SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BARBARA J. BOWLIN-BURDICK, an individual on behalf of herself and all others similarly situated,

Plaintiff,

vs.

LIFE CARE CENTERS OF AMERICA, INC., a corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: BC657139

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

Defendant Life Care Centers of America, Inc. (LCCA) operates six nursing homes in Southern California. It formerly employed Plaintiffs Barbara J. Bowlin-Burdick (Bowlin-Burdick) and Lucy Chavez (Chavez) (jointly, Plaintiffs). The operative Second Amended Complaint alleges wage and hour violations under the Labor Code as well as claims under the Unfair Competition Law, Bus. & Prof. Code §17200, *et seq*. and the Private Attorney General Act, Labor Code §2968, *et seq*.

Before the Court is Plaintiffs' Motion for Class Certification. Plaintiffs seek to certify four classes: a Late Meal Period Class; an On-Premises Rest Period Class; a Wage Statement Class; and a Waiting Time Penalty Class.

Having considered the written submissions, the admissible evidence,[1] and the argument of counsel on October 1, 2020, and as detailed herein, the proposed classes are properly certified.

II. APPLICABLE LAW

A class action is authorized "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." Code Civ. Proc. §382.

"The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*); *Dailey v. Sears, Roebuck and Co.* (2013) 214 Cal.App.4th 974, 988. The moving party bears the burden to show that the requisites for class certification are present. *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 654; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal 4th 319, 326 (*Sav-On*).

These requirements are commonly articulated in terms of the following:

- Numerosity – The proposed class is numerous in size. *Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222.
- Ascertainability – A class is ascertainable when it is defined "in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980

[1] Rulings on the evidentiary objections are appended hereto.

(*Noel*), citing *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915 (*Hicks*).

- Community of Common Interest – Common questions of law or fact predominate and class representatives have claims or defenses typical of the class and can adequately represent the class. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.
- Superiority – Proceeding with the case as a class action is superior to other methods of adjudication. *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089.

In order to consider whether class certification is appropriate the Court must consider the allegations of the complaint, the law applicable to the claims asserted, and the method by which liability is sought to be imposed. "'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.'" *Brinker*, *supra*, 53 Cal.4th at 1022, citing *Hicks*. "However . . . class treatment is not appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the class judgment on common issues." *Duran v. U.S. Bank Natl. Assoc.* (2014) 59 Cal.4th 1, 28 (*Duran*), internal cite and quotation marks omitted. Thus, the Court may take a "peek" at the merits by looking at the elements of the causes of action and how they will be established. *Brinker*, *supra*, 53 Cal.4th at 1024.

The Supreme Court also cautions that "the class action procedural device may not be used to abridge a party's substantive rights." *Duran*, *supra*, 59 Cal.4th at 34. "As our Supreme Court explained in *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 462 [115 Cal. Rptr. 797, 525 P.2d 701], '[c]lass actions are provided only as a means to enforce substantive law. Altering the substantive law to accommodate procedure would be to confuse the means with the ends—to sacrifice the goal for the going.'" *Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 841. This includes the right to

present a defense. See *Hale v. Sharp Healthcare* (2014) 232 Cal.App.4th 50, 66 (The Supreme Court encourages courts to "be 'procedurally innovative' in managing class actions," but "'procedural innovation must conform to the substantive rights of the parties,' including the right for the defendant to litigate its affirmative defenses.").

III. RELEVANT FACTS

A. Meal Periods

(i) Background

LCCA operates six skilled nursing facilities in California that provide skilled nursing, rehabilitation and senior living. The facilities are referred to as Bel Tooren, La Habra, Mirada Hills, Rimrock, North Walk Villa, and Menifee. Chavez worked at the Menifee facility as a Certified Nursing Assistant (CNA).

Nurses with varying educational levels and titles provide direct patient care. At the start of each shift, each nurse is assigned to specific patients. Deposition of Pegah Sahebifard at 35:1-6 (Plaintiff's Exhibit J); Deposition of Marcella Allard at 46:10-17 (Plaintiffs' Exhibit M); Deposition of Selena Stewart at 34:4-18 (Plaintiffs' Exhibit F). The conditions of many of these patients is such that they cannot be left unattended as many suffer from dementia or Alzheimer's disease. They must be individually fed and bathed. Deposition of Chavez at 70:15-71:3; 76:5-79:6 (Plaintiffs' Exhibit D).

All of the proposed Late First Meal Period class members are employees who engage in direct patient care. The evidence is that all such employees may only be provided relief by another employee who is also directly engaged in patient care, with certain restrictions. February 27, 2019 deposition of LCCA's PMK (for La Habra and Mirada Hills) Selena Stewart page 37:24-38:5; (Plaintiffs' Exhibit F). CNAs can cover for other CNAs. RNAs can cover for RNAs and CNAs. LVNs can cover LVNs, CNAs, RNAs or RN charge nurses. RNs can cover for any. Id. at pages 47:5-23; 52:9-20 and Exhibit 3 and 4 thereto.

LCCA's written meal period policy provides, "Associates working a period of more than five (5) hours shall be provided an unpaid, uninterrupted 30-minute meal period. The meal period shall be provided within the first five hours of work. During the meal period, the associates will be relieved of all duties and Life Care will make reasonable efforts to ensure the meal period is uninterrupted. Associates are responsible for clocking out at the beginning of his/her meal period and clocking in at the conclusion of his/her meal period." The following "Meal Period Rules" are also listed, including, "3. **Meal periods are to be scheduled with your supervisor in advance so that coverage can be provided. Resident care areas may not be left unattended during meal periods.**" Bolding added. This policy was given to employees at orientation. Lasota Deposition at 19:19- 20:16 (Defendant's Exhibit L) and Ex. 3 thereto.

