SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 3.550)

YORK CLAIMS SERVICE WAGE AND HOUR CASES

Included Actions:

Johnson, et al. v. York Claims Service, Inc.

Williams, et al. v. York Claims Service, Inc., et al.

Judicial Council Coordination Proceeding No. 4560

STATEMENT OF DECISION

Complaint Filed: April 11, 2008/June 17, 2008
Trial Date: May 8, 2014

San Francisco County Superior Court Case No. CGC-08-476427

Sacramento County Superior Court Case No. 34-2008-00008447-CU-OE-GDS

The Court has received and reviewed Defendant's objections to the Court's proposed statement of decision, and Plaintiff's responses/objections. The Court has also received and reviewed Defendant's proposed statement of decision and Plaintiff's objections. The Court hereby overrules Defendant's objections and adopts its tentative statement of decision as the final statement of decision in this matter, as restated herein.

INTRODUCTION

On June 17, 2008, Plaintiffs Lonnetta Williams and Roshon Green ("Plaintiffs") filed this action against York Claims Service, Inc. ("York" or "Defendant") in San Francisco Superior Court. Through an array of procedural motions, this case was coordinated with the Johnson, et al.

v. York Claims Service, Inc. (Case No. 34-2008-00008447-CU-OE-GDS) action and transferred to the Sacramento County Superior Court. Plaintiffs filed their amended complaint in this Court on October 23, 2009. Following coordination, the matter was referred to as York Claims Service Wage and Hour Cases, Judicial Council Coordination Proceeding, Case No. 4560.

In the action, Plaintiffs allege that York improperly classified Plaintiffs, and all other similarly situated claims examiners, as exempt and thereby failed to pay for overtime worked in excess of eight (8) hours a day or forty (40) hours a week. Plaintiffs also assert that York failed to issue itemized wage statements that comply with California Labor Code section 226. Plaintiffs' Amended Complaint, the operative pleading, alleges causes of action for unpaid overtime wages under Labor Code section 1194, for violation of the California Unfair Competition Law, Business & Professions Code section 17200, et seq., for failure to pay overtime wages and failure to provide itemized wage statements that comply with the law, and for violation of the Labor Code Private Attorneys General Act ("PAGA"), Labor Code section 2698 et seq., for civil penalties arising from York's alleged failure to pay all overtime wages and to provide wage statements in compliance with Labor Code section 226.

On July 19, 2012, Plaintiffs requested this Court to grant their motion under Code of Civil Procedure section 382 to certify a class of individuals identified by York as holding the job of claims examiner[1] and employed on an exempt basis in California between April 11, 2004, and the present. Plaintiffs also requested that the Court certify the wage statement claim. On August 12, 2012, this Court granted Plaintiffs' motion for class certification on both claims and the Court entered its order on September 7, 2012. In its order, the Court ordered Defendant to provide the last known name, address and telephone number of the class members. Defendant did so, and

[1] Testimony at trial established that York also employs persons on an exempt basis using the title "claims adjuster." These individuals were part of the certified class as well, and testimony established that York used the terms "examiner" and "adjuster" interchangeably. TR 400:24-27, 406:10-20.

after notice was mailed to the class and the opt-out period was completed, the class was comprised of 122 persons employed by York as exempt claims examiners or adjusters during the class period.[2]

Following class certification, the parties stipulated to Defendant amending its answer to include the administrative exemption affirmative defense. This was the sole exemption Defendant asserted applied to the class members.

Trial in this action commenced on May 8, 2014, and concluded on May 28, 2014.[3] After hearing testimony from 13 witnesses and considering thousands of pages of documentary evidence, and the receipt of extensive post-trial briefing from Plaintiffs and Defendant, the Court finds that Defendant did not meet its burden of proof to establish that the class members are exempt under California law, as detailed herein. The Court also finds that Plaintiffs met their burden of proof, namely (1) that the class members were employed by York during the class period; (2) the class members worked overtime hours during the class period; (3) York did not pay any class members overtime during the class period; and, (4) the amount of overtime wages owed to the Class. Therefore, the Court finds that the class members are non-exempt and that Defendant owes earned and unpaid overtime compensation and interest. At trial, Plaintiffs' expert testified to two separate damages scenarios/calculations. The first scenario did not include any deductions for the maximum amount of vacation time and PTO available to the class. The second set of calculations did include these deductions, and it is these calculations that the Court finds are applicable. Consequently, Defendant owes damages totaling $8,354,658, reflecting

[2] Plaintiffs' Exhibit 6.

