (*Id.*)

20 The Court finds that because Plaintiff filed a statement of non-opposition to Defendant's
21 Motion to Deny Class Certification in Part, Plaintiff has failed to meet his burden to demonstrate
22 that each of the requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are
23 met.

24 Accordingly, Defendant's Motion to Deny Class Certification in Part is GRANTED.

25 **III. MOTION FOR PARTIAL SUMMARY JUDGMENT**

26 A. Standard of Law

27 Summary judgment is appropriate when the moving party demonstrates no genuine issue
28 of any material fact exists and the moving party is entitled to judgment as a matter of law. Fed.

1 R. Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). Under summary
2 judgment practice, the moving party always bears the initial responsibility of informing the
3 district court of the basis of its motion, and identifying those portions of “the pleadings,
4 depositions, answers to interrogatories, and admissions on file together with affidavits, if any,”
5 which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v.*
6 *Catrett*, 477 U.S. 317, 323 (1986). “[W]here the nonmoving party will bear the burden of proof
7 at trial on a dispositive issue, a summary judgment motion may properly be made in reliance
8 solely on the pleadings, depositions, answers to interrogatories, and admissions on file.” *Id.* at
9 324 (internal quotation marks omitted). Indeed, summary judgment should be entered against a
10 party who does not make a showing sufficient to establish the existence of an element essential to
11 that party’s case, and on which that party will bear the burden of proof at trial. *Id.* at 322.

12 If the moving party meets its initial responsibility, the burden then shifts to the opposing
13 party to establish that a genuine issue as to any material fact does exist. *Matsushita Elec. Indus.*
14 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986); *First Nat’l Bank of Ariz. v. Cities Serv.*
15 *Co.*, 391 U.S. 253, 288–89 (1968). In attempting to establish the existence of this factual dispute,
16 the opposing party may not rely upon the denials of its pleadings, but is required to tender
17 evidence of specific facts in the form of affidavits, and/or admissible discovery material, in
18 support of its contention that the dispute exists. Fed. R. Civ. P. 56(c). The opposing party must
19 demonstrate that the fact in contention is material, *i.e.*, a fact that might affect the outcome of the
20 suit under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and that
21 the dispute is genuine, *i.e.*, the evidence is such that a reasonable jury could return a verdict for
22 the nonmoving party. *Id.* at 251–52.

23 In the endeavor to establish the existence of a factual dispute, the opposing party need not
24 establish a material issue of fact conclusively in its favor. *First Nat’l Bank of Ariz.*, 391 U.S. at
25 288–89. It is sufficient that “the claimed factual dispute be shown to require a jury or judge to
26 resolve the parties’ differing versions of the truth at trial.” *Id.* Thus, the “purpose of summary
27 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
28 genuine need for trial.’” *Matsushita Elec. Indus. Co.*, 475 U.S. at 587 (quoting Rule 56(e)

1 advisory committee’s note on 1963 amendments).

2 In resolving the summary judgment motion, the court examines the pleadings, depositions,
3 answers to interrogatories, and admissions on file, together with any applicable affidavits. Fed.
4 R. Civ. P. 56(c); *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305–06 (9th Cir. 1982). The evidence
5 of the opposing party is to be believed and all reasonable inferences that may be drawn from the
6 facts pleaded before the court must be drawn in favor of the opposing party. *Anderson*, 477 U.S.
7 at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
8 obligation to produce a factual predicate from which the inference may be drawn. *Richards v.*
9 *Nielsen Freight Lines*, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), *aff’d*, 810 F.2d 898 (9th Cir.
10 1987). Finally, to demonstrate a genuine issue that necessitates a jury trial, the opposing party
11 “must do more than simply show that there is some metaphysical doubt as to the material facts.”
12 *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. “Where the record taken as a whole could not lead
13 a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” *Id.* at
14 587.

15 B. Analysis

16 Defendant moves for summary judgment on Plaintiff’s claims for unpaid overtime and
17 minimum wages, meal break violations, rest break violations, failure to pay timely wages during
18 his employment, failure to pay regular wages at the termination of his employment, wage
19 statement violations and unfair competition. (ECF No. 23 at 2–3.) The Court will address each
20 claim in turn.