(ii) PMK Testimony

LCCA produced several persons most knowledgeable (PMK) to testify regarding the various facilities. Each testified, in substance, that before a nurse may take a meal period another nurse must be available to cover his or her patients. See Stewart February 2019 Deposition at 37:24 – 38:7; 39:4-11(Plaintiffs' Exhibit F); Stewart January 2020 Deposition at 41:4-17; 42:14-24 (Plaintiffs' Exhibit G); Sahebifard November 2019 Deposition at 40:6 – 41:6; 43:10 – 44:22 (Defendants' Q); and 69:9 through 71:9 (Plaintiffs' Exhibit J); Narcisse Deposition at 26:25- 27:19; 30:22 – 31:10 (Plaintiff's Exhibit L; Defendant's Exhibit N); Allard Deposition at 46:19-47:12 (Plaintiffs' Exhibit M); Kuizon Deposition at 18:18 – 19:19 (Plaintiffs' Exhibit N).

These witnesses testified to a variety of ways coverage is provided. Stewart testified the charge nurse would insure coverage or provide it herself. Stewart Deposition at 40:22-42:25 (Plaintiff's Exhibit F). Sahebifard testified that another nurse would be "pulled" to provide coverage. Sahebifard November 2019 Deposition at 69:9 through 71:9 (Plaintiff's Exhibit J). Narcisse testified the nursing staff "partners up" to provide coverage. Narcisse Deposition at 26:25- 27:19 (Plaintiff's Exhibit L). Allard described a

"huddle" at the beginning of each shift to discuss meal and rest breaks. Allard Deposition at 33:23- 35:8 (Plaintiffs' Exhibit M).

There is no evidence of a uniform procedure for providing coverage for a meal period such as a floating nurse for each location. Further, during discovery Plaintiffs sought documents pertaining to written meal period schedules. Haines Declaration, ¶13 and Exhibit 2 thereto. The only meal period schedule produced was in Chavez's personnel file. *Ibid.* Some PMK witnesses testified to such schedules, however. Sahebifard November 2019 Deposition at 57:6-21 (Plaintiff's Exhibit J); Kuizon Deposition at 17:17-18:17 (Plaintiffs' Exhibit N).

(iii) Employee Testimony

There is also evidence tendered by putative class members. Chavez testified that she could only take meal breaks when another nurse relieved her. Chavez Deposition at 141:8-12 (Plaintiffs' Exhibit D). Chavez's supervisor, Yvonne Alumia, confirmed that this was the case. Alumia Deposition at 54:13 through 55:22 (Plaintiff's Exhibit E). Alumia also testified that the charge nurse is ultimately responsible to "find someone" to cover nurses when they go on meal breaks. Alumia Deposition at 98:17-99:9 (Defendant's Exhibit C).

Dorothy Denise Parker testified she herself had to get someone to cover for her if she wanted a meal break and that there was no one at the facility where she worked that would assist her in locating coverage so she could take a lunch break. Plaintiffs' Exhibit O at 24:21 – 26:24.

Joselin Perez Romero testified it was necessary to make sure someone was covering her patients before she took a meal break. Plaintiffs' Exhibit P at 24:9-12. She further testified that of the times she took a late lunch about half the time it was because there was no one to cover her and the rest of the time it was because she could not complete all her work prior to the scheduled meal break. *Id.* at 27:15- 28:4.

In response to a question about the process for taking a meal period, Diana Joselyn Fuentes responded, "It's either you have the first lunch or the second lunch. You'll go and you'll clock --- you'll go and you'll clock out of the machine. And then you had to tell the charge nurse, 'Okay. I'm on my lunch.' And then that was just it." Fuentes Deposition at 25:23 – 26:5 (Defendant's Exhibit I). Fuentes also testified, however, that there was a requirement that before leaving for lunch someone had to be watching her patients, and that other CNAs would cover her patients during meal breaks but if the facility was short-staffed she could not take her lunch break on time. Fuentes Deposition at 29:20 – 31:17 and 45:18-25 (Plaintiff's Exhibit R).

The declarations of putative class members Carmen Magana, who worked at Mirada Hills (Exhibit U), Tecielen Cruz, who worked at La Habra (Exhibit V), Leticia Soto, who worked at the LCCA facility in Bellflower (Exhibit W), Abigail Chavez, Plaintiff Lucy Chavez's daughter, who also worked in Menifee (Exhibit X), Celene Ybarra, who worked at Rimrock (Exhibit Y), Elizabeth Cornell, who worked at the La Mirada facility (Exhibit AA), all aver that they could not take meal breaks until another nurse came to cover their patients. In some instances, like Parker, they also aver they were individually required to find another nurse to cover their patients. Cruz Declaration, ¶5; Ybarra Declaration, ¶6; Connell Declaration ¶6.

In short, the testimony by both the PMK deponents and putative class members is that a nurse may not take a meal break without coverage and that how coverage was provided was variable.

There is also evidence tendered by LCCA to the effect that class members, including the named plaintiff (Chavez) took meal periods late or not all for personal reasons (See e.g. Chavez Deposition at 102:14-17; 105:17-106:17 (Defendant's Exhibit F)) and that putative class members were required to submit a form to report missed, late or interrupted meal and rest periods. (See e.g. Bowlin-Burdick Deposition at 158:24-182:19 (Defendant's Exhibit D)).

(iv) Audits of Records

LCCA audits time cards for *missed* meal periods and pays meal period premiums for them. The evidence is inconsistent as to whether LCCA audits time cards for *late* meal periods. PMK Rona Sanchez testified as payroll coordinator for Menifee. She testified to reviewing time keeping entries on a daily basis looking for missed punches and that she generated a report of the employees who missed punches, which she then provided to supervisors. She confirmed that she only reviewed for missed punches and not anything else. Rona Sanchez Deposition at 19:4 – 20:17 (Plaintiffs' H). The majority of the testimony is consistent with Sanchez's. PMK Stewart January 2020 Deposition at 19:24-20:20 and 35:9-23 (Plaintiffs' G); PMK Stewart February 2019 Deposition at 62:7 – 63:24 (Plaintiffs' F); PMK Sahebifard November 2019 Deposition at 90:1-6, 92:7-11and 93:5-25 (Plaintiffs' J).

PMK Narcisse testified that at Rimrock she performed daily timecard audits to look for missing or short meal periods. Narcisse Deposition at 22:23-23:17 and 26:20-22 (Plaintiffs' L); Narcisse Deposition at 23:21-24:6 (Defendant's N). Similarly, PMK Allard testified to her understanding of what Rona Sanchez did, as well as what the new payroll person who replaced Sanchez does, which is to review for missed punches and to provide a report for supervisors. Allard Deposition at 56:21 -60:8 (Defendant's B). Within this testimony, Allard also testified that supervisors are looking for late or short lunches. *Id.* at 59:18-23.

(v) Plaintiffs' Expert Testimony

Plaintiffs' expert, Jon Michael DuMond, Ph.D., M.S., B.S. (DuMond), was provided with employee timekeeping records for the period July 16, 2015 through July 31, 2018, and provided an expert opinion. DuMond explains that based on the timekeeping data during the relevant time period, late meal periods occurred 28.1% of the time (57,526 of 204,663 shifts). Plaintiffs' Exhibit DD, page 5 table. LCCA's expert, Richard Goldberg, M.A.(Goldberg) criticizes this data as deficient because some of the meal

periods were started only a few minutes late. Further, the data does not, in and of itself, show why the meal period was late. These points do not undermine the accuracy of the data or preclude its use. The trier of fact can weight it with other information provided.

DuMond's analysis also showed that 14 meal period premiums were paid over the time period he analyzed. DuMond Report (Plaintiffs' Exhibit DD), page 5 table. DuMond was tasked with determining if employees received a first meal period prior to the sixth hour and to count the number of "Insufficient Break" payments made. For each Insufficient Break, DuMond identified the shift worked and whether the payment was made for a missed meal period (no meal period punch at all), a short or interrupted meal period, or a late meal period. DuMond was further asked to identify the number of pay periods that would include an "Insufficient Break" payment since April 10, 2016, as to all and not just those in the 8 nursing job positions. The evidence shows no meal period premium was paid for late meal periods 99.98% of the time.

Plaintiffs also propose, through the testimony of DuMond, that after class certification additional evidence could be developed by a random sampling of class members who would be asked whether during their employment they had late meal periods due to LCCA having inadequate staffing. As to those who answered affirmatively additional depositions could be taken. See Plaintiffs' Exhibit DD. Plaintiffs rely on *Bell v. Farmers Insurance Exchange* (2004) 115 Cal. App. 4th 715, 722-723 (*Bell*).

LCCA objects to this approach in a lengthy "objection" to Plaintiffs' trial plan. As discussed at oral argument, this is improper. Evidentiary objections to Dr. DuMond's proposal are proper, as is the tender of a critique thereof by LCCA's expert, Goldberg. But, a separate objection to Plaintiffs' "trial plan" is a thinly veiled attempt to avoid the page limits imposed by the Rules of Court. Thus, the arguments by LCCA in that document (pages 5:1-17:12) are disregarded.

Certain of Goldberg's criticisms of DuMond's proposed survey are persuasive. The use of *Bell's* methodology to determine liability (as opposed to damages) is questionable. See *Duran, supra*, 59 Cal. 4th at 33. Even if permitted, the question posed by DuMond as to

the meal break issue is inexact, at best. The term "adequate staff coverage" is undefined. Further, if a facility was not short staffed but no coverage was provided, is the answer "yes" or "no"? Is the respondent to consider each meal period occurring during the course of employment? Given these infirmities, it is concluded that this possible survey should not be considered in determining whether to certify the proposed late meal period class but that the balance of DuMond's testimony is properly considered.

B. Evidence Regarding On-Premises Rest Breaks

LCCA's Rest Period Policy provides, "Associates are provided one (1) paid 10-minute rest period every four (4) hours worked, or major portion thereof (i.e. two hours or more). Associates who work fewer than three and a half (3 ½) hours in a day, however, are not provided any rest periods." In the section captioned "Rest Period Rules," Rule 5 reads, "Associates are not permitted to leave the facility during paid rest periods (i.e. to run personal errands, smoke, walk or drive to convenience store, coffee shop, fast food, etc.)." Rule 6 provides in part that employees are subject to corrective action for leaving the facility during rest periods. Lasota Deposition at 25:1-16 and Exhibit 4 (Plaintiffs' I).

This policy is disseminated to employees during orientation and thereafter. PMK Allard Deposition at 15:19- 16:16 (Plaintiffs' Exhibit M) and Exhibit 3; PMK Narcisse Deposition at 47:1- 49:1 (Plaintiffs' L) and Exhibit 3; PMK Stewart January 2020 Deposition at 36:23- 38:7 (Plaintiffs' G) and Exhibit 10, and February 2019 Deposition at 22:13-23:1 (Plaintiffs' F); PMK Kuizon Deposition at 28:2-22 (Plaintiffs' N) and Exhibit 5.

LCCA's PMK witnesses testified that it is their policy to follow this written rule (MPA at 10:9-10 and fn. 18) and that LCCA holds seminars throughout the year and reminds employees about its written rest period policy (MPA at 10:12-15 and fn. 20).

Putative class members testified that LCCA's practices do not deviate from this written policy. Gonzalez Deposition at 27:11-21 and 46:15- 47:3 (Plaintiffs' Q); Fuentes

Deposition at 48:7 – 49:15 (Plaintiffs' R). Other putative class members offered declarations to this effect. Soto Declaration, ¶6; Ybarra Declaration, ¶7.