[3] Closing argument briefs were filed on August 26, 2014, September 10, 2014, and September 18, 2014, after which the Court took this case under submission. Subsequently, Defendant filed a sur-reply, which was not authorized by the Court, and untimely as the case had already been taken under submission. Consequently the Court strikes Defendant's "Objections to Portions of Plaintiffs' Reply Brief" and has not considered it in rendering this opinion.

$7,435,758 for overtime compensation and interest, and $918,900 in penalties.[4] The Post-judgment interest shall accrue on the overtime wages at the rate of ten percent per annum.

WAGE AND HOURS POLICY AND EMPLOYER'S BURDEN

Explaining how to approach wage and hour issues, the California Supreme Court instructed: "in light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection." (*Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702; see also, *Sav-On Drug Stores, Inc. v. Superior Court* (1994) 34 Cal.4th 319, 340.) In the context of overtime claims, the *Sav-On* court explained that "Labor Code section 1194 confirms 'a clear public policy...that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." (34 Cal. 4th at 340 (internal citation omitted).) The court continued, "California's overtime laws are remedial and are to be construed so as to promote employee protection." (*Id.*)(citing *Ramirez v. Yosemite Water Co.* (1999) 20 Cal. 4th 785, 794.) More recently, the California Supreme Court confirmed these rules of construction, emphasizing that courts must interpret statutes governing the conditions of employment broadly, "in favor of protecting employees." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1026-27)(quoting *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1103.)

The employer bears the burden of proving an employee's exemption from the overtime laws, as it is considered to be an affirmative defense. (See, *Ramirez*, 20 Cal. 4th at 794.) The application of an exemption from the overtime laws "is limited to those employees plainly and unmistakably within their terms." (*Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal. App. 4th 555, 562.) The failure to meet just one portion of one element in an exemption causes

[4] Defendant's Exhibit II.

the exemption to fail. (See, *Id.* at 570-574; *Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal. App. 4th 1363, 1371-72.)

///

THE ADMINISTRATIVE EXEMPTION

The California Labor Code specifies that any work in excess of eight hours per day and/or forty hours in a week shall be compensated at the rate of no less than one and one-half times the regular rate of pay. (Cal. Labor Code § 510(a).) An employee is exempt from the requirement for overtime pay if the employee is primarily engaged in duties that meet the test of an exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. (Cal. Labor Code § 515.) The Industrial Welfare Commission established exemptions and set them forth in pertinentWage Orders. (*Id.*)

York contends that the Plaintiffs' employment meets the criteria for the administrative exemption, which is set forth in Industrial Welfare Commission Wage Order 4-2001, 8 Cal. Code Regs. section 11040. It provides, in pertinent part:

> "[a] person employed in an administrative capacity means an employee whose duties and responsibilities involve either:
> (a)(i) The performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers...; and,
> (b) Who customarily and regularly exercises discretion and independent judgment; and,
> (c) Who regularly and directly assists a proprietor, or another employee who is employed in a bona fide executive or administrative capacity or,
> (d) Who performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or,
> (e) Who executes, under only general supervision, special assignments and tasks; and,
> (f) Who is primarily engaged in duties which meet the test for the exemption."

Subdivision (2)(N) of Wage Order 4-2001 defines "primarily" to mean "more than one-

half the employee's work time."

///

///

THE PLAINTIFFS WORKED OVERTIME

A. Plaintiffs provided sufficient evidence regarding the number of hours of overtime worked

The easiest way to determine if the Plaintiffs worked overtime in their employment with York would have been to look at any employment records maintained by York. However, as York classified them as exempt employees, it did not maintain time records pursuant to California Code of Regulations, Title 8, section 11040(7)(A)(3) and (7)(A)(5).[5] The Court therefore finds that Defendant did not keep any records of (1) the time class members began and ended each day, and (2) the actual hours that class members worked in any day, week, or pay period, including any overtime hours.

