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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**

14
15 SPENCER DE LA CRUZ, as an individual and
on behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 ABERCROMBIE & FITCH CO., a Delaware
19 corporation; ABERCROMBIE & FITCH
20 STORES, INC., an Ohio corporation, and
DOES 1 through 100, inclusive,

21 Defendants.

CASE NO.: 30-2007-00036240

(Assigned for all purposes to the Hon. Thierry P.
Colaw, Dept. CX 104)

TC
[PROPOSED] ORDER [A] GRANTING IN
PART AND DENYING IN PART
PLAINTIFFS MOTION FOR AN ORDER
CERTIFYING CERTAIN CLASSES OR
SUBCLASSES

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~~TPC~~
[PROPOSED] ORDER

1
2 Plaintiffs' Motion for Class Certification came on regularly for hearing before this court on
3 December 3, 2010. Peter M. Hart, Kimberly A. Westmoreland, and Melissa M. Coyle of the Law
4 Offices of Peter M. Hart and Kenneth H. Yoon and Linda P. Whitehead of the Law Offices of Kenneth
5 H. Yoon appeared on behalf of Plaintiffs. Mark A. Kneuve of Vorys, Sater, Seymour and Pease LLP
6 and Ross A. Boughton of Sheppard, Mullin, Richter & Hampton LLP appeared on behalf of
7 Defendants. The Court, having taken the above-entitled matter under submission on 12/03/2010 and
8 having fully considered the arguments of all parties, both written and oral, as well as the evidence
9 presented, now rules as follows:

10 1. The Motion by Plaintiffs for an Order Certifying Certain Classes or Subclasses is
11 GRANTED in part and DENIED in part.

12 A. Pursuant to C.C.P. § 382, when the question is one of a common or general
13 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all
14 before the court, one or more may sue or defend for the benefit of all. A party seeking class
15 certification must satisfy two basic requirements: (1) the existence of an ascertainable class, and (2) a
16 well-defined community of interest among the class members in the questions of law and fact
17 involved. [*Vasquez v. Sup. Ct. (Karp)* (1971) 4 Cal. 3rd 800, 809.] In addition, the moving party must
18 show that maintenance of a class action will result in a substantial benefit to the litigants and to the
19 court. [C.C.P. § 382; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3rd 462, 470, 477.] The burden
20 of proof is on the party seeking class certification [*Lockheed Martin Corp. v. Sup. Ct. (Carrillo)*
21 (2003) 29 Cal.4th 1096, 1103-1104.]

22 (1) Whether a class is "ascertainable" within the meaning of CCP 382 "is
23 determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
24 for identifying the class members." [*Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.
25 App. 3rd 1263, 1271.]

26 (2) In a class action, "[t]he community of interest" requirement embodies
27 three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims
28 or defenses typical of the class; and (3) class representatives who can adequately represent the class.

1 [Citation.]" [*Richmond, supra*, 29 Cal. 3rd at 470; *Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at
2 326.]

3 (i) Predominant questions of law or fact: In essence, this means that
4 "each member must not be required to individually litigate numerous and substantial questions to
5 determine his [or her] right to recover following the class judgment; and the issues which may be
6 jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous
7 and substantial to make the class action advantageous to the judicial process and to the litigants."
8 [*Washington Mut. Bank, FA v. Sup.Ct. (Briseno)* (2001) 24 Cal.4th 906, 913-914 (brackets in original;
9 internal quotes omitted); *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal. App.4th 110, 117.]

10 (ii) A motion for class certification is a procedural motion, and a
11 court may not consider the merits of the claim in determining whether to certify a class action. [*Linder*
12 *v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 436-444; *Hicks, supra*, 89 Cal. App. 4th at 914.] "The
13 ultimate question in every case of this type is whether ... the issues which may be jointly tried, when
14 compared with those requiring separate adjudication, are so numerous or substantial that the
15 maintenance of a class action would be advantageous to the judicial process and to the litigants."
16 [*Lockheed Martin Corp. v. Sup. Ct. (Carrillo)* (2003) 29 Cal.4th 1096, 1104-1105, (internal quotes
17 omitted).]

18 If a defendant's liability can be determined by facts common to all members, a class will be
19 certified even if the members must individually prove their damages. [*Hicks v. Kaufman & Broad*
20 *Home Corp.* (2001) 89 Cal. App. 4th 908, 916.]

