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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10 JOSEPH TIMBANG ANGELES, NOE
11 LASTIMOSA, on behalf of themselves and
on behalf of others similarly situated, and the
general public,

No. C 12-05860 CRB

**ORDER GRANTING MOTION TO
DECERTIFY GRACE PERIOD
SUBCLASSES**

12 Plaintiffs

13 v.

14 US AIRWAYS, INC., and DOES 1 through
15 50,

16 Defendants.
_____ /

17 Defendant US Airways moves to decertify Plaintiff Fleet Service Agents' ("FSAs")
18 Grace Period subclasses. And for good reason. Post-certification discovery has revealed that
19 these subclasses fall well short of the bar for commonality under Federal Rule of Civil
20 Procedure Rule 23(a), let alone that for predominance under Rule 23(b)(3).¹

21 **I. BACKGROUND**

22 **A. Factual Background**

23 FSAs are airport support staff who, among other things, handle bags, mail, and cargo,
24 as well as waive in, push back, and clean aircraft. Howard Decl. (dkt. 108-1) Ex. 3 (Henson
25 Depo.) at 14:20-15:3, Ex. 6 (Kortz Depo.) at 35:10-19, Ex. 5 (Massey Depo.) at 25:24-26:2,
26 37:22-38:11, Ex. 4 (Roberts Depo.) at 12:15-22, Ex. 2 (Sausa Depo.) at 25:8-26:1. Under
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28 ¹ The Court thus does not reach whether they satisfy Rule 23(b)(3)'s superiority requirement.

1 their collective bargaining agreement with US Airways, FSAs obtain their work schedules
2 through a bidding process that occurs at least three times per year. Decl. Howard Ex. 11
3 (Soto Decl.) ¶ 5, Ex. 8 (Crowl Depo.) at 21:13–22:6, 32:22–33:16, 34:21–35:9, Ex. 7 (Kullar
4 Depo.) at 39:13–25. Each station establishes its own work schedule or “bid,” which
5 corresponds to the station’s anticipated flight schedule for the bid period. See KohSweeney
6 Decl. (dkt. 106–1) Ex. 1 (Harbinson Decl.) ¶ 6.

7 FSAs work as part of a team and may be assigned one of several tasks such as
8 cleaning lavatories, loading or unloading bags, and pushing back aircraft. See Howard Decl.
9 Ex. 5 (Massey Depo.) at 38:19–21, Ex. 8 (Crowl Depo.) at 42:4–1, 48:16–22. Each team has
10 a Fleet Service Lead Agent (“Lead”). Decl. Howard Ex. 7 (Kullar Depo.) at 29:8–14, Ex. 8
11 (Crowl Depo.) at 42:1–11. The Leads are part of the same bargaining unit and typically
12 assign FSAs their tasks. KohSweeney Decl. Ex. 1 at 1A Art. 4 § D; Howard Decl. Ex. 6
13 (Kortz Depo.) at 27:8–22, Ex. 7 (Kullar Depo.) at 29:8–14, Ex. 8 (Crowl Depo.) at 42:1–4,
14 42:12–20, 45:20–46:4.

15 Managers oversee all FSAs, including Leads, and often work in offices tucked away
16 from where FSAs perform their duties. Howard Decl. Ex. 6 (Kortz Depo.) at 30:7–20, Ex. 7
17 (Kullar Depo.) at 15:17–16:19, 27:22–28:9, Ex. 1 (Brown Depo.) at 91:13–16. There is not
18 always a manager on duty. Howard Decl. Ex. 6 (Kortz Depo.) at 30:7–20, Ex. 7 (Kullar
19 Depo.) at 15:17–16:19, 27:22–28:9, Ex. 1 (Brown Depo.) at 91:13–16.