When an employer fails to maintain records of hours worked, the courts should not penalize employees for an inability to prove the precise number of hours that they have worked. (*Anderson v. Mt. Clemens Pottery, Co.* (1946) 328 U.S. 680, 687-88.) To do so, "would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation." (*Id.* at 687.) The Court may award overtime damages to the employee "even though the result be only approximate." (*Id.* at 688.) In the absence of employer-maintained records, Plaintiffs presented evidence of overtime hours worked via a survey of class members conducted by Dr. Dwight Steward, Ph.D. While York did not contest Dr. Steward's qualifications, it claimed the survey itself was flawed and not conducted pursuant to *Duran v. U.S. Bank*

[5] Plaintiffs' Exhibit 15 at Response No. 3.

National Association.[6]

53.28 percent of the 122 class members, or 65 class members, responded to the survey[7]; a response rate of which York's expert, Dr. Petersen, had no complaint.[8] Based on the survey responses, Dr. Steward determined that the average number of overtime hours worked per week was 8.61 hours, a number that he computed after following standard procedures and removing outlier responses.[9] The applicable confidence interval is 7.2 hours to 9.71 hours of overtime, meaning that Dr. Steward is 95 percent certain that the average number of overtime hours worked is within this range.[10] The average is consistent with the number of overtime hours that both Plaintiffs attested that they typically worked. Dr. Petersen did not disagree with Dr. Steward's calculations.[11]

Following the administration of the survey, Dr. Steward conducted the industry standard testing on the results to ensure there was not a non-response bias and no statistically significant differences among the respondents. Dr. Petersen agreed that Dr. Steward conducted appropriate statistical tests on the results to ensure there was no non-response bias. Dr. Petersen could not identify any additional tests that he felt Dr. Steward should have run. Dr. Petersen took issue with the survey Dr. Steward conducted because the survey respondents' identities remained confidential.' Although Dr. Petersen agreed that keeping the identity of survey respondents confidential "is appropriate in the vast majority of the surveys conducted," he felt that following

---

[6] Jeffrey Peterson, Ph.D., who testified on behalf of York, admitted that he had no criticism of Dr. Steward's qualifications to conduct the survey and perform the damage analysis. He also agreed that Dr. Steward appropriately designed the survey instrument, that the wording of the survey instrument was acceptable, that a telephone survey was appropriate, and that Dr. Steward surveyed the correct population. TR 787:15-21, 788:12-789:4, 792:18-20, 793:24-25, 794:4-6, 794:7-10, 126:18-127:2, 127:18-20, 127:24-128:10, 128:16-129:20, 129:23-130:9-28.

[7] TR 155:12-157:1

[8] TR 795:16-18.

[9] TR 157:27-159:12 & Plaintiffs' Exhibit 25.

[10] TR 159:13-160:18, 287:18-27.

[11] TR 29:6-8, 29:23-30:9, 122:26-123:11, 787:15-21, 788:12-789:4.

this standard protocol was not appropriate in this case. Dr. Steward attested to the scientific literature that established that he conducted the survey in accordance with established survey science standards.

The Court finds that the survey response rate is reasonable and the results are representative of the hours worked by the entire class population. York did not produce any evidence contrary to the survey results. The Court therefore adopts Dr. Steward's finding that the average number of overtime hours worked per week by the class is 8.61 hours, given the narrow interval and 95 percent confidence rate. The Court finds that Dr. Steward followed the accepted protocol in the scientific community when conducting the survey. The Court also finds that the position of Dr. Petersen that the survey respondents should not be anonymous is contrary to the view of the applicable scientific community.[12] Furthermore, York knew the identity of the members of the class, and was free to call any of them to testify in order to attempt to contradict the survey results; something York did not do.

