UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-4344 PA (ASx)	Date	January 19, 2018
Title	Patricia Barreras, et al. v. Wells Fargo Bank, N.A., et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court are cross-motions for summary judgment filed by plaintiff Jacqueline Ibarra ("Plaintiff") and defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant"). (Docket Nos. 26, 27.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing calendared for January 22, 2018, is vacated, and the matter taken off calendar.

I. Background

A. Procedural Background

Plaintiff and the members of the class she represents worked for Defendant selling mortgages. In the operative First Amended Complaint ("FAC"), Plaintiff alleges various wage and hour violations under California state law. (FAC ¶¶ 8-15, Docket No. 1-2.)

Plaintiff initiated this action on March 17, 2017 in the Los Angeles County Superior Court, seeking to represent a class of similar employees. (Docket No. 1-1.) The original complaint was filed jointly with another individual, and it named Wells Fargo & Company as defendant. (Id.) On June 5, 2017, Plaintiff filed her FAC, which dropped some claims and the other named plaintiff, and it asserted claims against Defendant for the first time. On June 12, 2017, Defendant removed the action to this Court. (Docket No. 1.)

The FAC includes claims for (1) failure to provide rest breaks; (2) failure to pay overtime wages; (3) failure to pay all wages upon separation; (4) failure to furnish timely and accurate wage statements; (5) violation of California's Unfair Competition Act ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq.; and (6) penalties under California's Private Attorney General Act, Cal. Labor Code § 2698 et seq. (FAC ¶¶ 24-58.) Pursuant to the parties' stipulation (Docket No. 17), on July 25, 2017, the Court certified a class, of which Plaintiff is a member, defined as follows:

> All non-exempt employees for Wells Fargo who at any time during the period from March 17, 2013 to August 1, 2017 worked for Wells Fargo in California in the job titles of Home Mortgage Consultant, Home Mortgage

> Consultant, Jr., Private Mortgage Banker, or Private Mortgage Banker, Jr and were subject to the common compensation plans during this period . . . .

(Docket No. 18.) In that same July 25, 2017 order, the Court dismissed most of Plaintiff's claims, leaving only Plaintiff's rest-break claim and the portion of Plaintiff's UCL claim relating to rest-break violations. (Id.)

The parties filed their motions for summary judgment on November 9, 2017. (Def.'s Mot., Docket No. 26; Pl.'s Mot., Docket No. 27.) The parties also filed a list of stipulated facts with various exhibits. (See Stip. Facts, Docket No. 25; Stip. Facts Exs. A-I, Docket No. 25-1.) The parties subsequently filed oppositions to each other's motions and replies for their own motions. (Def.'s Opp'n, Docket No. 29; Pl.'s Opp'n, Docket No. 30; Def.'s Reply, Docket No. 32; Pl.'s Reply, Docket No. 33.)

B. Facts Stipulated by the Parties

Plaintiff worked for Defendant in California as a Home Mortgage Consultant ("HMC") between November 2008 and March 2017. (Stipulated Fact ("SF") #1.)[1/] As an HMC, Plaintiff primarily conducted her work at a Wells Fargo branch office. (SF #2.) Plaintiff's primary job duty was to originate home mortgage loans, but she also, among other things, serviced walk-in customers' general banking needs and assisted loan customers after mortgage-loan funding. (Id.)

At all relevant times, HMCs were treated as non-exempt employees. (See SF #8.) HMCs beginning work for Wells Fargo received offer letters stating that their pay would be governed by compensation plans ("Comp Plans"). (SF #4-6; see Stip. Facts Exs. A, B.) Wells Fargo issues a new Comp Plan annually, and the new Comp Plan supersedes the prior Comp Plan with respect to any loans that fund after the new Comp Plan's effective date. (SF #7.) The relevant Comp Plans here are those for each of the years between 2013 and 2017. (SF #9; Stip. Facts Exs. C-G.)

