

1 Plaintiff now suggests that these findings should not apply to the second meal-break
2 subclass. However, the only evidence discussed in Plaintiff’s briefing that is specific to the second
3 meal break is: (1) the fact that time sheets do not contain a specific place to record a second meal
4 break; (2) the deposition of one of Defendant’s Vice Presidents who did not know whether
5 employees actually took second meal breaks or not; and (3) the fact that the 206 declarations
6 submitted by Defendant indicate that employees often took paid breaks if they needed a second
7 break. None of these three pieces of evidence can establish that Defendant’s policy regarding
8 second meal breaks, unlike the rest of Defendant’s break policies, was uniquely company-wide.

9 First, the fact that time sheets did not contain a specific line for recording a second meal
10 break could just as easily reflect Defendant’s policy that overtime was supposed to be an exception,
11 not a routine occurrence, and that it required permission from a supervisor. *See, e.g.,* Camp Decl.
12 Exh. 25 (Cortez Depo.) at 46:22-47:3. The fact that overtime may have been common does not
13 change the fact that Defendant’s policies required specific authorization from a supervisor, which
14 would afford the opportunity for specific arrangements regarding the taking and reporting of a
15 second break. There is no reason to believe that the absence of a particular blank on a preprinted
16 sheet designed for shorter shifts means that drivers were not allowed to take breaks. Instead, each
17 driver would have to prove what his supervisor permitted, with regards to overtime authorization.
18 This is thus an individual, not a common, question.

19 Second, the testimony of Defendant’s executives on which Plaintiff relies is inconclusive
20 for the same reasons explained in the November 13, 2012 Order: it simply does not suggest that
21 there was a company-wide practice or policy regarding the provision of meal breaks. *See, e.g.,*
22 Camp Decl. Exh. 32 (Depo. of Mark Bartholomew) at 105:17-18 (“Again, I don’t know if they
23 took it or they didn’t.”). As explained in the November 13, 2012 Order, Defendant’s written policy
24 explicitly entrusted the scheduling of meal breaks to individual supervisors at each location. An
25 executive’s testimony that he did not know whether drivers actually did or did not take second
26 meal breaks cannot establish that there was a company-wide practice or policy of preventing such
27 breaks. At most, it establishes that the company did not uniformly require employees to take
28 second meal breaks. But the law does not require Defendant to make sure employees actually take

1 meal breaks; it only requires that the breaks be made available. *See Brinker Rest. Corp. v. Superior*
2 *Court*, 53 Cal. 4th 1004 (2012).

3 Third, the Court has already clearly explained that it places no weight on the 206
4 declarations from current employees. Thus, even if they did say that workers were not allowed to
5 take a second off-duty meal break – which they do not – the Court would not find this evidence
6 persuasive. Furthermore, Plaintiff cannot both move to strike these declarations as coerced
7 because the declarations state that workers were given appropriate breaks, and simultaneously rely
8 on them to establish a common policy on a different aspect of Defendant’s practices. Thus, the 206
9 declarations do not provide evidence of a common policy unique to second meal breaks.

10 In sum, Plaintiff has not presented any persuasive evidence that Defendant had a company-
11 wide policy of failing to allow second meal breaks where required. Accordingly, for the reasons
12 stated in the November 13, 2012 Order and the reasons stated above, Plaintiff’s motion to certify a
13 class of drivers who were not given a second meal break is DENIED.

14 **IT IS SO ORDERED.**

15 Dated: November 28, 2012



LUCY H. KOH
United States District Judge