Defendant relies heavily on *Duran v. U.S. Bank National Association* to contend that the survey done by Dr. Steward was inappropriate and prevented Defendant from providing evidence. However, the facts of *Duran* are completely inapposite and consequently the reasoning is not applicable to the instant matter. In *Duran*, as here, the plaintiff class members were seeking unpaid overtime as they alleged they had been improperly classified as exempt. (*Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 12.) The trial court decided to determine liability by randomly selecting 21 plaintiffs of a 260 member class from whom testimony would be given regarding working hours. (*Id.*) The Defendant was not permitted to introduce evidence concerning the work hours of any plaintiff outside this sample. (*Id.*) Based on the testimony of the small

[12] TR 800:7-16, 8;;:24-801:7, 801:8-18, 803:2-26, 804:2-10, 806:12-27, 806:28-807:7, 808:14-26, 811:8-12, 815:26-816:19, 816:20-26, 817:11-27, 818:22-24, 819:5-17, 820:1-8, 820:9-22, 831:4-18, 832:24-28, 840:1-26, 842:24-852:25, 860:5-22, 861:8-862:3, 866:16-22, 867:21-28, 868:1-7, 868:12-869:24, 869:25-878:27, 888:10-889:27, 891:4-894:5, 894:21-28, 895:1-897:24, 913:24-914:9, 914:9-26, 915:19-916:9.

sample selected by the court, the trial court found that the entire class had been misclassified. (*Id.*) In determining damages, the trial court used the average amount of overtime from the small random sampling as representative of the entire class. (*Id.*) The California Supreme Court held "...the trial court's flawed implementation of sampling prevented USB from showing that some class members were exempt and entitled to no recovery. A trial plan that relies on statistical sampling must be developed with expert input and must afford the defendant an opportunity to impeach the model or otherwise show its liability is reduced. Statistical sampling may provide an appropriate means of proving liability and damages in some wage and hour class actions." (*Id.* at 13.)

Here, the Court did not select the participants in the survey, and the survey data was not from such a small sample as the data extracted in *Duran*. Here, the survey was conducted by an expert, Dr. Steward, whom York's expert testified was qualified to perform the survey. Over half of the class members responded to Dr. Steward's survey, and York was free to solicit testimony from those who did not participate in the survey in order to challenge the application of those results to the whole of the class. Unlike in *Duran,* this Court did not prohibit York from introducing data from those outside of Dr. Steward's sample. York's reliance on *Duran* is misplaced, and *Duran* does not direct the Court to ignore the data provided by Plaintiffs by way of Dr. Steward.

B. Plaintiffs provided sufficient evidence regarding calculations of overtime compensation, prejudgment interest, and civil penalties

Dr. Steward used the payroll data[13] York produced to multiply the average number of overtime hours, 8.61, by class members' applicable rates of pay and periods of employment to determine the damages arising from York's failure to pay for overtime worked. Dr. Steward also

[13] Plaintiffs' Exhibits 1-A, 2-A, and 3-A.

used this information to calculate the applicable penalties under the California Labor Code.[14]

///

YORK FAILED TO PROVE PLAINTIFFS ARE SUBJECT TO THE ADMINISTRATIVE EXEMPTION

For the reasons set forth more fully below, the Court finds that the Defendant misclassified the class members and failed to pay them overtime wages when they worked in excess of eight hours per day and/or forty hours per week. Defendant failed to produce evidence to establish by a preponderance of the evidence that Plaintiffs' employment satisfied all prongs of the administrative exemption. Specifically, the Court finds that, (1) the class members did not perform work directly related to the management policies and general business policies of York; (2) the class members did not customarily and regularly exercise discretion and independent judgment as to matters of significance; (3) the class members did not perform work under only general supervision, work along specialized and technical lines requiring special training, experience, or knowledge; and (4) the class members did not spend more than 50% of their time performing exempt duties.[15] As the failure of one element of the exemption prohibits the exemption from applying, the Court focuses its analysis on these elements.

Central to the Court's analysis in this case are the *Nordquist* case, the *Bell* line of cases, and the *Harris* case.