21 i. *Unpaid Overtime and Minimum Wages*

22 Defendant argues Plaintiff’s claim for unpaid overtime and minimum wages fails because
23 Plaintiff testified in his deposition that he never worked off the clock and his pay records
24 demonstrate that no “time-shaving” occurred. (ECF No. 23 at 11.) Plaintiff does not address his
25 claim for unpaid overtime and minimum wages in his opposition. (*See* ECF No. 25.)

26 On a motion for summary judgment, the plaintiff’s failure to address the defendant’s
27 arguments regarding a claim serves as the plaintiff abandoning that claim. *Est. of Shapiro v.*
28 *United States*, 634 F.3d 1055, 1060 (9th Cir. 2011) (affirming summary judgment on a claim

1 because the plaintiff “abandoned th[e] claim by failing to raise it in opposition to the
2 [defendant’s] motion for complete summary judgment”); *see also Shakur v. Schriro*, 514 F.3d
3 878, 892 (9th Cir. 2008) (quoting *Jenkins v. Cnty. of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir.
4 2005) (“We have previously held that a plaintiff has ‘abandoned . . . claims by not raising them in
5 opposition to [the defendant’s] motion for summary judgment.’ ”))

6 Here, Plaintiff fails to address his claim for unpaid overtime and minimum wages in his
7 opposition. (*See* ECF No. 25.) Moreover, Plaintiff fails to explain how evidence it identifies in
8 his response to Defendant’s separate statement of undisputed facts bears on his claim for unpaid
9 overtime and minimum wages. (ECF No. 25-1 at 2–3.) Thus, Plaintiff has provided no argument
10 regarding his unpaid overtime and minimum wages claim, and Plaintiff has abandoned this claim.

11 Accordingly, the Court GRANTS Defendant’s Motion for Summary Judgment as to
12 Plaintiff first claim for unpaid overtime and minimum wages.

13 *ii. Meal Break Violations*

14 Defendant argues Plaintiff’s claim for meal break violations fails because Plaintiff’s
15 deposition testimony and time records demonstrate Plaintiff received a timely, uninterrupted meal
16 break of at least thirty minutes on all shifts. (ECF No. 23 at 12–14.) Defendant contends that,
17 with one exception, Plaintiff always spent at least thirty minutes clocked out for his meal break.
18 (*Id.* at 13.) Defendant argues, even in the one instance when Plaintiff clocked out for 28 minutes,
19 Plaintiff was relieved of his duties for at least the required thirty minutes because Plaintiff spent
20 five minutes walking to the break room instead of clocking out immediately. (*Id.*)

21 In opposition, Plaintiff argues records showing noncompliant meal periods raise a
22 rebuttable presumption of meal period violations. (ECF No. 25 at 5 (citing *Donahue v. AMN*
23 *Servs., LLC*, 11 Cal. 5th 58, 77 (2021) (“If time records show missed, short, or delayed meal
24 periods with no indication of proper compensation, then a rebuttable presumption [of meal period
25 violations] arises.”).) Plaintiff contends that in addition to the 28-minute meal break on
26 November 16, 2021, time records reflect that on December 1, 2021, Plaintiff did not receive a
27 first or second meal break for a shift longer than ten hours. (*Id.* at 6.) Plaintiff further argues
28 Defendant has not provided evidence that meal break premiums were lawfully paid for each

1 violation and thus, has failed to rebut the presumption that proper compensation was not paid for
2 non-compliant meal breaks. (*Id.* at 5.)