C. Wage Statements

When employees have an insufficient meal break it appears on timekeeping records as "Insufficient Break –REG." When this occurs, LCCA pays the employee a meal period premium for that pay period. Lasota Deposition at 83:16 – 84:9 (Plaintiffs' I). However, wage statements do not carry any pay code for meal period premiums and instead are recorded as Regular hours. *Id.* at 84:4-14 and 90:11-17.

IV. ANALYSIS

A. Ascertainability and Numerosity Are Shown

"A class representative has the burden to define an ascertainable class." *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 918.

A plaintiff meets this burden by proposing a class definition that defines the class in terms of "objective characteristics and common transactional facts," which make "the ultimate identification of class members possible when that identification becomes necessary." *Noel, supra*, 7 Cal.5th at 980.

Plaintiffs seek to certify the following classes:

Late First Meal Period Class: All current and former non-exempt employees of LCCA, who were employed in any of the following positions: Registered Nurse (RN), RN Unit Nurse, Licensed Vocational Nurse (LVN), LVN Unit Nurse, LVN Treatment Nurse, Certified Nursing Assistant (CNA), Nursing Aide, and/or Restorative Certified Nursing Assistant (RNA), during the time period July 16, 2015 through the present at any of LCCA's California locations.

In footnotes Plaintiffs clarify the RNs and RN Unit Nurses are collectively referred to as RNs, and that LVN, LVN Unit Nurse and LVN Treatment Nurse are collectively referred to as "LVNs". Plaintiffs further clarify that the class period's start date of July 16, 2015, is the result of the settlement of a prior class action with a termination date of July

15, 2015. Finally, it is clarified that LCCA has six locations in California: Bel Tooren, La Habra, Mirada Hills, Rimrock, North Walk Villa, and Menifee.

On-Premises Rest Period Class: All current and former non-exempt employees of LCCA who have worked at any of LCCA's California locations at any time from May 2, 2016 through the present.

Wage Statement Class: All current and former non-exempt employees of LCCA who: (i) were paid at least one meal period premium payment that was denoted on their wage statement as an hour of "regular" pay; and/or (ii) are members of the Late First Meal Period class and/or On-Premises Rest Period Class and who received at least one wage statement at any time from April 10, 2016 through the present.

Waiting Time Penalty Class: All members of the Late First Meal Period Class and/or On-Premises Rest Period Class who separated their employment from LCCA Centers of American, Inc. at any time from July 16, 2015 through the present.

Each of these definitions meets the *Noel* requirements.

In terms of numerosity, there is no admissible evidence of the exact number of class members. However, the Court can infer from the declarations submitted and the admissible testimony as to the number of facilities and beds that the numerosity requirement is met.

B. Commonality

At the certification stage, the Court need not reach the merits of a case. What must be determined is whether Plaintiff's theory of recovery is, as analytical matter, likely to prove amenable to class treatment. *Brinker*, *supra*, 53 Cal.4th at 1021. It is not sufficient to show only that there are some common questions. What is required to be shown is that the common questions are amenable to common answers. "What matters to class certification . . . is not the raising of common 'questions' -- even in droves -- but, rather, the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the

litigation." *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 350 (*Wal-Mart*), citing Nagareda, Class Certification in the Age of Aggregate Proof, 84 N. Y. U. L. Rev. 97, 132 (2009).

1. Late Meal Period Class

Plaintiffs' theory of the case as it relates to the Late Meal Period Class is that LCCA has a consistent policy and practice that results in the failure to make lawful meal periods available to the proposed class members. Plaintiffs' burden *at trial* is to establish the policy or practice. At certification their burden is to show that such a policy or practice can be shown by common evidence. See *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 407 (*Aurora*) ("At the certification stage, plaintiffs need only establish that the question of whether the Hospital's practices or procedures resulted in the denial of lawful breaks can be determined on a classwide basis.") Plaintiffs need not establish, however, that the policy or practice impacted all class members equally. *Id.* at 409.

Labor Code §512, subd. (a), provides that an employer shall not employ an employee for more than five hours a day without providing a meal period of not less than 30 minutes (unless the total work period is no more than six hours, in which case it may be waived by mutual consent), and shall not employ an employee for a work period of more than 10 hours without providing a second meal period of not less than 30 minutes (unless the total hours worked is no more than 12 hours, in which case it may be waived by mutual consent, so long as the first meal period was not waived).

Labor Code §226.7, subd. (b), prohibits an employer from requiring an employee to work during a meal or rest period.

Labor Code §226.7, subd. (c), requires that employees receive one additional hour of pay if "an employer fails to provide an employee a meal or rest period in accordance with a state law," including a Wage Order.

Wage Order No. 5 (8 CCR §11050) governs workers in the healthcare industry. The healthcare industry is defined to include intermediate care and residential care facilities and

convalescent care facilities. Section 11050, ¶2(j). The parties agree that LLCA operates such facilities.

The relevant meal period requirements under Wage Order 5 are as follows:

11. Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

These provisions have been interpreted as requiring that first meal periods start after no more than five hours of work. *Brinker*, *supra*, 53 Cal.4th at 1041-1042.

There are two related common questions that predominate over any individual questions as to this proposed class:

First, Plaintiffs posit, and LCCA agrees (see Opposition at 14: 3-9) that there is a common merits-based question as to what it means to actually "provide" a meal period pursuant to Labor Code §512(a) and Wage Order 5, ¶11. Reply at 8:11-13. Our Supreme Court held in *Brinker*:

"An employer's duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a meal period to

its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. What will suffice may vary from industry to industry...."

Brinker, *supra*, 53 Cal.4th at 1040.

In the context of this case, the question is: Was LCCA required to provide an organized relief system so that employees could, if they chose, take their meal breaks on time and in full without having to ask their supervisor or co-workers for coverage, or is it sufficient to have enough nurses on duty at a given point in time so that the employee could take a timely and full meal break? The second and related common question is: Does LCCA have a policy or consistent practice that has the effect of denying nurses the ability to take timely statutorily compliant meal periods?

Plaintiffs seek answers to these questions through LCCA's written meal policy, the testimony of LCCA's PMK witnesses and putative class members, and the statistical testimony of DuMond. They argue that this evidence will show that nurses cannot take a meal period until someone comes to relieve them and that while meal periods may be scheduled, LCCA fails to maintain a consistent process for actually providing them because they do not have a consistent method for assigning the necessary coverage.

LCCA does not dispute that a nurse may not take a meal break without coverage but argues that the proposed method of proof fails, arguing that there is only "anecdotal" and statistical evidence focusing on the use of time records as part of the proof. It argues that the fact that 28.1% of employees did not start their meal periods on time does not establish liability. It also urges that it has a form, used by employees, by which they are to report late or missed meal periods. It suggests that different facilities communicate their break schedules differently and that no one is required to wait for coverage to take a break because it "layers" staffing at each facility to provide coverage. Further, it contends that

why an employee did not take a meal period (or took a late meal period) is a liability issue that would break the case down to individual mini-trials.

These arguments miss the mark. Plaintiffs are not seeking to establish liability based *solely* on anecdotal testimony and time records. They seek to show through the nature of the work itself, the written meal period policy, the testimony of individual employees and PMK witnesses as to the circumstances in the workplace, *and* the time records, that a trier of fact could infer the employer failed to consistently make available a statutorily compliant meal period to members of the proposed class. On this motion the question is *not* whether the policy exists but only whether there is substantial evidence to suggest that it can be established. As our Supreme Court has stated, "The theory of liability—that [the employer defendant] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law—is by its nature a common question eminently suited for class treatment." *Brinker, supra*, 53 Cal.4th at 1033.

LCCA may defend against the evidence by showing its "layered" staffing results in a consistent policy at each of its facilities of permitting nurses to take their breaks on time and in full. It may challenge the statistical evidence or argue that its weight is insufficient. It may introduce its own anecdotal evidence that nurses were consistently provided meal breaks on time and in full at the facilities and it may challenge the credibility of those that say they took their meals late or not at all or were required to secure their own coverage. It may also request a special verdict form as to each facility so that if the trier of fact finds a proper policy at some facilities but not all, liability may be limited.

In wage and hour case alleging a de facto policy of denying the opportunity to take proper meal breaks, the focus is not on whether particular individuals may have taken a meal break and/or taken one late for their own reasons but whether the policy itself exists. This is an issue for the trier of fact based on the totality of the evidence submitted by both parties. "California appellate authority…makes clear that, in the context of meal breaks, whether a specific employee actually had a valid meal break on a given day is a question of damages, and does not preclude class certification. *Lubin v. The Wackenhut*

Corp. (2016) 5 Cal.App.5th 926, 942 *(Lubin)*. To hold otherwise would be to hold that a meal break wage and hour case can never be certified unless the employer totally lacks a written statutorily compliant policy. *Alberts, supra,* 241 Cal. App. 4th at 407. See also *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129.

The cases cited by LCCA (*Wal-Mart* and *Brown v. Federal Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587 (*Brown*)), are not to the contrary. The issue in *Wal-Mart* was whether defendant discriminated against women in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1 *et seq*. Plaintiffs sought to certify a nationwide class of all female employees of Wal-Mart. The company had a published policy forbidding sex discrimination in employment decisions. Individual managers were granted discretion as to pay and promotion decisions. Plaintiffs alleged this discretion was exercised disproportionately in favor of men, leading to an unlawful disparate impact on female employees. See 42 U.S.C. § 2000e-2(k). It was further alleged Wal-Mart was aware of this effect, amounting to disparate treatment based on sex. See 42 U.S.C. § 2000e-2(a). The theory of the case was that a strong and uniform corporate culture permitted bias against women to infect the discretionary decisionmaking of Wal-Mart's managers, thereby making every female employee the victim of one common discriminatory practice. *Wal-Mart, supra*, 564 U.S. at 345.

In support of their motion for class certification plaintiffs relied upon statistical evidence about pay and promotion disparities between men and women at the company, anecdotal reports of discrimination from 120 of Wal-Mart's female employees, and the testimony of a sociologist, who conducted a "social framework analysis" of Wal-Mart's "culture" and personnel practices, and concluded that the company was "vulnerable" to gender discrimination. In addition, plaintiffs provided evidence from a statistician, and a labor economist. The statistician showed statistically significant disparities between men and women at Wal-Mart and opined the disparities could be explained only by gender discrimination. The economist compared workforce data from Wal-Mart and competitive

retailers and concluded that Wal-Mart "promotes a lower percentage of women than its competitors." *Wal-Mart, supra,* 564 U.S. at 356.

In finding the class was not properly certified the Supreme Court found that even if the statistical evidence were admissible (a premise it questioned), the tendered evidence could not establish plaintiffs' theory on a classwide basis. It concluded there were not "common questions" as that term is properly used in federal class action litigation and Title VII cases in particular, where the specific employment practice must be challenged and the crux of the inquiry is the *reason* for a particular employment decision. As the Supreme Court explained: "Other than the bare existence of delegated discretion, respondents have identified no 'specific employment practice'--much less one that ties all their 1.5 million claims together. Merely showing that Wal-Mart's policy of discretion has produced an overall sex-based disparity does not suffice." *Wal-Mart, supra,* 564 U.S. at 357. "Here respondents wish to sue about literally millions of employment decisions at once. Without some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question *why was I disfavored.*" *Wal-Mart, supra,* 564 U.S. at 352.

Here, a specific alleged employment practice is challenged. Further, as LCCA acknowledged at oral argument, statistical or anecdotal evidence may have a place in a class action. See *Duran, supra,* 59 Cal. 4th at 39. As was explained following *Wal-Mart*: Whether a representative sample may be used to establish classwide liability will depend on the purpose for which the sample is being introduced and on the underlying cause of action. *Tyson Foods, Inc. v. Bouaphakeo* (2016) 136 S.Ct. 1036, 1049. "A representative or statistical sample, like all evidence, is a means to establish or defend against liability. Its permissibility turns not on the form a proceeding takes—be it a class or individual action—but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action." *Id.* at 1046; *Lubin, supra,* 5 Cal.App.5th at 937.

Nor does *Wal-Mart* stand for the proposition that because an employer may have individualized defenses to employees' claims for damages, a class may never be certified.

Wal-Mart was a Title VII case in which, as a matter of statute, once the plaintiff has made a prima facie showing of a discriminatory action, the burden shifts to the defendant to show that the adverse employment action was made for a nondiscriminatory employment reason. A defendant's right to prove that an adverse employment action as to a specific employee was taken for a nondiscriminatory reason necessarily has to be individualized. In contrast, in a wage and hour case such as this, if plaintiff establishes the common practice or policy of denying timely meal and rest breaks, then whether an individual was permitted to take a valid meal or rest break on any given day is a question of damages. See *Brinker, supra*, 53 Cal.4th at 1022 ("'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages'"); *Lubin, supra,* 5 Cal.App.5th at 938-939.

Lubin further explains, "California appellate authority … makes clear that, in the context of meal breaks, whether a specific employee actually had a valid meal break on a given day is a question of damages, and does not preclude class certification. 'Under the logic of [*Brinker*'s] holdings, when an employer has not authorized and not provided legally required meal and/or rest breaks, the employer has violated the law and the fact that an employee may have actually taken a break or was able to eat food during the workday does not show that individual issues will predominate in the litigation.' (Citation.)" *Id.* at 942.

LCCA cites *Brown* for the proposition that time records "do not and cannot establish a practice of denying anyone a meal break within the first five hours of work." Opposition at 14:13-15. This language is not in the opinion. In *Brown*, plaintiffs proposed using time sheets as a common method of proof for establishing the number of meal breaks and rest breaks missed by the class. The court noted that the time records may or may not have accurately recorded breaks as they were prepared by the employees and concluded that the time spent on the reasons for missed breaks would exceed that saved by the class action vehicle.

LCCA also relies on *Esparza v. Safeway, Inc.* (2019) 36 Cal.App.5th 42 In *Esparza* plaintiffs brought a claim under Bus. & Prof. Code §17200 alleging the employer had a policy of failing to pay any meal period premiums. Its theory on class certification was that the practice harmed employees by denying them the value of working for an employer who did not categorically deny the payment of meal period premiums. They averred they did not seek accrued meal period premium wages and proposed a "market approach" for establishing loss. On summary judgment they tendered an inadmissible expert opinion based on time punch data. They did not offer the opinion as evidence of liability, as is proposed here.

Finally, *Lampe v. Queen of the Valley Medical Center* (2018) 19 Cal.App.5th 832, is not helpful to LCCA. There, plaintiffs sought to certify several classes based on the various theories. Among them was a proposed class of employees who allegedly were not provided a meal break after five hours of work. In support of their motion, time records for 75 employees (over a 7 year period) were analyzed and it was determined that 11.1 percent had meal breaks within the first 5 hours of their shifts. There were no declarations from employees who claimed they were denied meal breaks or were not provided them. The declaration from the named plaintiff stated that he signed a meal break waiver. Numerous other QVMC employees provided declarations that they were provided a break within five hours of starting their shift. Noting that a missed meal break does not constitute a violation if the employee waived the meal break, or otherwise voluntarily shortened or postponed it, the court found that class certification was properly denied because, among many other things, the expert's analysis failed to take into account the effects of meal break waivers and that analyzing review of individual employees files and pay stubs would be required on this issue. *Id.* at 851.

Relying on *Lampe*, LCCA argues "there is no evidence employees were denied timely meal breaks by a policy or *uniform* practice." Opposition at 15: 20-21. The evidence in the record is that (1) nurses work in an environment where patients may not be left unattended; (2) nurses provide bathing, feeding, medication, and the like, which may not

always be interrupted for a timely meal period; (3) the written meal period policy states both that meal breaks must be taken in the first five hours of work and that patients may not be left unattended; (4) in practice nurses do not take meal periods unless another nurse provides coverage; (5) meal periods are not consistently scheduled in writing at each location; (6) employees testified they must ask their supervisor for a relief nurse or seek out their own before taking a meal period; (7) the statistical evidence is that based on the timekeeping data during the relevant time period, late meal periods occurred 28.1% of the time (57,526 of 204,663 shifts) and that in 99.98% of occasions no late meal period premium was paid. This is sufficient to put to a trier of fact the common question of whether a de facto policy or practice of failing to provide timely meal periods exists. This is far different from the proposed trial evidence in *Lampe*.

In short, common questions are shown as to the proposed Late Meal Period Class and it is shown that the answers to those questions can be shown by common evidence. Plaintiffs' theory of liability, that LCCA's policy and practice of not making meal periods available unless there is coverage while simultaneously not having a consistent policy in place for providing coverage, raises a common question as to whether LCCA has a policy or practice of failing to provide an opportunity to take a proper meal break.

LCCA does not argue in its Opposition that there are any defenses it seeks to assert to this claim that would require significant individualized testimony, other than its contention that as to each class member each missed or late period must be shown and must be shown to be because of LCCA's policy rather than individual choice. This not the law in a case that asserts a de facto policy and practice of denying timely periods. *Lubin, supra,* 5 Cal.App.5th at 942; *Alberts, supra,* 241 Cal. App. 4th at 407.

The court recognizes that if such a de facto policy is found to exist or is found to exist at some but not all facilities, then there will be a question as to which members of the class were affected by the policy and how their damages should be calculated. As recognized in *Duran*, 59 Cal. 4th at 39-40, *Bell*, and *Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 371-372, once liability is established, a reasonably

expeditious means of calculating and distributing classwide aggregate damages (if individual adjudication of the entitlements of all class members, or a substantial portion of the members, would impose impossible burdens on the courts and litigants), is permitted.

Prior to trial, Plaintiffs shall propose such a methodology to be applied in the event liability is found.

2. On-Premises Rest Period Class

Wage Order No. 5, which is applicable here, contains the following applicable provisions:

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act. 8 CCR 11050. This definition differs from that generally applicable under state law, which defines "hours worked" as those in which the employee is subject to the employer's control.

12. Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

(C) However, employees ... of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain

on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

Plaintiffs' theory of liability with respect to the on-premises rest period claim is that LCCA's stated policy of requiring employees to stay on-site for rest breaks, and prohibiting certain conduct during rest breaks, is a violation of the statute and Wage Order 5 as to all class members.

LCCA opposes certification of an On-Premises Rest Period Class by arguing that under the Wage Order, employees are only "working" when they are "suffered or permitted" to work and that limitations on their ability to leave the premises or to engage in certain conduct during their breaks does not mean that they are "suffered or permitted to work." It also urges the Wage Order's "sole care" exemption applies to it. Finally, it argues that there is evidence employees were permitted to and did leave the premises. Perez Romero Deposition at 45:8-13 (Defendant's Exhibit P); Bowlin-Burdick Deposition at 67:16-19 (Defendant's C).

Whether the "suffered or permitted to work" provision and "sole care" exemption applies to LCCA is a common legal question which can be resolved across the class. This is so even if it the case that there may be occasions when LCCA did not apply its rest break policy. If Plaintiffs meet their burden of establishing a common policy, whether an individual was permitted to take a valid rest break on any given day is a question of damages. See *Brinker*, *supra,* 53 Cal.4th at 1022 "'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.'"); *Lubin*, *supra*, 5 Cal.App.5th at 938.

3. Wage Statements

Plaintiffs' theory of liability is that the proposed class members' wage statements are defective in that premium wages are shown as "regular" hours, which "has the effect of

misreporting hours worked in violation of Labor Code §226(a)(2) and (9)." Dr. DuMond calculated that during the period April 10, 2016, through July 31, 2018, there were 584 "Insufficient Break" notations in the timekeeping data. These payments were found for 175 employees within 429 pay periods. DuMond states that penalties can be easily calculated as they are based simply on the number of deficient wage statements received by each class member during the class period. The penalties would be $50 for each initial violation and $100 for each subsequent violation with a cap of $4,000 per employee.

The legal question of whether reporting premium wages as regular hours violates this section is one susceptible to proof on a class-wide basis. Defendant's various defenses, such as whether the conduct was "knowing and intentional," and its reliance on the DLSE manual, can be tried with common evidence as there is no evidence tendered that LCCA made individualized decisions as to each class member as to how to report pay.

4. Waiting Time Penalties

Plaintiffs' waiting time penalty class is entirely derivative of the meal period premium claim. Whether waiting time penalties are recoverable for meal period violations is a legal issue currently before the Supreme Court. *Naranjo v. Spectrum Security* (2019) 40 Cal.App.5th 444 (review granted & depublication denied, January 2, 2020, S258966). This legal question is a claim which Plaintiffs demonstrate is properly considered on a class basis.

C. Manageability and Superiority

Courts are required to carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. Plaintiff must establish by a "preponderance of the evidence that the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation." *Sav-on, supra,* 34 Cal.4th at 332.

As discussed, *supra*, although LCCA puts heavy emphasis on the notion that the case will devolve into a series of inquiries as to why individual class members did not take

a particular meal or rest break, that question cannot be controlling on manageability when the question is whether there is a de facto policy of failing to make such meal and test periods available. There appear to be no serious manageability issues as to any of the proposed classes given the applicable law. The one area where further refinement may be necessary is with respect to the meal period class. As to that class, given the differences in how meal periods are scheduled it may be advisable to try the issue of liability as to each facility separately and/or to provide a special verdict form that separates the facilities. Counsel shall be prepared to discuss this at the next status conference.

D. Adequacy and Typicality

"The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. '"The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent." [Citation.] "... To assure 'adequate' representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]" [Citation.]'" *Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 696-697, citing *J.P.Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212. To defeat adequacy, a conflict must go to the very subject matter of the litigation. *Id.* at 697.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502, internal punctuation and citations omitted.

Plaintiff Chavez has claims that are typical of all classes. She was employed by LCCA from June 2016 through February 2017 as a CNA. She worked at the Menifee facility and provided direct patient care. Chavez testified to taking late meal periods and

avers that she "never took a rest break because I was too busy taking care of my patients because there was always so much work to do, and because I could not leave my patients unattended at any time. While it was difficult to get coverage for my lunch breaks, it was impossible to get coverage for my rest breaks. Had I been able to take my rest breaks, there were places close by like McDonald's and Wendy's that I could have gone to if I wanted. Even if I could only step outside for a minute or two to get some fresh air and take a walk would have been nice. No one at Life Care ever told me that I could get paid an extra hour if I didn't get my rest breaks." Chavez Declaration, ¶5. She attaches records of wage statements and time records. *Id.* at ¶¶ 6 and 7 and Exhibits 1 and 2. Plaintiff Chavez declares that she understands her obligation as class representative is to treat the interests of employees in the class as she would her own and that she is fully prepared to take on this obligation. Chavez Declaration, ¶8.

Plaintiff Bowlin-Burdick was employed by LCCA from May 2016 to February 2017, as a non-exempt employee in the Admissions Department. She states that during her employment she was often unable to take rest breaks due to the amount of work she had, and that if she had been able to take a break she would have liked to run errands such as getting gas or grabbing a snack. Bowlin-Burdick Declaration, ¶¶ 3,4. She avers that she understands the obligations of being a class representative and is prepared to take them on. Bowlin-Burdick Declaration, ¶6.

LCCA argues that because Chavez testified that there was a fellow employee at her facility for whom she provided coverage (and which caused her own meals to be delayed), and that this employee did not reciprocate, there is an intra-class conflict. (Opposition at 13:7-9). The cited testimony, however, is not to that of the named plaintiff, but to her daughter, Abigail Chavez. (Defendant's Ex. F at 78:10-16; 80:7-18; 83:23-84:6). No conflict impacting adequacy is shown.

Proposed Class Counsel have provided sufficient evidence of their adequacy. Haines Declaration, ¶¶ 1-10; Declaration of George Azadian, ¶¶ 1-6.

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V. CONCLUSION AND ORDER

Plaintiffs' motion for class certification is granted. The proposed Late Meal Period, On-Premises Rest Period, Wage Statement, and Waiting Time Penalty classes are certified. Plaintiff Chavez is appointed as class representative for the Late Meal Period Class. Plaintiffs Chavez and Bowlin-Burdick are appointed as Class Representatives for the remaining proposed classes. Paul K. Haines of Haines Law Group and George S. Azadian of Azadian Law Group, PC are appointed as Class Counsel.

Counsel are ordered to meet and confer and propose a form of Notice to the Class Members, and the manner of dissemination. A hearing is set for 2/10/2021 10:00 a.m. A joint report shall be filed five (5) court days in advance. If the parties are not in agreement, a joint document setting forth each side's proposals and the reasons for same shall be set forth in table format.

Dated: 11/23/2020

Maren E. Nelson

MAREN E. NELSON
JUDGE OF THE SUPERIOR COURT

Rulings on Objections

Plaintiffs contend that they need not offer admissible evidence at the certification stage. Plaintiffs' Response to Defendant's Objections at 1:4-12. *Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101 (*Apple*) holds that admissible evidence is required, and that the admissibility standard set forth in *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal. 4th 747 (*Sargon*), applies to expert testimony.

> "[T]he court may consider only *admissible* expert opinion evidence at class certification. (See, e.g., *Mora v. Big Lots Stores, Inc.* (2011) 194 Cal.App.4th 496, 512-514, 124 Cal.Rptr.3d 535; *Carabini v. Superior Court* (1994) 26 Cal.App.4th 239, 245, 31 Cal.Rptr.2d 520.) The reasons for such a limitation are obvious. A trial court cannot make an informed or reliable determination on the basis of inadmissible expert opinion evidence. And certifying a proposed class based on inadmissible expert opinion evidence would merely lead to its exclusion at trial, imperiling continued certification of the class and wasting the time and resources of the parties and the court. The issue in this writ proceeding is simply whether the *Sargon* standard of admissibility applies to expert opinion evidence submitted in connection with class certification motions."
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> ....
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> "We see no reason why *Sargon* should not apply equally in the context of class certification motions. There is only one standard for admissibility of expert opinion evidence in California, and Sargon describes that standard. We are bound to adhere to that decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.) And, even were we free to disregard *Sargon* (and we are not), we would conclude that its standards for admissibility apply here. Although class certification is merely a procedural device, and not a determination on the merits, it has profound consequences for the trial court's management of the litigation and the rights of the parties. The corrosive effects of improper expert opinion testimony may be felt with substantial force at class certification, just as at

summary judgment or at trial. The trial court's gatekeeping role serves a similar salutary purpose in each of these contexts."

Apple, *supra*, 19 Cal.App.5th at 1117 and 1119, emphasis in original.

Line rulings on LCCA'S objections are appended.

Plaintiffs also objects by way of "evidentiary objections" to uses of the evidence in LCCA's Memorandum of Points and Authorities. These are not challenges to the admissibility of evidence but arguments as to how the evidence is used. Much like LCCA's objections to the trial plan, Plaintiffs' objections amount to an extension of the allowed paged for briefing. Moreover, in large measure, the objections do not present specific objections to specific pieces of testimony but instead state several objections to multiple questions and answers. The objections are overruled.

Documents Considered:

Filed May 22, 2020
Plaintiffs' Notice of Motion and Motion for Class Certification; Memorandum of Points and Authorities In Support Thereof
Plaintiffs' Compendium of Evidence ISO Plaintiffs' Motion for Class Certification

Filed July 23, 2020
Defendant Life Care Centers of America, Inc.'s Opposition to Plaintiffs' Motion for Class Certification
Appendix of Evidence Submitted ISO Opposition; Declaration of Stacey F. Blank
Defendant's Objection to Plaintiff's Evidence Submitted ISO Motion for Class Certification; Declaration of Elwina Grigoryan; Declaration of Angelica Velasquez
Defendant Life Care Centers of America, Inc.'s Compendium of Excerpts of Material Evidence
Defendant Life Care Centers of America, Inc.'s Objections to Plaintiffs' Trial Plan; Declaration of Richard Goldberg, M.A.

Filed September 8, 2020
Plaintiffs' Reply Brief ISO Motion for Class Certification
Plaintiffs' Objection to Defendant's Additional Unauthorized 13-Page Brief and Request to Strike Same, and Response to Defendant's Objections to Trial Plan
Plaintiffs' Objections to Defendant's Evidence Submitted ISO Opposition to Class Certification
Plaintiffs' Response to Defendant's Objections to Deposition of Dr. DuMond and Plaintiffs' Evidence Submitted ISO Motion for Class Certification
Declaration of Paul K. Haines ISO Plaintiffs' Reply Brief Filed ISO Motion for Class Certification

Lodged November 4, 2020
Transcript of Oral Argument