In *Nordquist v. McGraw-Hill Broadcasting Co.*, the Court found that a sportscaster had not been properly classified as an exempt employee pursuant to the administrative exemption and was entitled to back overtime pay from his employer. ((1995) 32 Cal. App. 4th 555.) The Court noted that "discretion and independent judgment involves the comparison and evaluation of

[14] Defendant's Exhibit II

[15] York did not present any evidence demonstrating that class members "regularly and directly assist a proprietor or another employee who is employed in a bona fide executive or administrative capacity" or that class members "execute, under only general supervision, special assignments and tasks." Hence, the Court finds that York failed to prove either element.

possible courses of conduct, and acting or making a decision after considering various possibilities. It implies that the employee has the power to make an independent choice free from immediate supervision and with respect to matters of significance. The decision may be in the form of a recommendation for action subject to the final authority of a superior, but the employee must have sufficient authority for the recommendations to affect matters of consequence to the business or its customers." (*Id.* at 564)(citing IWC Order No. 11-80.)

In *Bell v. Farmers Ins. Exchange*, the plaintiffs were insurance adjusters whose employer claimed they were exempt from overtime pay pursuant to the administrative exemption. ((2001) 87 Cal.App.4th 805.) The Court determined the employees did not meet the criteria for the administrative exemption, finding they did not perform administrative tasks, but instead were producing the product of the company, "occupied in the routine of processing a large number of small claims." (*Id.* at 827-28.) The representatives had a low amount of independent settlement authority, and were mainly used as a conduit of information to their supervisors. (*Id.* at 828.) The analysis of the *Bell* court relied heavily on the fact that the employees were producing the "product" of the company, as opposed to performing purely administrative tasks.

In *Harris v. Superior Court*, the Court held that while the administrative/production worker test applied in *Bell* was relevant, it was improper to be used as a bright line test in determining application of the administrative exemption. ((2011) 53 Cal.4th 170.) The Court directed "in resolving whether work qualifies as administrative, courts must consider the particular facts before them and apply the language of the statutes and wage orders at issue." (*Id.* at 190.)

A. York failed to prove that class members perform work that is directly related to York's management policies or general business operations

The evidence presented at trial failed to establish that class members performed work related to management policies. While York contended that class members advised management

and negotiated settlements, it failed to produce evidence that this was anything more than providing York's services, i.e. producing its product.

Here, as in the *Bell* cases, the class members are insurance adjusters who exercised little to no independent discretion, and were processing a large number of small claims -- essentially producing York's product. York is a third party administrator that solely handles claims of third parties, and its QAG states that York's goal is to provide product consistency, by adhering to core product standards.[16] Mr. Bentz, York's person most knowledgeable regarding the duties of the class members, acknowledged that York's products are its claims files and the job of the class members is to maintain those files.[17] Further, Mr. Bentz and Mr. O'Brien, York's Vice President in charge of Human Resources, confirmed that the class members do not set York's policies, and that someone higher up the corporate structure does this.[18]

This testimony supports the Court's analysis under the more fact specific analysis required by the *Harris* court, rejecting the bright-line "product" test in determining whether job duties are administrative in nature. As *Harris* provided, "[w]ork qualifies as 'directly related' if it satisfies two components. First it must be *qualitatively* administrative. Second, *quantitatively*, it must be of substantial importance to the management or operations of the business." (*Harris*, 53 Cal.4th at 181-82.) Here, the job duties performed by the class members do not satisfy either prong of the two-component test. The work performed was carrying out the daily activities for which the business exists, not advising management, determining policies, or any other such administrative tasks. Both Plaintiffs denied York's contentions that they made "recommendations to management," testifying that when they spoke to their supervisors, it was regarding how to

[16] Plaintiff's Exhibit 4, at p. 4.

[17] TR 453:8-27, 454:1-4.

[18] TR 472:26-473:8, 473:12-21.

resolve claims, not providing suggestions regarding York's business operations.[19] York and its clients set the claim handling procedures and the class members were required to follow them.[20]

B. York failed to prove that class members "customarily and regularly exercise discretion and independent judgment" as to matters of significance

The *Nordquist* court explained the two situations in which employers most frequently misapply this language. (32 Cal. App. 4th at 564.) First, "is the failure to distinguish ['discretion and independent judgment'] from the use of skills and knowledge. An employee who merely applies his or her knowledge in determining what procedures to follow, or...whether specified standards are met...is not exercising discretion and judgment of the independent sort associated with administrative work." The Court finds that, at most, class members applied their knowledge to follow strict procedures and meet York's standards, as enforced through York's mandatory audits. The evidence established that class members could not deviate from these procedures.

