

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEN LOPEZ,

No. C 08-05396 SI

Plaintiff,

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

**BACKGROUND**

This litigation concerns a wage and hour dispute between plaintiff Ben Lopez and defendant United Parcel Service, Inc. (“UPS”). Plaintiff contends that UPS improperly classified him as an employee exempt from overtime compensation under California law. Plaintiff brought suit in September 2008 based on his alleged misclassification in five full-time supervisor positions he held at UPS between March 2001 and June 2008: Hub Supervisor, Preload Supervisor, On-Road Supervisor, Training and Retention Supervisor, and On-Job Supervisor. A jury trial was held with respect to the first four positions in April 2010. The jury found that plaintiff was properly classified as exempt in the Hub Supervisor, Preload Supervisor, and Training and Retention Supervisor positions, and that although UPS did not meet its burden of proving that plaintiff was properly classified as exempt in the On-Road Supervisor, plaintiff had failed to prove that he worked any overtime hours or missed any meal breaks during his tenure in this position.

Due to statute of limitations issues, plaintiff’s claim with respect to the On-Job Supervisor position was brought under California’s Unfair Competition Law (“UCL”), Cal. Bus & Prof. Code § 17200 *et seq.*, rather than under California wage and hour law. *See Murphy v. Kenneth Cole Prods.*, 155

1 P.3d 284, 289 (Cal. 2007) (statutory wage claims are subject to a three-year statute of limitations;  
2 penalty claims are subject to a one-year statute); Cal. Bus. & Prof. Code § 17208 (UCL claims subject  
3 to four-year statute). The claim was tried to the Court on July 15, 2010. As set forth below in the  
4 following Findings of Fact and Conclusions of Law, on the basis of the testimony and evidence received  
5 at trial, the arguments of counsel, and the papers submitted, the Court finds that UPS has met its burden  
6 of proving that plaintiff was properly classified as falling within the administrative exemption in his On-  
7 Job Supervisor position. The Court therefore rules in favor of UPS on plaintiff's UCL claim.

8  
9 **FINDINGS OF FACT**

10 1. Plaintiff was employed by UPS as an On-Job Supervisor ("OJS") from January 1, 2005  
11 to July 31, 2005. For the entire period of his employment as an OJS, plaintiff was classified by UPS  
12 as exempt from overtime compensation.

13 2. The OJS position was a special assignment related to UPS's implementation of a new  
14 Preload Assist System intended to improve UPS's business operations by standardizing its package  
15 sorting and delivery operations. A key component of the Preload Assist System, and the one in which  
16 plaintiff participated, was to improve efficiency and safety in package delivery routes. To this end,  
17 other members of UPS management drafted proposed new routes which were intended to improve upon  
18 the existing routes.

19 3. Plaintiff's primary role as an OJS was related to studying, observing, and further refining  
20 the proposed new delivery routes. His tasks included studying maps of package delivery routes, riding  
21 with delivery drivers to observe the routes in practice, and reporting back to the OJS team, which  
22 included other persons in plaintiff's position, managers, and engineers.

23 4. Plaintiff rode with delivery drivers approximately three days per week. During the rides,  
24 it was plaintiff's responsibility to evaluate the efficiency of the proposed new routes, to identify the  
25 cause of any instance in which the driver did not meet the efficiency goal set for the route, and to train  
26 drivers on how to improve their accuracy, efficiency, and safety.

27 5. During his ride-alongs with drivers, plaintiff made notations as to how proposed routes  
28 could be improved, for example by avoiding one-way streets, minimizing left-hand turns, and ensuring



1           2.       Employees in California are presumptively entitled to overtime compensation for all  
2 hours worked in excess of eight hours per day or forty hours per week. Cal. Lab. Code § 510(a). An  
3 employer who claims that an employee is exempt from overtime compensation under a particular  
4 statutory exemption bears the burden of proving, by a preponderance of the evidence, that the exemption  
5 applies. *Gomez v. Lincare, Inc.*, 93 Cal. Rptr. 3d 388, 395 (Cal. Ct. App. 2009).

6           3.       UPS claims that plaintiff was exempt from overtime under the administrative exemption.  
7 To prove that plaintiff properly fell within the administrative exemption, UPS must demonstrate that  
8 he: (a) was responsible for performing “office or non-manual work directly related to management  
9 policies or general business operations of his employer”; (b) “customarily and regularly exercise[d]  
10 discretion and independent judgment”; (c) “perform[ed] under only general supervision work along  
11 specialized or technical lines requiring special training, experience, or knowledge” or “execute[d] under  
12 only general supervision special assignments and tasks”; (d) was primarily engaged in exempt job  
13 duties; and (e) met a salary threshold of at least two times the minimum wage. Cal. Code Regs. tit. 8,  
14 § 11090(1)(A)(2).