20 In 2008, US Airways implemented timekeeping software called “Workbrain.”
21 Howard Decl. Ex. 11 (Soto Decl.) ¶ 7. FSAs clock in and out electronically using the
22 software, which tracks their time and pay. Howard Decl. Ex. 9 (Vail Depo.) at 25:9–17,
23 38:5–39:23. Each FSA’s schedule is programed into Workbrain for each bid period so that if
24 an FSA is clocked-in during their scheduled time, Workbrain automatically logs that period
25 as paid time. Howard Decl. Ex. 11 (Soto Decl.) ¶ 8. Conversely, when an FSA clocks in
26 before or remains clocked-in after their scheduled time, Workbrain logs this time as unpaid
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1 time.² See Howard Decl. Ex. 11 (Soto Decl.) ¶ 8, Ex. 9 (Vail Depo.) at 50:15–52:9,
2 55:24–56:12. Many FSAs clock in before their scheduled shift or remain clocked-in after
3 their shift has ended; Workbrain automatically logs this time as unpaid, regardless of whether
4 they are working or engaging in personal activities. Howard Decl. Ex. 1 (Brown Depo.) at
5 91:17–20, Ex. 2 (Sausa Depo.) at 110:16–18, 112:5–13, Ex. 3 (Henson Depo.) at 62:8–63:25.
6 The FSAs allege that they were not paid for work performed during these Grace Periods.

7 **B. Procedural History**

8 The FSAs added the “Grace Period” claim to their Third Amended Complaint. See
9 TAC (dkt. 52). The FSA plaintiffs then moved for class certification, which the Court
10 granted. See Order Granting Mot. to Cert. (dkt. 75). Although class certification was a
11 “close question” at the time, the Court held that “enough [had] been alleged” to warrant
12 discovery but noted that it would later review class certification “depending on what the
13 evidence is.” H’rg Tr. (dkt. 78) at 2:16–3:3. In light of the post-certification discovery, US
14 Airways moves to decertify subclasses number 2 and 3—the “Grace Period” subclasses.

15 **1. The Grace Period Subclasses**

16 Class members are made up of all former US Airways FSAs “who worked as Fleet
17 Service Agents in the State of California at any time on or after June 22, 2008, until the date
18 of certification and who are members of one or more of Plaintiffs’ subclasses.” Opp’n to
19 Mot. to Decertify at 3–4 n.1 (dkt. 109). Subclass 2 is made up of FSAs who, while
20 clocked-in, engaged in pre-shift work and are owed compensation for hours worked. Mot.
21 for Class Certification at 1–2 (dkt. 64). Subclass 3 is made up of FSAs who, while
22 clocked-in, engaged in post-shift work and are owed compensation for hours worked. Id.
23 Together, these are the Grace Period subclasses. Id.

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² Workbrain is programed to only allow an FSA to clock in either 55 minutes before their
27 scheduled shift or clock out within 30 minutes after their shift ends. Howard Decl. Ex. 11 (Soto Decl.)
28 ¶ 8, Ex. 9 (Vail Depo.) at 50:15–52:9, 55:24–56:12.

1 for personal reasons.³ See id. Ex. 1 (Brown Depo) 91:13–20, Ex. 2 (Sausa Depo.) at
2 110:16–18, 112:5–13, Ex. 3 (Henson Depo.) at 62:8–63:25. Glen Brown is an FSA who
3 works in Ontario and testified that he arrives to work early due to his own personal
4 preferences and that no US Airways manger is on-duty at the beginning of his shift. Id. at
5 91:13–20. He and Michelle Massey also testified that they and other FSAs use this time for
6 personal activities, like picking up tickets for personal travel. Id. at 39:4–7, Ex. 5 (Massey
7 Depo.) at 121:7–123:22. Monica Sausa, an FSA based out of San Jose, testified that she
8 clocks in early to beat traffic.⁴ Id. Ex. 2 (Sausa Depo.) at 110:16–18, 112:5–13. She also
9 testified that FSAs have personal conversations, watch television, or spend time on their cell
10 phones during the Grace Periods; Sausa in fact frequently uses collects empty soda cans from
11 airplane garbage cans to recycle for money. See id. at 70:9–72:25, 118:1–119:8, 104:10–15.
12 Marvin Henson, a Lead at San Francisco International Airport, testified that he arrives early
13 because the employee shuttle bus typically drops him off before his shift starts, and that
14 should an FSA perform work early, he would ensure that their time was recorded and paid.
15 Id. Ex. 3 (Henson Depo.) at 62:8–63:25. Defense counsel informed the Court at the hearing
16 that an FSA in San Diego occasionally grills on the tarmac. In short, FSAs are not
17 always—or perhaps not even often—engaged in work-related tasks during the Grace Periods.