Although there are some variations in the Comp Plans from year to year, the manner in which Wells Fargo calculated HMCs' wages, at least as relevant to this lawsuit, remained the same. (SF #10.) The relevant Comp Plans explained that HMCs' total compensation would be comprised of: (1) hourly pay ("Advances on Commissions"); (2) incentive pay (including commissions) to the extent it exceeded advances; and (3) premiums for overtime hours worked. (SF #11, 12; Stip. Facts Ex. C at 2; Stip. Facts Ex. D at 2; Stip. Facts Ex. E at 2; Stip. Facts Ex. F at 2; Stip. Facts Ex. G at 2.) The hourly pay generally was set at $12 per hour during the relevant time. (SF #13.) The Comp Plans further stated:

[1/] Because they all are treated equivalently, "HMC" shall refer to California Wells Fargo employees working as any of Home Mortgage Consultant, Private Mortgage Banker, Home Mortgage Consultant Jr., or Private Mortgage Banker Jr. (SF #3; see also Docket No. 18 at 2 (certifying class).)

> For purposes of this Plan, all hourly pay and other paid time (e.g., Paid Time Off, Paid Holidays) is an advance against monthly commissions and Performance Scorecard Bonuses, and also against all incentives that Employee is otherwise eligible to earn under this Plan . . . . As such, Employee's hourly pay and other paid time is referred to as Advances on Commissions, and . . . Employee will be credited commissions and other incentives under this Plan only to the extent the gross received incentive amounts exceed the hourly pay the employee has received. . . .
>
> As used in this Plan, 'incentive' refers to all commissions, bonuses and other incentive payments for which the Employee is eligible under this Plan.

(Stip. Facts Ex. C at 2; Stip. Facts Ex. D at 2; Stip. Facts Ex. E at 2; see Stip. Facts Ex. F at 2; Stip. Facts Ex. G at 3; SF #14.)

Each of the Comp Plans, under the heading "Commissions and Advance Calculation," included similar examples of how the calculation works, such as this language from the 2015 Comp Plan:

> 1. Regular Hourly Pay
> Employees are required to enter all hours worked/non worked accurately and timely. Employee will earn an hourly rate of pay for each hour worked. This will show as 'Regular Pay' on the Employee's paycheck. . . .
>
> . . .
>
> 3. Advance On Commissions
> The first 1x the hourly rate of pay received for all hours worked and other paid time is an advance against commissions, bonuses, and other incentives. . . .
> • Advance on Commission will include: all standard hours worked, PTO and standard time for hours worked beyond 40/week.
>
> . . .
>
> Example: 40 hours regular + eight (8) hours overtime
> $12.00 x 40 hours = $480 per week of "regular pay"
> $12.00 x 8 = 96 per week of "straight time OT pay"
> $480 + $96 = $576 advance on commissions, bonuses and other incentives
>
> 4. Commissions
> Gross commissions will be calculated according to the commission credit schedule and the loans funded in the month. The advance and downward

> adjustments will be subtracted to determine the net commissions. If the net commissions are negative, that deficit will be carried forward as an advance against gross commission in the next month.
>
> Example: $5,000 gross commissions for month
> $1,920 regular pay for month ($480 x 4 weeks)
> $384 straight time OT pay for month ($96 x 4 weeks)
> $50 downward adjustment for HMC website
> $5,000 - $1,920 - $384 - $50 = $2,646 commission payable

(Stip. Facts Ex. E at 6-7; SF #16; see Stip. Facts Ex. C at 7-8; Stip. Facts Ex. D at 6-7; Stip. Facts Ex. F at 6-7; Stip. Facts Ex. G at 7-8.) Each of the relevant Comp Plans stated: "[N]et commissions (gross commission less hourly pay advances) shall be paid on the last pay period of each month based on the actual funding of mortgage loans originated by Employee during the previous month." (Stip. Facts Ex. C at 9; Stip. Facts Ex. D at 8; Stip. Facts Ex. E at 8; Stip. Facts Ex. F at 8; see Stip. Facts Ex. G at 9; SF #17.) The Comp Plans also stated: "The fact that hourly pay (Advances on Commissions) is taken into account in calculating net commissions/incentives under this Plan shall not give Employer the right to recover any hourly pay back from any employee. Hourly pay is fully vested when received and is not subject to recapture by Employer under any circumstances." (SF #18; Stip. Facts Ex. C at 9; Stip. Facts Ex. D at 8; Stip. Facts Ex. E at 8; Stip. Facts Ex. F at 8; see Stip. Facts Ex. G at 9.)

All of an HMC's loan-funding and commissions activity for a month is reflected on a report titled "Wells Fargo Bank, N.A. Distributed Retail Commission Report" ("DRCR"), which HMCs can download after the close of the month. (SF #23; see Stip. Facts Ex. H.) The DRCR shows the sum of the commission credit generated from all loans funded in a month as "Unadjusted Commission." (SF #24.) Downward adjustments (subtractions) are applied to the Unadjusted Commission for the cost to an HMC of participating in certain marketing programs; for agreements by an HMC to share commission with another employee ("Outbound Splits"); and for sums an HMC was tasked, but failed, to collect from borrowers for credit reports and property appraisals. (SF #25; see SF #37; Stip. Facts Ex. C at 8; Stip. Facts Ex. D at 7; Stip. Facts Ex. E at 7; Stip. Facts Ex. F at 7; Stip. Facts Ex. G at 8.) Adjustments (additions) to the Unadjusted Commission are made if an HMC receives a commission split from another employee ("Inbound Splits") or for a reversal of a previous month's downward adjustment. (SF #26.) The resulting sum after these adjustments are applied is set forth as "Adjusted Gross Commission." (SF #27.) From the Adjusted Gross Commission, Wells Fargo subtracts the "Regular Advance" and any "Applied Carryover," with the resulting sum labeled "Net Due." (SF #28, 31; see SF #37; Stip. Facts Ex. C at 8; Stip. Facts Ex. D at 7; Stip. Facts Ex. E at 7; Stip. Facts Ex. F at 7; Stip. Facts Ex. G at 8.) The Regular Advance is calculated from (1) the sum of all hours the HMC worked and any hours for Holiday or Paid Time Off during the calendar month, and (2) the hourly rate established by Wells Fargo during the calendar month. (SF #29.) Applied Carryover accrues when the Net Due on a DRCR is a negative value, with the negative value carrying forward to the next month's commission calculation as a debit item. (SF #30; see SF #37; Stip. Facts Ex. C at 8; Stip. Facts Ex. D at 7; Stip. Facts Ex. E at 7; Stip. Facts Ex. F at 7; Stip. Facts Ex. G at 8.) Any debit shown on a DRCR

always carries over as Applied Carryover in the following month's DRCR as long as Net Due continues to be negative. (SF #31; see SF #37; Stip. Facts Ex. C at 8; Stip. Facts Ex. D at 7; Stip. Facts Ex. E at 7; Stip. Facts Ex. F at 7; Stip. Facts Ex. G at 8.) When an HMC has a positive Net Due on the DRCR, that amount is paid to the HMC on the last payday of the following month. (SF #33.)

HMCs receive wage statements with the title "Pay Voucher" on their paydays, which occur every two weeks. (SF #34.) Straight-time work hours recorded in the timekeeping system for a two-week period are listed as "Regular Pay." (Id.) Regular Pay is a component of the Regular Advance on the DRCRs. (Id.) On the last payday of the month, the Net Due from the prior month's DRCR, if it is positive, is reflected on the itemized wage statement as "WFHM Commission Flat." (SF #35; see Stip. Facts Ex. I.) The Net Due and WFHM Commission Flat typically are identical, but there are times when further information about loans is obtained after the DRCR is issued that impact the value of the commission credit and, by extension, the Net Due. (SF #35; see Stip. Facts Ex. I.) HMCs are paid the WFHM Commission Flat once per month for the prior's month's Net Due. (SF #36.) If the Net Due from the prior month's DRCR is zero or negative, then the last Pay Voucher for the corresponding month will reflect no WFHM Flat Commission entry or will show zero for its amount. (Id.)

Wells Fargo has California-specific policies applicable to HMCs stating that HMCs are entitled to ten minutes of paid rest time for every four hours worked or major fraction thereof. (SF #38.) The Comp Plans do not specifically reference rest breaks, and there is no item on the DRCR that references rest breaks. (SF #32, 38.) However, HMCs do not clock out during rest breaks, meaning that rest time is included in HMCs' hourly-rate pay. (SF #39.) If an HMC reports to a manager that he or she was not given a bona fide opportunity for a ten-minute, uninterrupted rest break, the HMC may enter an item into the timekeeping system that generates an hour of penalty pay to account for the missed rest break. (SF #40.) These one-hour payments are calculated at the HMC's normal hourly rate; the rate used is not based on an HMC's commission or other incentive pay. (SF #41.)

II. Legal Standard

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "[T]he burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); see Musick v. Burke, 913 F.2d 1390, 1394 (9th Cir. 1990). The moving party must affirmatively show the absence of such evidence in the record, either by deposition testimony, the inadequacy of documentary evidence, or by any other form of admissible evidence. See Celotex, 477 U.S. at 322. The moving party has no burden to negate or disprove matters on which the opponent will have the burden of proof at trial. See id. at 325.

As required on a motion for summary judgment, the facts are construed "in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). However, the nonmoving party's allegation that factual disputes persist between the parties will not automatically defeat an otherwise properly supported motion for summary judgment. See Fed. R. Civ. P. 56(c). A "mere 'scintilla' of evidence will be insufficient to defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" Fazio v. City & County of San Francisco, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting Anderson, 477 U.S. at 249, 252). Otherwise, summary judgment shall be entered.

III. The Parties' Requests for Judicial Notice

In support of its own motion, Defendant requests that the Court take judicial notice of certain California and New Jersey state-court records and orders. (Docket No. 26-1.) In opposition to Defendant's motion, Plaintiff requests that the Court take judicial notice of a filing from Vaquero v. Ashley Furniture Indus., Inc., No. 2:12-cv-08590-PA-MAN (C.D. Cal. filed Oct. 5, 2012). (Docket No. 30-3.) Neither party has opposed the other's request. The parties' requests for judicial notice are granted. See, e.g., Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (court may take judicial notice of court filings and other matters of public record).

IV. Discussion

"When parties file cross-motions for summary judgment, [the court must] consider each motion on its merits." Am. Tower Corp. v. City of San Diego, 763 F.3d 1035, 1043 (9th Cir. 2014) (citing Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir. 2001)). "The district court [is] required to consider each cross-motion for summary judgment separately and to determine, viewing both motions, whether there [is] any genuine issue of material fact." Guatay Christian Fellowship v. County of San Diego, 670 F.3d 957, 971 (9th Cir. 2011) (citing Riverside Two, 249 F.3d at 1136); see Tulalip Tribes of Wash. v. Washington, 783 F.3d 1151, 1156 (9th Cir. 2015).

Here, the parties' arguments are generally the same for the two motions, and the parties stipulated to the essential facts.[2/] Because all that remains is the legal question of whether Defendant's compensation system complies with California law, the Court discusses the parties' motions together.

[2/] Plaintiff argues that because Defendant failed to respond to her statement of undisputed facts, the Court should presume the facts set forth therein to be true for purposes of her motion. (Pl.'s Reply at 2 (citing, inter alia, L.R. 56-3).) The Local Rules allow a court to deem facts admitted in certain circumstances, but they do not absolve the Court of its duty to determine that there is no dispute of material fact before granting summary judgment. See L.R. 56-3 (requiring facts to be adequately supported); see also Fair Hous. Council, 249 F.3d at 1137. At any rate, both motions may be resolved on the basis of the parties' stipulated facts and the documents submitted with them.

A. Plaintiff's Rest-Break Claim

In her FAC, Plaintiff alleges that Defendant violated California Labor Code section 226.7 and section 12 of the Industrial Welfare Commission's ("IWC's") Wage Order No. 4-2001 by failing to provide, authorize, and/or pay rest breaks during the relevant period. (FAC ¶¶ 24-31.) According to the FAC, class members "were routinely required to work through rest periods at the direction of Defendant and/or with Defendant's knowledge and acquiescence," and "Defendant paid Plaintiff and class members based on a commission, and did not separately compensate them for their time." (Id. ¶ 28.)

In their statement of stipulated facts, the parties make clear that their legal dispute concerns only whether Defendant's HMC compensation system complies with the requirement that rest breaks be "paid." (SF #42.) Plaintiff argues that the system fails to do so because HMCs' regular (hourly) pay is merely an advance that is subtracted from future commissions. (Pl.'s Mem. P. & A. at 11-17, Docket No. 27-1; Pl.'s Opp'n at 10-24.) By contrast, Defendant describes its compensation system as one where HMCs "receive a bona fide hourly wage for all hours worked (including rest time), plus they are eligible to earn incentive pay over and above that base hourly pay." (Def.'s Mem. P. & A. at 9, Docket No. 26; Def.'s Reply at 4; Def.'s Opp'n at 6.)

Much of the parties' briefing relates to the California Court of Appeal's decision in Vaquero v. Stoneledge Furniture LLC, 214 Cal. Rptr. 3d 661 (Ct. App. 2017). In Vaquero, the Court of Appeal ruled that an employer's commission-based compensation plan violated Labor Code section 226.7 because it did not separately compensate employees for rest breaks. See id. at 673-75. Plaintiff argues that Defendant's compensation system as indistinguishable from that held unlawful in Vaquero because it, too, provides for an hourly wage that later is deducted from an employee's gross commissions. (Pl.'s Mem. P. & A. at 12-14; Pl.'s Reply at 2-4; Pl.'s Opp'n at 10-12.) Defendant contends that its "compensation system is fundamentally different from the [system in Vaquero] because it involves a base hourly wage that is immediately vested, earned and not subject to recapture rather than a mere 'draw against commission.' It also entails the possibility of earning monthly incentive pay over and above the base hourly wage." (Def.'s Mem. P. & A. at 11-12; Def.'s Opp'n at 8-10.)

1. Applicable Law

Under California law, "[a]n employer shall not require an employee to work during a . . . rest . . . period mandated pursuant to . . . [among other things, an] . . . applicable . . . order of the Industrial Welfare Commission . . . ." Cal. Lab. Code § 226.7(b). "If an employer fails to provide an employee a . . . rest . . . period[,] . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the . . . rest . . . period is not provided." Cal. Lab. Code § 226.7(c). The "rest . . . period . . . shall be counted as hours worked, for which there shall be no deduction from wages." Cal. Lab. Code § 226.7(d).

IWC Wage Order 4-2001, Cal. Code Regs. tit. 8, § 11040 [hereinafter "Wage Order 4"], generally applies to "persons employed in professional, technical, clerical, mechanical, and similar

occupations whether paid on a time, piece rate, commission, or other basis." Wage Order 4, § 1. The parties agree that Wage Order 4 applies to HMCs. (Def.'s Mem. P. & A. at 9; Def.'s Opp'n at 6; Pl.'s Mem. P. & A. at 11-12.) Wage Order 4 requires employers to "authorize and permit all employees to take rest periods . . . . 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." Wage Order 4, § 12(A). Like Labor Code section 226.7(d), the Wage Order provides that "[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." Id. Also like the statute, the Wage Order further provides that "[i]f an employer fails to provide an employee a rest period[,] . . . 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." Id. § 12(B).

2. Analysis

The Court concludes that Defendant's compensation system violates California Labor Code section 226.7 and Wage Order 4.

Wage Order 4 "requires employers to separately compensate employees for rest periods if an employer's compensation plan does not already include a minimum hourly wage for such time." Vaquero, 214 Cal. Rptr. 3d at 669.[3/] Defendant's compensation system does not provide for any supplemental payment to HMCs who record missed rest breaks (see SF #32, 38-41; Stip. Facts Exs. C-H), and contrary to the law, Defendant's compensation system does not ensure that employees are compensated for missed rest breaks. An HMC whose commissions have in the aggregate matched or exceeded their hourly pay (that is, an HMC who has no Applied Carryover on his or her DRCR) receives wages for a month that are based on his or her commissions, subject to some possible adjustments that are not relevant here. (See SF #11, 12, 14, 16, 25-31, 33, 37; Stip. Facts Ex. C at 2, 6-7; Stip. Facts Ex. D at 2, 6-7; Stip. Facts Ex. E at 2, 6-7; Stip. Facts Ex. F at 2, 6-7; Stip. Facts Ex. G at 2, 7-8.) Such an HMC's wage is entirely dependent on the HMC's sales activity; it is not affected by whether or not the HMC takes a rest break. If the HMC does take a rest break, the rest break is not compensated because, by definition, it is time in which the HMC is not engaged in commission-generating activities. See Vaquero, 214 Cal. Rptr. 3d at 670 ("[T]he purpose of a rest period is to rest, not to work.").

Additionally, in some situations, Defendant's compensation system effectively deducts missed-rest-break payments from an HMC's wages. When an HMC receives only the hourly pay (that is, receives the Advance on Commissions but no incentive pay), the HMC's wages would seem to compensate for rest breaks, whether taken or missed. This is because Defendant does not prevent HMCs from taking rest breaks, HMCs do not clock out for rest breaks, and HMCs can record when they miss rest breaks. (SF #38-41.) But an HMC whose commissions fall below the hourly-pay amount will

[3/] Vaquero involved a different IWC Wage Order, but it contained the same language as Wage Order 4 in relevant part. Compare IWC Wage Order No. 7-2001, § 12, Cal. Code Regs. tit. 8, § 11070(12), analyzed in Vaquero, 214 Cal. Rptr. 3d 661, with Wage Order 4, § 12.

accrue a deficit that eventually reduces the HMC's commissions once those commissions exceed the hourly pay amount. (See SF #11, 12, 14, 16, 25-31, 33, 37; Stip. Facts Ex. D at 2, 6-7; Stip. Facts Ex. E at 2, 6-7; Stip. Facts Ex. F at 2, 6-7; Stip. Facts Ex. G at 2, 7-8; Stip. Facts Ex. H.) The statements in the Comp Plans that hourly pay is fully vested and not subject to recapture (SF #18; Stip. Facts Ex. C at 9; Stip. Facts Ex. D at 8; Stip. Facts Ex. E at 8; Stip. Facts Ex. F at 8; see also Stip. Facts Ex. G at 9) do not alter the fact that the HMC ultimately must reimburse Defendant at least some portion of the hourly pay, which includes rest-break payments, from the HMC's subsequently earned wages. Nor is that effect diminished by the fact that hourly pay is paid out biweekly while commissions are paid on a monthly basis, one month afterward.

This case is not meaningfully different from Vaquero. The compensation plan considered in Vaquero paid employees on a commission basis but provided that an employee would never earn less than $12.01 per hour of work. See 214 Cal. Rptr. 3d at 663-64. When an employees' commissions were less than the hourly pay amount, the employee received the hourly pay amount as a "draw" on future commissions, but the deficit was carried forward until it was reimbursed through deductions from those future commissions. See id. As here, employees recorded the time that they worked and were not required to clock out during rest breaks. See 214 Cal. Rptr. 3d at 664. Nonetheless, the compensation system violated the law because "the formula it used for determining commissions did not include any component that directly compensated sales associates for rest periods." 214 Cal. Rptr. 3d at 664. The compensation system in Vaquero suffered from the same two deficiencies noted in Defendant's system. See id. at 673-74 ("[W]hen Stoneledge paid an employee only a commission, that commission did not account for rest periods. When Stoneledge compensated an employee on an hourly basis (including for rest periods), the company took back that compensation in later pay periods. In neither situation was the employee separately compensated for rest periods.").

The Court is not persuaded by Defendant's efforts to distinguish Vaquero, or its arguments that HMCs may earn above minimum wage; HMCs' hourly rate is the same for rest breaks and for other purposes; HMCs' hourly wages are labeled "advances on commissions" rather than "draws"; or that HMCs' hourly wages otherwise are treated by Defendant as bona fide wages. (Def.'s Mem. P. & A. at 12-15; Def.'s Opp'n at 6-8.) None of these arguments alter the analysis.

The Court also is not persuaded by Defendant's attempts to distinguish cases involving piece-rate compensation systems. (Def.'s Mem. P. & A. at 10; Def.'s Opp'n at 7-8.) See Vaquero, 214 Cal. Rptr. 3d at 670 ("[N]othing about commission compensation plans justifies treating commissioned employees differently from other employees. The commission agreement used by Stoneledge during the class period is analytically indistinguishable from a piece-rate system in that neither allows employees to earn wages during rest periods." (citations omitted)). A piece-rate system "calculat[es] compensation based on the type and number of tasks completed, rather than by the number of hours worked." Ontiveros v. Safelite Fulfillment, Inc., 231 F. Supp. 3d 531, 536 (C.D. Cal. 2017) (quoting Fowler Packing Co., Inc. v. Lanier, No. 1:16-CV-00106-DAD (SAB), 2016 WL 3648963, at *1 (E.D. Cal. July 8, 2016), aff'd in part and rev'd in part, 844 F.3d 809 (9th Cir. 2016)). Thus, like a commission-based system, a piece-rate system compensates an employee based on the work performed rather than how long it takes

to perform. Multiple courts have addressed piece-rate compensation systems and held that they violate California Labor Code section 226.7 and IWC Wage Orders where they do not ensure that employees' rest breaks are separately compensated. See Ontiveros, 231 F. Supp. 3d at 536-37; Sandoval v. M1 Auto Collision Ctrs., No. 13-cv-03230-EDL, 2016 WL 6561580, at *20-23 (N.D. Cal. Sept. 23, 2016) ("[U]nder Defendants' system, workers are not separately paid for rest breaks because they receive the same compensation whether they take a rest break or not. . . . Defendants' arguments [that they adequately compensate employees for rest breaks and that rest breaks need not be separately compensated] would [only be] persuasive if they could show that employees are allowed to request additional piece rate time for rest breaks."); Bluford v. Safeway Stores, Inc., 157 Cal. Rptr. 3d 212, 217-20 (Ct. App. 2013). These cases confirm the deficiencies in Defendant's compensation system.

Both in its own motion and in its opposition to Plaintiff's motion, Defendant argues that its commission-based compensation system complies with anti-deduction laws. (Def.'s Mem. P. & A. at 15-18; Def.'s Opp'n at 13-17.) Whatever latitude Defendant otherwise may have to implement an incentive-based compensation system, Defendant must compensate its employees for missed rest breaks and may not deduct rest-break payments from their wages. See Cal. Labor Code § 226.7; Wage Order 4 § 12; see also Vaquero, 214 Cal. Rptr. 3d at 670 (stating that "the [California] Legislature views the right to a rest period as so sacrosanct that it is unwaivable").

Finally, in its opposition to Plaintiff's motion, Defendant argues that the failure to pay employees for missed rest breaks does not give rise to liability under Labor Code section 226.7. (Def.'s Opp'n at 17-19.) Defendant contends that rest-break compensation may only be recovered in a claim for a minimum-wage violation, not directly under section 226.7. (Id. at 18.) However, "numerous courts have held that § 226.7 does provide a private right of action." Ovieda v. Sodexo Operations, LLC, No. CV 12-1750-GHK (SSx), 2012 WL 12887083, at *3 & n.4 (C.D. Cal. Aug. 9, 2012) (collecting cases).

Accordingly, Plaintiff is entitled to summary judgment as to liability on her claim for unpaid rest breaks.

B. Plaintiff's UCL Claim

"California's Unfair Competition Law prohibits 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.' . . . In prohibiting 'any unlawful' business practice, the UCL 'borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable.'" Levitt v. Yelp! Inc., 765 F.3d 1123, 1129-30 (9th Cir. 2014) (first quoting Cal. Bus. & Prof. Code § 17200; and then quoting Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 973 P.2d 527, 539-40 (1999)).

Neither party addresses Plaintiff's UCL claim in its arguments (see Pl.'s Mem. P. & A.; Def.'s Mem. P. & A.), although Plaintiff's notice for her motion states that she seeks summary judgment as to liability on the claim (Pl.'s Mot. at 2). The portion of Plaintiff's UCL claim remaining in the case is derivative of Plaintiff's claim for unpaid rest breaks. (See FAC ¶¶ 48-53; Docket No. 18.) A violation

of section 226.7 is a valid theory of liability upon which a UCL claim may be premised. See, e.g., Bargas v. Rite Aid Corp., 245 F. Supp. 3d 1191, 1214 (C.D. Cal. 2017); see also Safeway, Inc. v. Superior Court of Los Angeles County, 190 Cal. Rptr. 3d 131, 144-45 (Ct. App. 2015) (UCL claim may be predicated on failure to pay premium wages under Labor Code section 226.7 for missed meal breaks). Because Plaintiff is entitled to summary judgment as to liability on her rest-break claim, Plaintiff also is entitled to summary judgment as to liability on her UCL claim.

Conclusion

For all of the foregoing reasons, Plaintiff is entitled to summary judgment as to liability on her claim for failure to compensate for rest breaks and her derivative UCL claim. Accordingly, Plaintiff's Motion for Partial Summary Judgment (Docket No. 27) is granted, and Defendant's Motion for Classwide Summary Judgment on Certified Claim (Docket No. 26) is denied.

IT IS SO ORDERED.