21 Whether predominant common questions of law or fact exist among the Plaintiffs' 10
22 subclasses is really the crux of this motion for certification.

23 2. The Motion is GRANTED certifying certain subclasses as enumerated below:

24 A. All non-exempt employees that comprise the "**Meal Break Subclass.**"

25 Plaintiffs argue that meal breaks are completely within the control of defendant in that
26 defendant had an "auto scheduler" program that scheduled breaks, and approval by a manger was
27 required before an employee could take a meal break. Additionally, the auto scheduler was capable of
28 being modified by a manager. Plaintiffs argue that this system gave complete control over meal breaks

1 to defendant and therefore, by taking this approach, it was defendant's duty to ensure that employees
2 took their meal breaks. Defendant, of course, argues that despite *Brinker* pending before the California
3 Supreme Court, employers are only required to provide a meal break and have no duty to ensure or
4 require that the employee take the break.

5 Even though the California Supreme Court still has yet to render a decision in *Brinker*,
6 Plaintiffs' meal break subclass can be certified on the basis that required meal breaks may not
7 have been provided. Defendant argues that it did not have a uniform policy denying meal breaks
8 and, in fact, took proactive measures to ensure that managers complied with the law. Defendant
9 points to the 12 declarations from managers stating that they strictly enforced meal breaks and
10 the 125 declarations from non-management employees stating that they never missed a meal
11 break as proof of this. Defendant also argues that Plaintiffs cannot show through time records
12 that the lack of any clock out or a clock out of less than 30 minutes was the result of a manager
13 disallowing a class member to take a meal break; rather, the employee could have chosen to
14 waive the meal break or could have simply forgotten to clock out before going on his break.

15 But just as a time record does not prove or disprove that a meal break was not provided,
16 125 employee declarations stating that they never missed a meal break does not necessarily
17 prove that meal breaks were provided to all putative class members. The common issue is
18 whether despite having a uniform policy regarding meal breaks, whether that policy was
19 enforced such that meal breaks were provided to Defendant's employees. Defendant's arguments
20 go to the substantive merits and proof of damages of the claim, which are not proper inquiries
21 within the procedural mechanism of a class certification motion. Even though evidence is
22 submitted in connection with a motion for class certification, a court may not consider the merits
23 of the claim in determining whether to certify a class action. [*Linder v. Thrifty Oil Co.* (2000) 23
24 Cal.4th 429, 436-444; *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal. App. 4th 908,
25 914.] Accordingly, common issues of fact and law predominate and the meal break subclass is
26 certified.

27 B. All non-exempt employees that comprise the “Meal Premium Pay
28 Subclass.”

1 Like the meal break subclass, the meal premium subclass should be certified. Plaintiffs
2 allege that employees who worked night shifts were paid at a higher rate of compensation. When
3 those employees missed a meal break, they were paid at a regular rate of pay rather than at their
4 higher rate. Defendant argues that just like the meal break subclass, individual issues
5 predominate and there is no typicality. But again, the issue is simple: either Defendant paid
6 premium-rate employees for missed meal breaks at their premium rate, or Defendant did not.
7 This is the issue common to all class members in this subclass, and based on the same reasoning
8 set forth above in the meal break subclass section, the meal premium subclass is certified.

9 C. All non-exempt employees that comprise the **“Work Related Travel**
10 **Subclass.”**

11 Plaintiffs in this subclass allege that Defendant has improperly failed to pay the travel time of
12 those employees who were "borrowed" by other stores and required to drive a greater distance to that
13 store than to their home store. Defendant disputes this and contends that it is company policy to not
14 borrow nonexempt employees.

15 The deposition testimony of Defendant's PMK Kuerschner does not support this. [See depo of
16 Joel Kuerschner, p. 98, and attached as exhibit C to Whitehead declaration, ("associates, whether it's
17 models, impacts, they could be temporarily borrowed from their permanent store to another store? A.
18 Correct."); p. 154-155, attached as exhibit 1 to Knueve declaration (non-management person
19 "shouldn't" be borrowed to a location that requires them to travel a greater from their home store, but
20 there is no limit on distance to which they can be borrowed); and p. 215, attached as exhibit 1 to
21 Knueve declaration (the direction is not to borrow a nonexempt employee in circumstances where they
22 need to travel but pursuant to company policy, they should be reimbursed).]