15  
16 **Non-manual work directly related to management or business operations**

17           4.       Plaintiff was responsible for performing non-manual work as an OJS. Plaintiff did not  
18 physically assist delivery drivers in driving delivery vehicles, loading and unloading packages, or  
19 making deliveries. Rather, his responsibilities were to observe drivers, gather data, and analyze delivery  
20 routes. These are non-manual tasks. *See Perine v. ABF Freight Sys., Inc.*, 457 F. Supp. 2d 1004, 1013  
21 (C.D. Cal. 2006). Plaintiff provides no authority in support of his argument that riding as a passenger  
22 in a delivery van, making written notations, and entering information into a PDA constitutes manual  
23 work.

24           5.       Plaintiff’s work was directly related to UPS’s management and general business  
25 operations. California courts recognize a dichotomy, drawn from federal wage and hour law, between  
26 “administrative” employees and “production” employees. The latter are defined as “those whose  
27 primary duty is producing the commodity or commodities, whether goods or services, that the enterprise  
28 exists to produce.” *Bell v. Farmers Ins. Exch.*, 105 Cal. Rptr. 2d 59, 70 (Cal. Ct. App. 2001) (citations

1 omitted); *see also* 29 C.F.R. § 541.205(a) (2002).<sup>1</sup> Plaintiff’s work as an OJS involved management  
2 tasks such as supervision, evaluation, and policy development, rather than production tasks such as  
3 actually loading or delivering packages.

4  
5 **Discretion and independent judgment**

6 6. The exercise of discretion and independent judgment involves “the comparison and the  
7 evaluation of possible courses of conduct and acting or making a decision after the various possibilities  
8 have been considered.” 29 C.F.R. § 541.207(a) (2002). Plaintiff was regularly called upon to assess  
9 and evaluate proposed delivery routes, observe the routes in practice, and suggest modifications based  
10 on his observations and experience. He performed this work without immediate supervision from his  
11 managers. Additionally, some of his recommendations for route improvements were accepted by his  
12 managers. *See id.* § 541.207(e) (“The decisions made as a result of the exercise of discretion and  
13 independent judgment may consist of recommendations for action.”).

14 7. The Court is not persuaded by plaintiff’s argument that he was merely applying set  
15 “standards” in his OJS position and was therefore non-exempt. The very nature of plaintiff’s job duties  
16 as an OJS called for the frequent exercise of discretion and judgment, not the mere rote application of  
17 standards. In addition, to the extent plaintiff was responsible for ensuring that subordinate employees  
18 (e.g., drivers) complied with UPS standards, that responsibility does not take him outside the scope of  
19 the exemption. *See Donovan v. Burger King Corp.*, 672 F.2d 221, 226 (1st Cir. 1982) (“Ensuring that  
20 company policies are carried out constitutes the very essence of supervisory work.”) (quotation marks  
21 and citation omitted) (addressing FLSA exemption).

22  
23 **Executed under only general supervision special assignments and tasks**

24 8. The Court finds that the OJS position involved the performance of special assignments  
25 and tasks under only general supervision. Plaintiff has testified that the majority of his OJS work was  
26 carried out independently. The weekly team meetings and the occasional drive-by check by a supervisor

27  
28 

---

<sup>1</sup> The pre-2004 version of the federal regulations is instructive in assessing exempt status under California law. *Bell*, 105 Cal. Rptr. 2d at 65-66.

1 constitute only “general supervision” of plaintiff’s primary work. Additionally, the OJS position was  
2 by definition a special assignment created to aid UPS in developing its improved Preload Assist System.

3  
4 **Primarily engaged in exempt job duties**

5 9. There is no question that plaintiff was primarily engaged in exempt administrative job  
6 duties. The Court disagrees with plaintiff that his primary job duty was “to manually input data into the  
7 PDA.” Pltf. Prop. FFCL at 8. Rather, as described above, his primary job duties were to evaluate  
8 delivery routes and recommend improvements to increase efficiency and safety. These are exempt job  
9 duties. Plaintiff has confirmed that he does not recall ever driving a delivery vehicle or delivering a  
10 package during his time as an OJS; indeed, he testified that the nature of his work made his performance  
11 of these tasks impossible. Thus, it is clear that he spent the majority of his time on exempt tasks.

12  
13 **Salary threshold**

14 10. Plaintiff does not dispute that his salary during his employment as an OJS met the  
15 statutory threshold of two times the minimum wage.

16  
17 **CONCLUSION**

18 For the foregoing reasons, the Court finds that plaintiff was properly classified as exempt during  
19 the period of his employment with UPS as an On-Job Supervisor. The Court therefore rules in favor  
20 of UPS on plaintiff’s claim under the UCL.

21  
22 **IT IS SO ORDERED.**

23  
24 Dated: September 14, 2010



25  
26  
27  
28  

---

SUSAN ILLSTON  
United States District Judge