3 In reply, Defendant argues Plaintiff’s admissions about receiving proper meal breaks —
4 despite what the records show — unquestionably rebut the *Donahue* presumption and defeat
5 Plaintiff’s claim. (ECF No. 27 at 4.) Defendant cites to a number of cases for its contention that
6 because Plaintiff admitted he received compliant meal breaks, his time records are irrelevant.
7 (*Id.*) Defendant further argues that while Plaintiff claims he cut his meal break short a couple of
8 times, Defendant demonstrated that Plaintiff always received at least thirty minutes of off-duty
9 time, which Defendant contends is all the law requires. (*Id.*)

10 The Court finds Plaintiff has established the *Donahue* presumption applies in this case.
11 Time records reflect that on November 16, 2021, Plaintiff took a 28-minute meal break after
12 working 4 hours and 52 minutes and on December 1, 2021, Plaintiff did not clock out for a meal
13 break after working 4 hours and 31 minutes. (ECF No. 25-2 at 9–10.) Defendant, however,
14 adequately rebuts the presumption with Plaintiff’s testimony. First, Plaintiff admitted he was
15 scheduled for a meal break of at least thirty minutes after about four or four and a half hours of
16 work on every shift he worked. (ECF No. 23-2 at 10.) Further, while records reflect two
17 potentially non-compliant meal breaks, the undisputed evidence establishes that upon being
18 relieved of duty for the scheduled meal break, Plaintiff walked to the break room — a walk of
19 approximately five minutes — to clock out at the time clock there.² (ECF 25-1 at 4.) As it is
20 undisputed Plaintiff was relieved from duty and on a scheduled meal break while Plaintiff walked
21 approximately five minutes to clock out, the Court agrees with Defendant that Plaintiff received a
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23 ² Plaintiff purports to dispute Defendant’s separate statement of undisputed material fact
24 No. 15, which states Plaintiff walked on-the-clock to the break room and clocked out there for his
25 meal break, but Plaintiff fails to point to supporting evidence for his contention that Plaintiff
26 would “clock in closest to my — where I start working at.” (ECF No. 25-1 at 4.) Upon review of
27 Plaintiff’s deposition transcript, the Court finds Plaintiff’s statement that he would “clock in
28 closest to my — where I start working at” does not pertain to meal breaks but rather refers to
where Plaintiff would clock in *at the start of a shift*. (ECF No. 23-2 at 10 (emphasis added).)
Because where Plaintiff would clock in at the start of a shift does not refute that Plaintiff walked
on-the-clock to the break room and clocked out there for meal breaks, the Court considers
Defendant’s separate statement of undisputed material fact No. 15 to be undisputed.

1 timely, uninterrupted meal break of at least thirty minutes on all shifts.

2 Accordingly, the Court GRANTS Defendant's Motion for Summary Judgment as to
3 Plaintiff's second claim for meal break violations.

4 *iii. Rest Break Violations*

5 Defendant argues Plaintiff's claim for failure to provide rest breaks fails as a matter of law
6 because Plaintiff admits he consistently received at least the minimum rest breaks required. (ECF
7 No. 23 at 14.) In opposition, Plaintiff argues his deposition testimony shows that at times his
8 breaks were cut in half or shortened, and occasionally, he had to take a radio with him. (ECF No.
9 25 at 6.)

10 The Court finds the testimony cited by Plaintiff, however, does not refute Plaintiff's
11 admission that he consistently received at least the minimum rest breaks required. As Defendant
12 correctly points out, the cited testimony is inapposite. First, Plaintiff cites a passage that has
13 nothing to do with whether Plaintiff received rest breaks but rather, concerns repairing the sorter
14 machine. (ECF No. 25-1 at 4.) Second, Plaintiff cites a passage regarding an instance in which
15 engineers *tried* to get Plaintiff to work during his break. (*Id.*) However, in that instance, Plaintiff
16 complained and received a proper rest break. (ECF No. 25-2 at 5.) Third, Plaintiff cites
17 testimony in which Plaintiff stated his breaks were "cut in half." (ECF No. 25-1 at 4.) However,
18 the testimony was clarified to be that his scheduled 15-minute breaks were shortened to 10
19 minutes. (*Id.*) Thus, without more, Plaintiff has failed to offer any specific evidence that
20 Defendant fails to provide rest breaks.

21 Accordingly, the Court GRANTS Defendant's Motion for Summary Judgment as to
22 Plaintiff's third claim for rest break violations.