23 This testimony from Defendant's PMK seems to establish that while stores "shouldn't" borrow
24 nonexempt employees, it did happen and if so and the associate traveled a greater distance to the
25 borrowing store than to his home store, company policy was that he should be reimbursed. Based on
26 this evidence, common issues predominate as to Defendant's company policy for reimbursement of
27 travel time and expenses, and this subclass is certified.

28 Defendant does correctly note that if an employee volunteers to work at a store farther away

1 than their home store, such as college students going home on a school break, they should not be
2 compensated for travel time. This type of situation would appear to fall outside Defendant's
3 "borrowing" policy, and the certified subclass definition should make that distinction. Accordingly,
4 the certified Work Related Travel Subclass excludes all subclass members who volunteered to work at
5 a store further away than their home store (e.g., college students going home on a school break).

6 D. All non-exempt employees that comprise the **"Travel Expense Subclass."**

7 Plaintiffs allege that Defendant failed to pay Plaintiffs when Defendant required them to travel
8 distances longer than their regular commute for business-related reasons, such as Defendant's
9 employee "borrowing" policy. As noted above, Defendant disputes having any employee "borrowing"
10 policy, but the declaration of Defendant's PMK Kuerschner contradicts this. Moreover, Defendant's
11 HR director, Tony Park, states in his declaration that although such travel is "generally not
12 reimbursable," an associate can request reimbursement, which is then left to the discretion of human
13 resources or the district manager. [See Park declaration, paragraph 4.] Therefore, based on Park's
14 testimony and because this subclass relating to the reimbursement of expenses incurred as a result of
15 that, this subclass "Travel Expense" is certified.

16 E. All non-exempt employees that comprise the **"Terminated Employee
17 Subclass."**

18 This subclass consists of those Plaintiffs who were not paid all due wages at the time of
19 termination and who did not timely receive all due wages within 72 hours of termination. With respect
20 to the timely payment of all wages, Plaintiffs make a confusing argument regarding subterfuge on
21 Defendant's part by "fictitiously suspending" class members instead of terminating them so that
22 Defendant could avoid having to timely pay class members their final wages due. Plaintiffs offer no
23 evidence to support this theory and this theory is rejected, but it is not necessary to certification
24 because this subclass is derivative anyway of Plaintiffs' other subclasses. In other words, if Plaintiffs
25 were improperly denied wages due to unpaid meal breaks, business-related travel expenses, etc., then
26 they would necessarily not have received all wages due upon termination and would fall within this
27 subclass. Accordingly, because common issues of fact and law predominate in those other subclasses,
28 this subclass is certified.

1 F. All non-exempt employees that comprise the **“Reporting Time Subclass.”**
2 Plaintiffs allege that until 2/2009, Defendant had no written policy regarding reporting time
3 pay, such that if an employee reported for work and was told his shift was reduced by more than half
4 or canceled, he was not compensated for his reporting time. After 2/2009, Defendant instituted a
5 company policy that would compensate an associate three hours' reporting time in such instances.

6 Defendant acknowledges that in January 2009, it implemented software that automatically
7 provided minimum shift pay if an employee clocked in for less than three hours' work. Defendant also
8 notes that "many" of the named Plaintiffs were never sent home early in violation of California law,
9 but the Plaintiffs cited by Defendant include only one Plaintiff (Guajardo) who is listed by Plaintiffs
10 among the class representatives of this subclass.

11 Defendant's acknowledgement that it had no policy prior to 2009 regarding minimum reporting
12 pay concedes that for that part of the class period at least until 2009, class members may not have
13 received compensation for reporting to work but having his shift reduced or canceled. There are
14 common issues present and this subclass is certified.

15 G. All non-exempt employees that comprise the **“Security Check Subclass.”**

16 Defendant's company-wide loss prevention policy required that all employees clock out after
17 completing their shift and then wait at the front of the store until a manager can check their bags or
18 backpacks for store merchandise. Plaintiffs contend that this was time off the clock which employees
19 were required to do and were controlled completely by Defendant. Defendant does not dispute that it
20 had a security check policy and that all employees were required to wait until a manager checked them
21 out before leaving the store following completion of their shift.

22 Defendant, instead, argues that the time employees were required to wait for a manager could
23 consist of a few seconds to a couple of minutes and was therefore *de minimus* and not compensable.