The second misapplication "involves employees who make decisions, but not at a level appropriate to administrative work. . . Matters of consequence are those of real and substantial significance to the policies or general operations of the business of the employer..." (*Id.* at 564.) Much like the administrative-production dichotomy, this element requires that discretionary decision-making be at the level of the employer's management policies or general business operations. The Court finds that the evidence establishes that any nominal discretion that the class members possessed in performing their job duties pertains to the claims files themselves, not to York's business overall.[21]

1. York requires adjusters to follow strict procedures

The evidence established that York provides both exempt and non-exempt examiners and

[19] TR 121:13-18, 17:17-18:12, 80:2-8, 80:23-81:5, 90:2-18, 113:25-114:7, 346:11-21.

[20] TR 508:4-12, 727:1-4.

[21] TR 83:18-27, 121:12-21, 472:26-473:8, 473:12-21, 473:27-474:1, 474:16-20, 474:24-476:5, 508:4-12, 624:2-13, 624:16-25, 533:2-7, 533:14-534:5, 646:23-26, 647:10-14, 727:1-4, 1114:19-27, 1115:14-24, 1136:11-19.

adjusters with the same training.[22] This undercuts any argument that the "exempt" adjusters use specialized training or knowledge, not required for the non-exempt adjuster/examiner position. The evidence also established that the class members had to comply with Defendant's policies and procedures, such as those set forth in its QAG, a voluminous manual containing standards meant to establish consistency across all claims files.[23] Further, class members had to comply with the instructions provided by York's clients.[24] Class members could not deviate from these instructions. Class members' supervisors receive notification of all new claims to enable them to begin actively monitoring them, thus ensuring that adjusters/examiners properly check for new assignments.[25] York mandates that all data regarding claims must be kept in Claims Connect and instructs claims examiners and adjusters to check several times per day for new assignments.[26]

The evidence established that for each deadline set, York expected class members to comply with the deadline or to make a detailed note in the file as to why they could not do so.[27] York gives specific writing instruction, dictating that adjusters must use proper grammar, avoid opinions, and avoid the usage of acronyms and abbreviations in their files.[28] The evidence also established that class members could not send out documents without the approval of their supervisors.[29] If a claim is to be denied, the class member could not send out a denial letter without approval from both the supervisor and client.[30] If a Reservation of Rights letter was necessary, the class member was required to use a form letter with language supplied by the

---

[22] TR 546:16-20

[23] TR 5:19-28, 6:9-19, Exhibit 4-A, 112:13-17, 412:8-11, 696:5-12, 696:23-28, 453:8-27.

[24] TR 6:20-27, 7:4-13, 7:21-8:10, 113:9-24, 404:14-405:8, 688:18-691:1, 727:1-4; 1082:13-15, 1132:21-1133:2.

[25] TR 8:16-9:8, 114:9-15, 399:12-27, 400:8-12, 1132:21-1133:2, 401:28-402:5.

[26] TR 401:2-25.

[27] TR 463:13-26.

[28] TR 1095:4-12.

[29] TR 728:3-15, 730:6-731:9, 732:20-733:4, Exhibit 4 at page 34; 1086:14-19, 1087:5-9.

[30] TR 1080:12-1081:1

client, and had to obtain supervisor approval.[31]

Although York provided testimony that adjusters/examiners had "authority" to settle claims, this authority proved to be limited. York did not dispute testimony that any settlements within the examiner's authority must conform to the subject damage estimate, and that if the class member wanted to settle for a different amount, he or she had to seek supervisor approval.[32]

The Court finds that the evidence established that the class members had to follow procedures set forth by York and its clients. York failed to show that the class members exercised discretion and independent judgment with respect to matters of significance. As the *Nordquist* court explained: "An employee who merely applies his or her knowledge in determining what procedures to follow, or. . .whether specified standards are met...is not exercising discretion and judgment of the independent sort associated with administrative work." (32 Cal.App.4th at 573.)