18 And when FSAs request pay for work performed before or after their scheduled shifts,
19 managers rarely scrutinize such requests. See Howard Decl. Ex. 7 (Kullar Depo.) at 49:5–22,
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21 ³ Managers generally try to ensure a buffer between when an FSA starts their shift and when
22 a plane is scheduled to arrive, and between when a plane departs and when an FSA ends their shift.
23 Howard Decl. Ex. 11 (Soto Decl.) ¶ 6. They do this to ensure that FSAs do not have to work before
24 their scheduled start times or after their scheduled end times. See Howard Decl. Ex. 11 (Soto Decl.) ¶
25 6.

26 ⁴ The FSA plaintiffs assert that Monica Sausa testified that she did not receive training as to
27 what activities constitute compensable Grace Period work but was trained to arrive early to do
28 preparatory work. Opp’n to Mot. to Decertify at 5–6 (citing Ex. 2 (Sausa Depo.) at 34:18–36:4,
114:1–5). The FSAs mischaracterize her testimony. Sausa testified that FSAs need to be at their
stations ten minutes before a flight, not before their shifts start. Sausa Depo. at 114:4–5. And although
there may be airplanes on the ground when they begin their shifts, FSAs are not assigned to those
airplanes. Id. at 105:20–2.

1 51:4–24, Ex. 8 (Crowl Depo. 89:9–23), Ex. 1 (Brown Depo.) at 95:2–25, Ex. 4 (Roberts
2 Depo.) at 42:5–15, Ex. 3 (Henson Depo.) at 131:8–16, Ex. 6 (Kortz Depo.) at 63:1–65:12,
3 Ex. 5 (Massey Depo.) at 57:10–14. Sausa testified that she can complete a “Time
4 Adjustment Slip” to report additional time and will be paid for it. Id. Ex. 2 (Sausa Depo.) at
5 111:1–112:4. Soniya Kullar, an SFO manager, testified that she approves payment for any
6 and all time recorded, even for only one minute and sometimes where a Lead has not verified
7 the time reported. Id. Ex. 7 (Kullar Depo.) at 49:5–22; 51:4–24. She said, “we don’t
8 question it. We just pay it.” Id. at 51:23–24. Christina Crowl, a manager at Los Angeles
9 International Airport (LAX), could recount only one occasion during her six years of
10 employment with US Airways where she declined to approve additional work time reported
11 by an FSA. Id. Ex. 8 (Crowl Depo.) at 89:9–23; 131:8–24. Marvin Henson, an SFO Lead,
12 testified that he signs off all additional time worked by FSAs and that SFO Leads have a
13 common practice of rounding up additional work time, which may actually result in
14 overpayment to FSAs.⁵ Id. Ex. 3 (Henson Depo.) at 111:2–112:16, 118:7–119:3.

15 **II. LEGAL STANDARD**

16 A federal court’s order to grant class certification is subject to later modification. See
17 Fed. R. Civ. Pro. 23(c)(1)(C); Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147 (1982).
18 The party seeking decertification bears the burden of demonstrating that the elements of Rule
19 23 have not been established. Weigele v. FedEx Ground Package Sys., 267 F.R.D. 614, 617
20 (S.D. Cal. 2010). “Certification is proper only if the trial court is satisfied, after a rigorous
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22 ⁵ Furthermore, the deposition testimony of class members does not support their declarations.
23 Deposed class members submitted declarations stating that they believed they had performed work
24 outside of their scheduled shifts without pay. See Uriate Decl. Ex. 1. But when deposed, none could
25 recall a single instance in which they reported additional work but were not paid for it. Howard Decl.
26 Ex. 4 (Roberts Depo.) at 42:5–15, Ex. 3 (Henson Depo.) at 131:8–16, Ex. 6 (Kortz Depo.) at
27 63:1–65:12, Ex. 5 (Massey Depo.) at 57:10–14. US Airways has also produced over 69,000 pages of
paper forms from California stations that reflect the reporting and recording of time worked by FSAs
during the Grace Periods. Howard Decl. ¶ 3. They confirm “that grace periods were converted to paid
time on 23,963 occasions from June 22, 2008 to May 10, 2013, which amounts to an average of 93.6
conversions per calendar week across all California stations.” Howard Decl. Ex. 28 (Czechowski Decl.)
¶¶ 10–11.

1 analysis,” that the prerequisites of Rule 23 have been met. Wal-Mart Stores, Inc. v. Dukes,
2 564 U.S. 338, 350–51 (2011) (internal quotation marks omitted). This rigorous analysis will
3 frequently “entail some overlap with the merits of the plaintiff’s underlying claim,” because
4 determining whether the class’s certification requirements are met “involves considerations
5 that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.”
6 Id. at 351 (citing Falcon, 457 U.S. at 160) (internal quotation marks omitted).

7 **III. DISCUSSION**

8 Federal Rule of Civil Procedure 23(a)(2) requires “questions of law or fact common to
9 the class,” which means that there must be some “common contention . . . that it is capable of
10 classwide resolution” such that the “determination of its truth or falsity will resolve an issue
11 that is central to the validity of each one of the claims in one stroke.” Wal-Mart, 564 U.S. at
12 350. After discovery, it is now clear that this case comes nowhere close to that bar. There is
13 no evidence that US Airways had a common policy requiring FSAs to report to work early or
14 perform work before and after their shifts. Instead, the record demonstrates that employees
15 by and large made personal choices about how early to show up before their shifts and how
16 late to leave afterwards. And it demonstrates that US Airways had mechanisms in place for
17 FSAs to report unpaid work, with specifics varying from station to station.

18 What is more, FSAs routinely engaged in personal activities during their Grace
19 Periods. For example, some were working, some were watching TV, some were chatting,
20 some were on their phones (perhaps Snapchatting), and one may have been grilling. There is
21 no way for common evidence to determine who was working, how long they were working,
22 whether they reported working, and whether they were not paid for working. The FSAs thus
23 have it backwards when they maintain that “(1) whether Class Members sometimes work
24 during Grace Periods; (2) if so, whether this work sometimes goes unreported; (3) whether
25 some Grace Period work remains unpaid by Defendant; and (4) whether the consequences of
26 Defendants’ chosen policies lead it to routinely violate relevant wage and hour laws” present
27 common questions capable of classwide resolution. Opp’n to Mot. to Decertify at 7. To the
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1 contrary, (1), (2), and (3) are the very individualized questions that make it impossible for the
2 Court to conclude that common questions—even if they existed here—could possibly
3 predominate as required by Rule 23(b)(3).⁶ And (4), of course, cannot be determined without
4 answering those individualized questions.

5 This case is thus the opposite of Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036
6 (2016). There, employees at a meat-processing plant sued to recover for unpaid time they
7 spent donning and doffing protective gear before and after their shifts. Id. at 1042. No one
8 disputed that the employees were doing anything other than donning and doffing during that
9 time. See id. at 1044–46. The dispute instead hinged on whether the class could rely on
10 representative evidence to prove how long it took to don and doff. Id. at 1047. Because
11 individual employees suing individually could have relied on such evidence, the Supreme
12 Court held that the class could too. Id. But again, here employees were donning, doffing,
13 chatting, reading, napping, watching TV, and maybe even grilling during the Grace
14 Periods—who knows what else. Representative evidence would not fly for individual FSAs,
15 and it will not fly for a class of them.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Defendant US Airways’s motion to
18 decertify the Grace Period subclasses.

19 **IT IS SO ORDERED.**

20 Dated: February 13, 2017



21 CHARLES R. BREYER
22 UNITED STATES DISTRICT JUDGE
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27 ⁶ Different reporting mechanisms at different stations pose still more individualized questions.
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