24 Because Defendant's security check policy is a written, company-wide policy that requires
25 every employee to submit to a security check once he or she has clocked out, common questions of
26 law and fact predominate on this issue. The crux of this subclass will be proving damages, but most
27 class actions contemplate individual proof of damages which necessarily entails the possibility that
28 some class members will be unable to prove any damages. [See *Bell v. Farmers Insurance Exchange*

1 (2004) 115 Cal. App. 4th 715, 744.] "The law unequivocally provides that each class member may
2 establish damages independently without threatening the integrity of the class action." [*Rose, supra*,
3 126 Cal. App. 3rd 926, 934.]

4 Defendant's *de minimus* argument is also not sufficient, at least at this stage of the case, to
5 defeat certification of this subclass. Even if an employee was only required to wait a few minutes for a
6 manager to check his bag and coat, as Plaintiffs point out, these "few minutes" incurred if the
7 employee leaves the store at every break and upon completion of his shift can add up to an hour or
8 more over the course of a pay period, thereby undercutting the *de minimus* argument. Plaintiffs'
9 suggestion of proving these increments of time by recording a random sampling of stores and how
10 long it takes them to perform their security checks may be problematic, but where class action
11 treatment is otherwise proper (i.e., common questions predominate), "a bifurcated trial, subclasses, or
12 other remedial procedures could be used to make individual damage determinations." [*J.P. Morgan &*
13 *Co., Inc., supra*, 113 Cal. App. 4th at 216; see also *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*
14 (1987) 191 Cal. App. 3rd 1341, 1354.] Accordingly, the security check subclass is certified.

15 H. All non-exempt employees that comprise the "Pay Stub Subclass."

16 Plaintiffs contend that because Defendant failed to pay class members for missed meal breaks
17 and for meal premiums, time worked off the clock (security checks, banks deposits, and work-related
18 travel time), reporting time pay, and accrued personal vacation day pay, Defendant has failed to keep
19 accurate pay records. Like the terminated employee and minimum wage subclasses this subclass is
20 dependent on the underlying subclasses being certified which condition has occurred.

21 I. All non-exempt employees that comprise the "Minimum Wage Subclass."

22 Plaintiffs state that those employees who were not paid for work-related travel time, who were
23 required to wait off the clock for security checks, and who made bank deposits are included within this
24 subclass. As noted above, the security check subclass is certified. Therefore, if Plaintiffs prove that
25 Defendant exercised control over their off-the-clock behavior by requiring them to wait some tangible
26 amount of time and preventing them from leaving the store until a store manager could check their
27 bags and backpacks, then Plaintiffs would not have been paid their full wages for time worked and
28 would also fall within this minimum wage subclass as well.

1 Moreover, as previously noted, even if some class members only had to wait a few seconds for
2 a security check or never made bank deposits or were not required to travel to other stores, this is
3 insufficient to defeat class treatment. If a class member did not make bank deposits or never traveled
4 to other stores for recruitment or "employee borrowing" purposes or never missed a meal break, that
5 class member would not qualify for inclusion in that particular applicable subclass and simply would
6 not present a claim for any damages as part of that subclass. Moreover, even though the claims of the
7 class members in the security check subclass may likely vary widely in terms of the amount of time
8 each class member was required to wait off the clock for a manager to perform a security check, these
9 are issues of individualized damages, not claims, and the individualized proof necessary to prove each
10 class member's damages would not be so numerous, substantial, or diverse as to preclude a finding of
11 the requisite commonality of interest in the substantive underlying claims. Regardless, if the court
12 were to determine later on that the issue of damages required individual determinations, the court
13 could certify different subclasses of Plaintiffs or the court could bifurcate the issue of damages for
14 trial, if necessary. Accordingly, this subclass is certified as common questions of fact and law
15 predominate.

16 3. The Motion is DENIED as to the request to certify a "Vacation Day Subclass."

17 Plaintiffs contend that defendant had a policy where at the start of each calendar year, it would
18 grant each full-time employee three personal days to use at any time and for any reason but which had
19 to be used by the end of the year. Plaintiffs allege that this "leads to the conclusion" that if an
20 employee failed to use the personal days during the course of the calendar year, the days would be
21 forfeited. Similarly, if the employee terminated his employment before using the three days,
22 defendant's policy improperly required that the remaining time be forfeited. [See deposition of Joel
23 Kuerschner, p. 359-360, attached as exhibit C to Whitehead declaration.] Plaintiffs designate plaintiff
24 Branchik as the sole named plaintiff to represent this subclass.

25 Defendant counters that Plaintiffs have referenced the wrong policy, albeit based on the
26 mistaken identification of that policy by Kuerschner, one of Defendant's PMK's.

27 Defendant contends that although the written policy provided for the forfeiture of unused
28 personal days, the actual policy in effect provided that unused personal days were paid out upon

1 termination of employment. [See deposition of Leroy Castillo, pp. 54-56, and attached as exhibit 16 to
2 Kneuve declaration.] Defendant also submits deposition testimony from Plaintiff Branchik, the sole
3 plaintiff named to represent this subclass, in which Branchik admits that he received unused personal
4 days in his final paycheck and that he did not dispute the amount. [See deposition of James Branchik,
5 p. 213, and attached as exhibit 9 to Kneuve declaration.]

6 Plaintiffs do not submit any declarations from other class members stating that they were not
7 paid for unused personal days either at year's end or upon termination of employment. In fact,
8 Plaintiffs only cite to paragraph 12 of attorney Coyle's declaration submitted in support of Plaintiffs'
9 moving brief, which only discusses Plaintiff Branchik's typicality in representing this subclass.

10 Accordingly, Plaintiffs have not submitted sufficient evidence to show that the common issues
11 of fact exist among the class members with respect to the nonpayment of unused personal days or that
12 Branchik, who denied having not received his full amount of unused personal days, is typical for this
13 class claim. This subclass therefore will not be certified.

14 4. Typicality of class claims:

15 The class representative must be a member of the class, but need not have interests identical to
16 those of the class members, but rather, the representative's claim must be typical of those of the class
17 members. [*Classen v. Weller* (1983) 145 Cal. App. 3rd 27, 45-46 (emphasis added).] There must be an
18 identity of interest among members of the class and a lack of adversity or antagonism between the
19 named plaintiffs and the absent class members over the core issues involved in the litigation.

20 [*Harrison v. Board of Supervisors* (1975) 44 Cal. App. 3rd 852, 863 (identity of interest among class
21 members and lack of adversity or antagonism must exist between named plaintiff and absent class
22 members over core issues involved in litigation); *McGhee v. Bank of America* (1976) 60 Cal. App. 3rd
23 442, 450.]

24 Here, Defendants argue that the 10 named Plaintiffs are a "hodge podge" of current and former
25 employees, each with a unique set of circumstances giving rise to a different set of claims. Other than
26 the issue with Branchik not having an actual claim for uncompensated unused personal days, the
27 named Plaintiffs do appear to raise issues that are typical of and not antagonistic to those of the class.
28 And the facts concerning Defendant's company-wide policies or, as applicable, lack thereof, applies to

1 all class members in their various subclasses, including the named Plaintiffs. Therefore, the element of
2 typicality has been met.

3 5. Adequacy of class representatives:

4 Because the class representative assumes a fiduciary duty on behalf of the class, he must raise
5 those claims reasonably expected to be raised by the members of the class. [*City of San Jose v.*
6 *Superior Court (Landa Unlimited)* (1974) 12 Cal. 3rd 447, 464.] Here, Plaintiffs have set forth
7 subclasses, each with specifically named Plaintiffs to adequately represent the claims presented by
8 each subclass. Other than the discussion concerning Plaintiff Branchik's lack of typicality for the
9 vacation day subclass, Defendant's "hodge podge" argument is without merit and there is no evidence
10 that Plaintiffs' claims are in any way antagonistic to the class. Thus, the specifically named Plaintiffs
11 for each certified subclass adequately represent the claims presented by each subclass.

12 Plaintiffs' counsel must also be qualified, experienced, and generally able to conduct the
13 proposed litigation; and the plaintiff must not have interests antagonistic to those of the class.
14 [*McGhee v. Bank of America* (1976) 60 Cal. App. 3rd 442, 450.] Here, Plaintiffs' counsel submit
15 declarations detailing their experience in complex and class actions. These declarations appear
16 satisfactory to establish counsels' proficiency in representing and litigating class actions, and therefore
17 this element for class certification has been met. Accordingly based on the submitted declarations,
18 Plaintiffs' counsel, namely Peter M. Hart of the Law Offices of Peter M. Hart, Kenneth H. Yoon of the
19 Law Offices of Kenneth H. Yoon, Larry W. Lee and Craig S. Hubble of Diversity Law Group, APC,
20 Eric Honig of the Law Office of Eric Honig, and Ira Spiro of Spiro Moss, LLP are adequate class
21 counsel and are appointed Class counsel (see declarations of these counsel).

22 6. Maintenance of the class action will result in substantial benefit to the litigants and to
23 the court.

24 These "benefits" are not measured by reference to individual recoveries alone. A class action
25 should offer consumers more than just a means of recovery for modest individual damages. Other
26 "salutary by-products" should include "a therapeutic effect upon those sellers who indulge in
27 fraudulent practices, aid to legitimate business enterprises by curtailing illegitimate competition, and
28 avoidance to the judicial process of the burden of multiple litigation involving identical claims."

1 [Linder v. Thrifty Oil Co. (2000) 23 Ca1.4th 429, 445.]

2 Many of the class members' potential recoveries in this case may be quite small and well below
3 the real-world threshold amount for which a lawyer would likely take a plaintiffs case, thereby
4 satisfying the typical "insufficient amount" pursued in class actions. Treatment of this action as a class
5 action would also benefit both the litigants and the court. There are approximately 105,000 total class
6 members, broken out into various smaller increments for the subclasses, who, more likely than not, are
7 young adults and students who lack sufficient knowledge, sophistication, or financial ability to each
8 retain counsel to bring individual claims against Defendant for modest damages. Class treatment
9 further provides a disincentive for Defendant to continue with any alleged Labor Code violations,
10 which benefits the public.

11 Moreover, the parties and the judicial process stand to benefit as well, since class treatment
12 provides relief from the burden of multiple actions involving identical claims.

13 7. Accordingly, for the foregoing reasons and based upon the evidence submitted, the
14 elements of class certification have been met and Plaintiffs' motion is granted as to all subclasses
15 except the Vacation Day Subclass:

16 a. The "Meal Break Subclass," defined as a subclass of all of Defendants' past and
17 present employees whom Defendants classified as non-exempt employees in California during the
18 period from December 19, 2003 to the present whose time records do not show him/her taking an
19 unpaid break of at least 30 minutes for any shift of more than 6 hours.

20 b. The "Meal Premium Pay Subclass," defined as a subclass of all of Defendants'
21 past and present employees whom Defendants classified as non-exempt employees in California
22 during the period from December 19, 2003 to the present whose payroll records show him/her
23 receiving meal premium pay at less than his/her required rate of meal premium pay.

24 c. The "Work-Related Travel Subclass," defined as a subclass of all of
25 Defendants' past and present employees whom Defendants classified as non-exempt in California
26 during the period from December 19, 2003 to the present and who performed work related travel for
27 Abercrombie beyond the normal work commute without compensation and excludes such subclass
28 members who volunteered to work at a store further away than their home store (e.g., college students

1 going home on a school break).

2 d. The "Travel Expense Subclass," defined as a subclass of all of Defendants' past
3 and present employees whom Defendants classified as non-exempt in California who incurred work
4 related travel costs for Abercrombie beyond the normal work commute costs and who were not
5 reimbursed for such costs during the period from December 19, 2003 to the present.

6 e. The "Terminated Employee Subclass," defined as a subclass of all of
7 Defendants' past employees whom Defendants classified as non-exempt in California whose
8 employment ended at any time between December 19, 2003 to the present and who were not properly
9 paid all wages on termination or within 72 hours thereof.

10 f. The "Reporting Time Subclass," defined as a subclass of all of Defendants' past
11 and present employees whom Defendants classified as non-exempt employees in California during the
12 period from December 19, 2003 to the present whom, upon showing up for their scheduled shift, had
13 their scheduled work shift(s) cancelled and/or reduced to less than half of the original scheduled shift.

14 g. The "Security Check Subclass," defined as a subclass of all of Defendants'
15 past and present employees whom Defendants classified as non-exempt in California during the
16 period from December 19, 2003 to the present and who were subjected to uncompensated
17 security checks.

18 h. The "Pay Stub Subclass," defined as a subclass of all of Defendants' past
19 and present employees whom Defendants classified as non-exempt employees in California
20 during the period from December 19, 2003 to the present who were provided wage statements.

21 i. The "Minimum Wage Subclass," defined as a subclass of all of
22 Defendants' past and present employees whom Defendants classified as non-exempt in
23 California during the period from December 19, 2003 to the present and who were not paid
24 wages at the minimum wage for each hour worked.

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The request to certify a "Vacation Day Subclass," also described by the Court as the vacation pay subclass, is denied.

IT IS SO ORDERED.

Dated: 4 January
2011



Hon. Thierry Patrick Colaw
Judge of the Superior Court