23 *iv. Failure to Pay Timely Wages, Wage Statement Violations, and*
24 *Unfair Competition*

25 Defendant argues Plaintiff's claims for failure to pay timely wages, wage
26 Statement violations and unfair competition fail because they are derivative of Plaintiff's claims
27 for failure to pay wages and break premiums, which also fail. (ECF No. 23 at 15.) Defendant
28 further argues the claims fail for independent reasons. (*Id.*) With respect to the final pay and

1 wage statement claims, Defendant contends the claims require a heightened showing that
2 Defendant “willfully” failed to pay wages at termination. (*Id.* at 15–16 (citing *Amaral v. Cintas*
3 *Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008) (employee bears the burden of proving
4 willfulness)).) Defendant argues Plaintiff’s own admissions and records preclude any showing
5 that he performed work without pay or experienced a meal or rest break violation. (ECF No. 23
6 at 16–17.) Additionally, Defendant argues Plaintiff’s wage statement claim improperly duplicates
7 his wage claims. (*Id.* at 17–18.) Finally, with respect to Plaintiff’s unfair competition claim,
8 Defendant contends Plaintiff must establish that he lacks an adequate remedy at law as Plaintiff is
9 seeking restitution of his allegedly unpaid wages. (*Id.*) Defendant argues Plaintiff’s
10 Labor Code claims provide damages for the same amount Plaintiff seeks in restitution under the
11 Unfair Competition Law — namely, unpaid wages and break premiums — and thus, his legal
12 remedies are adequate. (*Id.* at 19–20.)

13 In opposition, Plaintiff fails to address the majority of Defendant’s arguments. (*See* ECF
14 No. 25.) Instead, Plaintiff only argues his wage statement claim survives because it is derivative
15 of his rest and meal break claims. (*Id.* at 7–8.) Plaintiff cursorily makes the same point about his
16 unfair competition claim in the introduction of his opposition. (*Id.* at 2.)

17 As stated previously, on a motion for summary judgment, the plaintiff’s failure to address
18 the defendant’s arguments regarding a claim serves as the plaintiff abandoning that claim. *Est. of*
19 *Shapiro*, 634 F.3d at 1060; *see also Shakur*, 514 F.3d at 892.

20 Here, Plaintiff concedes his wage statement and unfair competition claims are derivative
21 of his break claims. Because the Court finds Plaintiff’s rest breaks claims fail, as explained
22 above, the Court finds Plaintiff’s wage statement and unfair competition claims fail. Moreover,
23 Plaintiff fails to address Defendant’s independent grounds for summary judgment as to Plaintiff’s
24 claims for failure to pay timely wages, inaccurate wage statements, and unfair competition. Thus,
25 Plaintiff has abandoned these claims.

26 Accordingly, the Court GRANTS Defendant’s Motion for Summary Judgment as to
27 Plaintiff’s fifth, sixth, seventh, and eighth claims for failure to pay timely wages, inaccurate wage
28 statements, and unfair competition.

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IV. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendant’s Motion to Deny Class Certification in Part (ECF No. 17) and GRANTS Defendant Motion for Partial Summary Judgment (ECF No. 23) in its entirety.

The Court notes the parties have not followed the procedures and deadlines set forth in its Amended Pretrial Scheduling Order (“the Order”). (ECF No. 12.) Pursuant to the Order, all discovery relevant to class certification should have been completed within two hundred forty (240) days from the date of the Order, and a motion for class certification should have been filed no later than one hundred eighty days after the close of certification discovery. All other necessary dates and deadlines were to be issued following the Court’s ruling on Plaintiff’s Class Certification Motion. Accordingly, it appears Defendant’s Motion for Partial Summary Judgment was premature and Plaintiff’s deadline to file a motion for class certification has passed. Neither party raised concerns regarding the parties’ failure to adhere to the Order nor have the parties filed a proposed stipulation to modify the Order.

The Court ORDERS the parties to file a joint status report within thirty (30) days of this order indicating whether Plaintiff will file a motion for class certification and if so, whether the Court should allow Plaintiff to do so given that the deadline to do so has passed.

Date: March 10, 2025



TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE