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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4

5 DAVID GARDNER; STEVE MATTERN; and  
6 WILLIAM SULLIVAN, individually  
7 and on behalf of all similarly  
8 situated current and former  
9 employees,

10 Plaintiffs,

11 v.

12 SHELL OIL COMPANY; SHELL OIL  
13 PRODUCTS COMPANY, LLC; and  
14 EQUILON ENTERPRISES LLC dba SHELL  
15 OIL PRODUCTS US; and DOES 1  
16 through 20, inclusive,

17 Defendants.  
18

No. C 09-05876 CW

ORDER DENYING  
DEFENDANTS' MOTION  
TO DENY PLAINTIFF  
CLASS  
CERTIFICATION AND  
GRANTING  
PLAINTIFFS' MOTION  
FOR CLASS  
CERTIFICATION  
(Docket Nos. 57 &  
59)

19 Defendants Shell Oil Company, Shell Oil Products Company LLC,  
20 and Equilon Enterprises LLC dba Shell Oil Products US  
21 (collectively Defendants) move to deny class certification.<sup>1</sup>  
22 Docket No. 57. On the same day Defendants filed their motion,  
23 Plaintiffs moved to certify a class and subclass. On January 27,  
24 2011, the Court held a hearing on the motions. Having considered  
25 all of the parties' papers and oral argument, the Court DENIES  
26 Defendants' motion and GRANTS Plaintiffs' motion. (Docket Nos. 57  
27 & 59).

28 <sup>1</sup> Shell Oil Company (SOC) is a subsidiary of Royal Dutch  
Shell plc, a multinational oil company, and it wholly owns Shell  
Oil Products Company LLC (SOPC), which is a minor, indirect owner  
of Equilon Enterprises LLC dba Shell Oil Products US (SOPUS).

BACKGROUND

This action concerns whether Defendants' refinery-wide policies and practices deprive Plaintiffs of their state law rights to thirty-minute meal periods relieved of all duties, or an extra hour of pay in lieu thereof. Plaintiffs seek monetary, injunctive and declaratory relief.

Defendants have operated the Martinez, California refinery at issue in this case since at least April, 2004. The "shift employees" who comprise the putative class are known as Operators. Operators are paid hourly, work rotating twelve-hour shifts, and are required by refinery policies to remain in communication at all times, and to remain on the premises. They must refrain from sleeping, reading non-work related materials, using headphones, and using the internet for personal purposes for more than fifteen minutes per shift. There are no set times for meal breaks. Operators work as Board Operators and Outside Operators and are assigned to one of six departments: Operations Central, Delayed Coker, Distillation and Hydroprocessing, Cracked Products, Utilities, and Logistics. Board Operators work at a console in a control center, tracking on various screens how a particular unit is running. Outside Operators work outside of the control centers, and are responsible for maintaining, monitoring and inspecting equipment, as well as responding to directions from Board Operators. In contrast to Operators, employees on a "day schedule" generally work between eight and ten hours per day, and

1 receive an unpaid thirty-minute meal period free from any work  
2 responsibilities. Communication between and among Board and  
3 Outside Operators is required to run the Martinez refinery  
4 properly.

5 Operators at the refinery are governed by one collective  
6 bargaining agreement (CBA). There is no written provision in the  
7 CBA or elsewhere indicating that Operators have consented to waive  
8 their rights to a thirty-minute meal period. The CBA states,  
9 "Whenever operations are continuous, each employee engaged in such  
10 work shall remain on duty until relieved." 2009 CBA, Exh. 6, p.  
11 4. The CBA, which has been in effect since at least April, 2004,  
12 covers all putative class members.  
13

14 Prior to the initiation of this litigation, the Operators'  
15 union filed a class action against SOC, SOPUS and Tesoro Refining  
16 and Marketing Company (Tesoro) in the Central District of  
17 California, United Steel Workers, et al. v. Shell Oil Co., et al.  
18 (USW Case), 08-cv-03693 RGK. That complaint alleged meal period  
19 violations and other claims on behalf of a proposed state-wide  
20 class of current and former employees who worked at three separate  
21 refineries operated by SOC, SOPUS and Tesoro. The three  
22 refineries included the Martinez refinery that is the focus of  
23 this case, a Los Angeles area refinery, and a Tesoro refinery and  
24 chemical plant also located in Martinez. On August 21, 2009, the  
25 judge in the USW case denied class certification, in part because  
26 the proposed classes included employees from multiple refineries  
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1 owned by different companies and governed by different collective  
2 bargaining agreements. After class certification was denied,  
3 Plaintiffs in the USW case shifted course. On July 7, 2010, two  
4 other putative class actions were filed, alleging meal period  
5 violations and other claims on behalf of shift employees of Shell  
6 and Tesoro at the Los Angeles area refinery. Thus, the original  
7 USW case has evolved into four separate cases, each covering the  
8 employees of one employer at one refinery.  
9

10 In the present action, Plaintiffs bring claims under  
11 California's Unfair Competition Law (UCL), Business & Professions  
12 Code § 17200 et seq., and California Labor Code §§ 512 and 226.7  
13 and Industrial Welfare Commission (IWC) Wage Order 1-2001 § 11 for  
14 failure to provide meal breaks. Plaintiffs move to certify the  
15 following class:

16 All current and former shift employees of Defendants  
17 Shell Oil Company, Shell Oil Products Company LLC,  
18 and/or Equilon Enterprises LLC dba Shell Oil Products  
19 US who worked at least one 12-hour shift, excluding  
20 any shifts worked as temporary shift supervisors,  
21 since April 25, 2004, at the Martinez refinery  
22 operated by one or more of the Defendants.<sup>2</sup>

21 Plaintiffs also move to certify a subclass of former  
22 employees suing for failure to pay all wages due at the time of  
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24 <sup>2</sup> The proposed class and subclass definitions provided here  
25 reflect the modified definitions set forth in Plaintiffs' reply  
26 brief in support of their motion for class certification.  
27 Defendants' opposition questioned the presence of temporary shift  
28 workers in the proposed classes. The modified definitions clarify  
that Plaintiffs do not seek to include temporary shift supervisors  
in the proposed classes.

1 discharge or resignation, as required by California Labor Code  
2 §§ 201, 202, and 203. The subclass is defined as:

3 All former shift employees of Defendants Shell Oil  
4 Company, Shell Oil Products Company LLC, and/or  
5 Equilon Enterprises LLC dba Shell Oil Products US who  
6 worked at least one 12-hour shift, excluding any  
7 shifts worked as temporary shift supervisors, since  
8 April 25, 2004, at the Martinez refinery operated by  
9 one or more of the Defendants, and whose employment  
10 has been terminated by discharge or resignation.

11 LEGAL STANDARD

12 Plaintiffs seeking to represent a class must satisfy the  
13 threshold requirements of Rule 23(a) as well as the requirements  
14 for certification under one of the subsections of Rule 23(b).

15 Rule 23(a) provides that a case is appropriate for certification  
16 as a class action if:

17 (1) the class is so numerous that joinder of all  
18 members is impracticable;

19 (2) there are questions of law or fact common to  
20 the class;

21 (3) the claims or defenses of the representative  
22 parties are typical of the claims or defenses of  
23 the class; and

24 (4) the representative parties will fairly and  
25 adequately protect the interests of the class.

26 Fed. R. Civ. P. 23(a). Rule 23(b) further provides that a case  
27 may be certified as a class action only if one of the following is  
28 true:

(1) prosecuting separate actions by or against  
individual class members would create a risk of:

(A) inconsistent or varying adjudications with  
respect to individual class members that would  
establish incompatible standards of conduct for  
the party opposing the class; or

1 (B) adjudications with respect to individual  
2 class members that, as a practical matter,  
3 would be dispositive of the interests of the  
4 other members not parties to the individual  
5 adjudications or would substantially impair or  
6 impede their ability to protect their  
7 interests;

8 (2) the party opposing the class has acted or  
9 refused to act on grounds that apply generally  
10 to the class, so that final injunctive relief or  
11 corresponding declaratory relief is appropriate  
12 respecting the class as a whole; or

13 (3) the court finds that the questions of law or  
14 fact common to class members predominate over  
15 any questions affecting only individual members,  
16 and that a class action is superior to other  
17 available methods for fairly and efficiently  
18 adjudicating the controversy. The matters  
19 pertinent to these findings include:

20 (A) the class members' interests in  
21 individually controlling the prosecution or  
22 defense of separate actions;

23 (B) the extent and nature of any litigation  
24 concerning the controversy already begun by or  
25 against class members;

26 (C) the desirability or undesirability of  
27 concentrating the litigation of the claims in  
28 the particular forum; and

(D) the likely difficulties in managing a class  
action.

Fed. R. Civ. P. 23(b). Plaintiffs assert that this case qualifies  
for class certification under subdivisions (b)(3).

A district court may certify a class only if it determines  
that the plaintiff has borne its burden of demonstrating that each  
element of Rule 23 is satisfied. General Tel. Co. v. Falcon, 457  
U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564 F.2d  
1304, 1308 (9th Cir. 1977). "[W]hen considering class  
certification under Rule 23, district courts are not only at

1 liberty to, but must, perform a rigorous analysis to ensure that  
2 the prerequisites of Rule 23 have been satisfied, and this  
3 analysis will often, though not always, require looking behind the  
4 pleadings to issues overlapping with the merits of the underlying  
5 claims." Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 594 (9th  
6 Cir. 2010) (en banc) (certiorari granted). Nevertheless,  
7 "district courts may not analyze any portion of the merits of a  
8 claim that do not overlap with the Rule 23 requirements." Id.  
9

10 The court need not accept conclusory or generic allegations  
11 regarding the suitability of the litigation for resolution through  
12 class action. Burkhalter Travel Agency v. MacFarms Int'l, Inc.,  
13 141 F.R.D. 144, 152 (N.D. Cal. 1991). In addition, the court may  
14 consider supplemental evidentiary submissions of the parties. In  
15 re Methionine Antitrust Litig., 204 F.R.D. 161, 163 (N.D. Cal.  
16 2001); see also Moore v. Hughes Helicopters, Inc., 708 F.2d 475,  
17 480 (9th Cir. 1983) (noting that "some inquiry into the substance  
18 of a case may be necessary to ascertain satisfaction of the  
19 commonality and typicality requirements of Rule 23(a)" although  
20 "it is improper to advance a decision on the merits at the class  
21 certification stage"). Ultimately, it is in the district court's  
22 discretion whether a class should be certified. Molski v. Gleich,  
23 318 F.3d 937, 946 (9th Cir. 2003); Burkhalter, 141 F.R.D. at 152.  
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DISCUSSION

I. Ascertainable Class

"An adequate class definition specifies 'a distinct group of plaintiffs whose members [can] be identified with particularity.'" Campbell v. PricewaterhouseCoopers, LLP, 253 F.R.D. 586, 593 (E.D. Cal. 2008) (quoting Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978). "The identity of class members must be ascertainable by reference to objective criteria." 5 James W. Moore, Moore's Federal Practice, § 23.21[1] (2001). Thus, a class definition is sufficient if the description of the class is "definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member." O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998).

At the outset, Defendants argue that the proposed classes are ambiguous because the term "shift employee" has a commonly-accepted definition that is contradicted by the proposed class definitions. Defendants assert that a "shift employee" or "shift worker" is one who works on a rotating shift schedule. They claim that, at the refinery, there are no such workers assigned to eight- or ten-hour "shifts" because those schedules are limited to day workers, who do not relieve a departing employee. The class definitions refer to "All current and former shift employees . . . who worked at least one 12-hour shift." Thus, Defendants point out an apparent redundancy in the wording of the

1 proposed class definitions. This is not a basis to find the class  
2 definitions indefinite. Plaintiffs discussed the class definition  
3 with Shell's counsel, and the parties agreed that the proposed  
4 class would be limited to employees who worked twelve-hour shifts.  
5 Fang Decl. in Support of Plaintiffs' Opposition to Defendants'  
6 Mot. to Dismiss ¶ 9. Defendants do not dispute that members of  
7 the proposed class can be identified from their timekeeping and  
8 payroll records. Accordingly, the Court finds that the class  
9 definitions are sufficiently particular and ascertainable.  
10

11 II. Rule 23(a) Requirements

12 A. Numerosity

13 "The prerequisite of numerosity is discharged if 'the class  
14 is so large that joinder of all members is impracticable.'" Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998)  
15 (quoting Fed. R. Civ. P. 23(a)(1)). See also 1 Alba Cone &  
16 Herbert B. Newberg, Newberg on Class Actions § 3.3 (4th ed. 2002)  
17 (where "the exact size of the class is unknown, but general  
18 knowledge and common sense indicate that it is large, the  
19 numerosity requirement is satisfied"). Plaintiffs contend that  
20 there are an estimated 300 to 500 members of the proposed class at  
21 the Martinez refinery. In their Notice of Removal, filed pursuant  
22 to the Class Action Fairness Act, Defendants indicated, "From  
23 April 24, 2005 to the filing of the Complaint, Defendants had on  
24 average approximately 280 potential class members at their  
25 Martinez California refinery." Notice of Removal at ¶ 11. Courts  
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1 have found that joinder is impracticable in cases with as few as  
2 forty class members. Ikonen v. Hartz Mountain Corp., 122 F.R.D.  
3 258, 262 (S.D. Cal. 1998). Defendants do not dispute, and the  
4 Court finds, that Plaintiffs satisfy the numerosity requirement.

5 B. Commonality

6 Rule 23 contains two related commonality provisions. Rule  
7 23(a)(2) requires that there be "questions of law or fact common  
8 to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(b)(3), in turn,  
9 requires that such common questions predominate over individual  
10 ones.

11  
12 The Ninth Circuit has explained that Rule 23(a)(2) does not  
13 preclude class certification if fewer than all questions of law or  
14 fact are common to the class:

15 The commonality preconditions of Rule 23(a)(2)  
16 are less rigorous than the companion  
17 requirements of Rule 23(b)(3). Indeed, Rule  
18 23(a)(2) has been construed permissively. All  
19 questions of fact and law need not be common to  
20 satisfy the rule. The existence of shared legal  
issues with divergent factual predicates is  
sufficient, as is a common core of salient facts  
coupled with disparate legal remedies within the  
class.

21 Hanlon, 150 F.3d at 1019.

22 Rule 23(b)(3), in contrast, requires not just that some  
23 common questions exist, but that those common questions  
24 predominate. In Hanlon, the Ninth Circuit went on to discuss the  
25 relationship between Rule 23(a)(2) and Rule 23(b)(3):

26 The Rule 23(b)(3) predominance inquiry tests  
27 whether proposed classes are sufficiently  
28 cohesive to warrant adjudication by  
representation. This analysis presumes that the

1 existence of common issues of fact or law have  
2 been established pursuant to Rule 23(a)(2);  
3 thus, the presence of commonality alone is not  
4 sufficient to fulfill Rule 23(b)(3). In  
5 contrast to Rule 23(a)(2), Rule 23(b)(3) focuses  
6 on the relationship between the common and  
7 individual issues. When common questions  
8 present a significant aspect of the case and  
9 they can be resolved for all members of the  
10 class in a single adjudication, there is clear  
11 justification for handling the dispute on a  
12 representative rather than on an individual  
13 basis.

14 Id. at 1022 (citations and internal quotation marks omitted).

15 Plaintiffs contend that there are numerous common questions,  
16 including Defendants' obligations to provide a thirty-minute meal  
17 period relieved of all duties, pursuant to California Labor Code  
18 §§ 226.7 and 512 and IWC Wage Order 1-2001 § 11. More precisely,  
19 the case presents the questions of whether the policies and  
20 practices requiring Operators to remain on the refinery premises  
21 and in close proximity to their work areas, and to remain in  
22 constant communication with co-workers and supervisors via company  
23 radio, while barring them from sleeping, reading non-work related  
24 materials, watching movies, or using the Internet for more than  
25 fifteen minutes per shift, deprive putative class members of  
26 thirty-minute meal periods relieved of all duties in accordance  
27 with law.

28 In addition, there exists the question of whether Defendants  
are liable for penalties under California Labor Code §§ 201  
through 203. Sections 201 and 202 prescribe when an employer must  
pay an employee's remaining wages earned but unpaid upon the  
employee's termination or resignation. Section 203 imposes

1 penalties for failure to comply with these requirements. The  
2 question of liability for waiting-time penalties, as penalties  
3 under Section 203 are often described, turns on whether Defendants  
4 were obliged to pay the former employees one hour of premium pay  
5 for each shift during which they worked while subject to the  
6 policies described above.

7  
8 Defendants offer only a conclusory argument that Plaintiffs  
9 have failed to satisfy the commonality requirement under Rule  
10 23(a)(2). In their motion to deny class certification, Defendants  
11 state, in regards to the challenged requirements and restrictions,  
12 "These common questions are not sufficient." Mot. to Deny Class  
13 Cert. at 13. Defendants appear to challenge the sufficiency of  
14 the commonalities, but not their existence. Defendants' opening  
15 brief and reply, as well as their opposition to Plaintiffs' motion  
16 for class certification provide no further explanation about why  
17 Plaintiffs have failed to satisfy the commonality requirement.  
18 Defendants' bare assertions are unpersuasive; Plaintiffs have  
19 demonstrated the existence of questions and issues common to the  
20 class.  
21

22 To the extent Defendants intended to defeat a finding of  
23 commonality by providing an extensive recitation of the various  
24 duties carried out by members of the proposed class, these  
25 distinctions are irrelevant because the policies and practices at  
26 issue are applicable to all Operators.  
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1 C. Typicality

2 The typicality prerequisite of Rule 23(a) is fulfilled if  
3 "the claims or defenses of the representative parties are typical  
4 of the claims or defenses of the class." Fed. R. Civ. P.  
5 23(a)(3). The test for typicality is "whether other members have  
6 the same or similar injury, whether the action is based on conduct  
7 which is not unique to the named plaintiffs, and whether other  
8 class members have been injured by the same course of conduct."  
9 Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992)  
10 (quoting Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985)).  
11 Defendants do not contest that named Plaintiffs have claims  
12 typical of class members. The Court finds that Plaintiffs satisfy  
13 Rule 23's typicality requirement.  
14

15 D. Adequacy

16 Rule 23(a)(4) requires that "the representative parties will  
17 fairly and adequately protect the interests of the class." Fed.  
18 R. Civ. P. 23(a)(4). Defendants do not dispute Plaintiffs'  
19 assertion that they satisfy the adequacy requirement and the Court  
20 finds that they do.  
21

22 III. Class Certification Under Rule 23(b)

23 A. Rule 23(b)(2)

24 "Claims for money relief may be certified as part of a Rule  
25 23(b)(2) class, but the rule 'does not extend to cases in which  
26 the appropriate final relief relates exclusively or predominantly  
27 to money damages.'" Wang v. Chinese Daily News, Inc., 623 F.3d  
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1 743, 753 (9th Cir. 2010) (internal quotation marks omitted)  
2 (citing Dukes, 603 F.3d at 615 n.38).

3 Citing Allison v. Citgo Petroleum Corp., 151 F.3d 402, 412-16  
4 (5th Cir. 1998), Defendants contend that monetary relief in this  
5 case predominates because Plaintiffs seek damages for alleged  
6 unpaid wages and waiting-time penalties. However, the Ninth  
7 Circuit has expressly rejected the Allison approach to determining  
8 whether monetary relief in a given case disqualifies the class  
9 from certification under Rule 23(b)(2). In Wang, the Ninth  
10 Circuit explained, "In Dukes, we rejected as 'deficient' . . . the  
11 Allison 'incidental damages standard' that permits certification  
12 of claims for monetary relief under Rule 23(b)(2) only when they  
13 are 'incidental to requested injunctive or declaratory relief,'  
14 because it is unduly restrictive." 623 F.3d at 753-54. In this  
15 circuit, Rule 23(b)(2) is interpreted to require "only that claims  
16 for monetary relief not predominate over claims for injunctive  
17 relief" and certification is acceptable when the claims are on  
18 "equal footing." Id. at 754.

21 Plaintiffs in the present case, like those in Wang, have a  
22 substantial claim for injunctive relief because they seek to end  
23 long-standing employment policies. Id. The claims for injunctive  
24 and monetary relief are closely related because back wages are  
25 sought for those who were deprived of lawful meal periods due to  
26 the policies Plaintiffs seek to enjoin. As a result of this close  
27 relationship, the request for monetary relief does not introduce  
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1 "new and significant legal and factual issues," nor raise  
2 particular due process or case management concerns. Id.  
3 Furthermore, courts have held that back wages are a form of relief  
4 that may be permitted in a Rule 23(b)(2) action. Dukes, 603 F.3d  
5 at 618-19 (holding that back pay in a Title VII case is fully  
6 consistent with certification of a Rule 23(b)(2) class action and  
7 noting that "every circuit to have addressed the issue has  
8 acknowledged that Rule 23(b)(2) does allow for some claims for  
9 monetary relief."). In Dukes, the Ninth Circuit reasoned that  
10 back pay in the Title VII context generally involves relatively  
11 uncomplicated factual determinations and few individualized  
12 issues, and is an integral component of Title VII's "make whole"  
13 remedial scheme. Id. at 619. Nor are waiting-time penalties so  
14 significant or complex that they render Plaintiffs' monetary claim  
15 predominant over their request for injunctive relief.  
16 Accordingly, class certification under Rule 23(b)(2) is warranted.  
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19 B. Rule 23(b)(3)--Predominance

20 Defendants challenge the predominance of common questions  
21 sufficient to support class certification. "The Rule 23(b)(3)  
22 predominance inquiry tests whether proposed classes are  
23 sufficiently cohesive to warrant adjudication by representation."  
24 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When  
25 common questions present a significant aspect of the case and they  
26 can be resolved for all members of the class in a single  
27 adjudication, there is clear justification for handling the  
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1 dispute on a representative rather than an individual basis."  
2 Hanlon, 150 F.3d at 1022 (internal quotation marks omitted). "The  
3 common issues must only predominate; they do not have to be  
4 dispositive of the litigation." In re Lorazepam & Clorazepate  
5 Antitrust Litig., 202 F.R.D. 12, 29 (D.D.C. 2001).

6 To determine whether the predominance requirement is  
7 satisfied, "courts must identify the issues involved in the case  
8 and determine which are subject to 'generalized proof,' and which  
9 must be the subject of individualized proof." In re Dynamic  
10 Random Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at  
11 \*6 (N.D. Cal.).

12 Plaintiffs assert that they will be able to provide  
13 generalized evidence of the allegedly unlawful meal period  
14 policies and practices at the Martinez refinery with proof of  
15 Defendants' written policies and deposition testimony of  
16 Defendants' representatives. Plaintiffs further contend that a  
17 class action is a superior method to resolve the dispute because  
18 hundreds of individual claims would exhaust judicial resources and  
19 use time inefficiently. It is also unlikely that the wage earners  
20 in the putative class would have sufficient incentive to pursue  
21 their claims as individuals.

22 Defendants' first argument is that meal period claims are not  
23 susceptible to class treatment under Rule 23(b)(3) because an  
24 employer need only make meal periods available to eligible  
25 employees. Accordingly, Defendants assert that each claim  
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1 requires an individualized inquiry to determine whether Defendants  
2 thwarted the meal period, or the employee simply chose not to take  
3 it.

4 Defendants, however, do not state the full extent of the  
5 protection provided by California Labor Code §§ 512 and 226.7 and  
6 IWC Wage Order 1-2001 § 11, and disregard the nature of  
7 Plaintiffs' claims. California Labor Code § 512 generally  
8 requires employers to provide employees with meal periods of at  
9 least thirty minutes at intervals depending on the number of hours  
10 worked in a given day. Cal. Labor Code § 512(a). In turn,  
11 California Labor Code § 226.7 states that no employer shall  
12 require any employee to work during any meal period established by  
13 an applicable IWC Wage Order. Under IWC Wage Order 1-2001  
14 § 11(C), "[u]nless the employee is relieved of all duty during a  
15 30 minute meal period, the meal period shall be considered an 'on  
16 duty' meal period and counted as time worked." An "on duty" meal  
17 period is permitted when the "nature of the work prevents an  
18 employee from being relieved of all duty and when by written  
19 agreement between the parties an on-the-job paid meal period is  
20 agreed to." IWC Wage Order 1-2001 § 11(C). Section 226.7 also  
21 mandates one additional hour of pay at the employee's regular rate  
22 of compensation for each work day that a meal period is not  
23 provided in accordance with an applicable IWC Wage Order. Cal.  
24 Labor Code § 226.7(b).

1 Under California's meal period provisions, "[i]t is an  
2 employer's obligation to ensure that its employees are free from  
3 its control for thirty minutes, not to ensure that employees do  
4 any particular thing during that time." Brown v. Federal Express  
5 Corp., 249 F.R.D. 580, 585 (C.D. Cal. 2008) (applying Murphy v.  
6 Kenneth Cole Productions., Inc., 40 Cal. 4th 1094, 1104 (2007)).  
7 Employers are obliged "not to force employees to work through  
8 breaks." Id. at 585 (citing Murphy, 40 Cal. 4th at 1104).  
9 Accordingly, Plaintiffs claim that Defendants' refinery-wide  
10 policies, requiring all Operators to remain on the premises, close  
11 to their work stations, to respond to radio calls and alarms  
12 throughout their shifts, to remain responsible for assigned units  
13 at all times, and to refrain from engaging in common break-time  
14 activities, deprived Operators of off-duty thirty-minute meal  
15 periods. Essentially, Plaintiffs claim that Defendants have not  
16 relinquished sufficient control over Operators during their meal  
17 breaks so as to make available an off-duty meal break and, thus,  
18 the Operators are entitled to payment of an hour's premium wage  
19 for each on-duty meal break. In this respect, the common issues  
20 presented by Plaintiffs' claims plainly predominate over any  
21 individual issues.  
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24 Defendants assert that, as a matter of law, the policies and  
25 practices that are the focus of this suit do not deprive  
26 Plaintiffs of an off-duty meal break. The Court need not resolve  
27 the merits of Plaintiffs' claims based on the present motions.  
28

1 However, for purposes of class certification, Plaintiffs' claims  
2 are adequately supported by law. In the USW case, on August 27,  
3 2010, Judge Klausner granted summary judgment in favor of the  
4 plaintiffs on their meal break claims, which were based on the  
5 same restrictions and requirements attacked in this action. After  
6 analyzing Labor Code §§ 226.7 and 512(a), IWC Wage Order 1-2001  
7 § 11, and related case law, the court found that the plaintiffs  
8 had established that they were not relieved of all duty during  
9 their meal breaks.  
10

11 Defendants argue that an employee is not "on duty" simply  
12 because the employee must remain on the premises. In support of  
13 this proposition, Defendants selectively quote from the website  
14 for the California Department of Industrial Labor Relations'  
15 Division of Labor Standards Enforcement (DLSE). The DLSE is the  
16 state division charged with enforcing IWC Wage Orders, and the  
17 webpage quoted is intended to answer frequently asked questions  
18 about the laws and regulations governing meal periods in  
19 California. However the relevant text quoted in full states,  
20

21 [Y]our employer can require that you remain on its  
22 premises during your meal period, even if you are  
23 relieved of all work duties. However if that occurs,  
24 you are being denied your time for your own purposes  
and in effect remain under the employer's control and  
thus, the meal period must be paid.<sup>3</sup>

25 Thus, the DLSE's explanation is contrary to Defendants' position.  
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27 <sup>3</sup> [http://www.dir.ca.gov/dlse/FAQ\\_MealPeriods.htm](http://www.dir.ca.gov/dlse/FAQ_MealPeriods.htm) (last  
28 revised March 7, 2008).



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The following class is certified:

All current and former shift employees of Defendants Shell Oil Company, Shell Oil Products Company LLC, and/or Equilon Enterprises LLC dba Shell Oil Products US who worked at least one 12-hour shift, excluding any shifts worked as temporary shift supervisors, since April 25, 2004, at the Martinez refinery operated by one or more of the Defendants.

The following subclass is certified:

All former shift employees of Defendants Shell Oil Company, Shell Oil Products Company LLC, and/or Equilon Enterprises LLC dba Shell Oil Products US who worked at least one 12-hour shift, excluding any shifts worked as temporary shift supervisors, since April 25, 2004, at the Martinez refinery operated by one or more of the Defendants, and whose employment has been terminated by discharge or resignation.

IT IS SO ORDERED.

Dated: 4/21/2011

  
CLAUDIA WILKEN  
United States District Judge