2. Adherence to the strict guidelines is reinforced via York's audits

Evidence at trial established that York conducts frequent claims file audits to ensure that class members are following clients' specific instructions.[33] This purpose was confirmed at trial by Mr. Trimarchi, York's head of quality assurance.[34] The auditors also look for effective supervision by reviewing the supervisor's file notes, as well as the supervisor's diary, to ensure that the supervisor provided the required guidance and enforced deadlines. Auditors also check to ensure that supervisors approved specific forms.[35] The auditor checks whether the adjuster made initial and response calls within the QAG specified timeframes, and confirms that in keeping file notes the adjuster used proper grammar, did not express opinions, and did not use acronyms or

[31] TR 1081:2-10, 1081:27-1082:5, 1082:6-12, Exhibit TT.

[32] TR 120:7-121:11, 368:18-369:7, 369:8-15.

[33] TR 582:13-22, 633:5-15.

[34] TR 445:3-27, 579:9-17, 582:1-5, 711:28-712:16.

[35] TR 720:25-721:2, 712:9-28, 722:9-723:1, 723:9-17, 728:3-36.

abbreviations.[36] The auditor even checks to make sure the adjuster obtained all QAG required documents, such as police reports and vehicle damage appraisals.[37]

These audits emphasize that class members followed strict guidelines and instructions in almost every aspect of their day to day work. Their compliance with these instructions was monitored not only by their supervisors, but by the claims file audits. The Court finds that York failed to prove that class members "plainly and unmistakably" exercise discretion and independent judgment with respect to matters of significance. Accordingly, the Court finds that this element of the exemption fails.

C. York failed to prove that class members worked under only general supervision or work along specialized and technical lines requiring special training, experience, or knowledge

1. York failed to establish that class members were only generally supervised

For the administrative exemption to apply, an employee must be subject to only "general supervision." While there is a dearth of case law interpreting this element, it appears clear to the Court that "general supervision" does not describe the class member/supervisor relationships at issue. As described above, the evidence showed that class members were constantly monitored in all aspects of their employment with York.

The evidence established that York's structure was such that class members reported to a supervisor (also called a unit manager) who in turn reported to the branch manager.[38] Supervisors and class members at York interacted on a daily basis, working in close proximity to each other on the same floor, with adjusters in cubicles and supervisors typically in nearby offices.[39] Plaintiff Green testified that she was required to meet with her supervisor on a daily basis to review every

[36] TR 718:11-719:6, 723:18-724:5, 1092:11-18, 1092:24-27, 1094:9-26, 1095:4-12.

[37] TR 724:16-18, 725:1-7, 725:10-17.

[38] TR 16:6-15, 536:4-11, 568:17-20.

[39] TR7 13:27-14:9, 110:3-8, 110:19-21, 111:25-112:14, 1116:4-21, 1132:1-16, 1160:5-19.

claim assigned to her.[40] Plaintiff Williams spoke to her supervisors "quite often" each day about pending claims.[41] Class members Morgan and Aschinger also spoke to their supervisors on a daily basis about pending claims. Mr. Russ, who supervised both Morgan and Aschinger, confirmed that when he supervised each woman, they were each was in his office one to three times per day for five to ten minutes at a time, discussing their claims.[42]

Employees were even supervised with regard to their working hours, despite their salaried status. Mr. Bentz, Mr. O'Brien, and Mr. Baber, a current York Regional Vice President, all attested that York expected class members to work a minimum of 40 hours per week and that class members had to be at the office during regular business hours.[43] Class members confirmed this, and testified that if they did not meet the minimum 40 hours weekly requirement, they were required to make up the time. Class members also had to ask permission from their supervisor to be absent from the office for any period of time, no matter how minor, during normal business hours.[44] Plaintiff Green received a disciplinary write up from her supervisor for failing to make up time and for arriving at work 40 minutes late.[45]

These circumstances, combined with the supervision required by York and enforced through the audit process, demonstrates that the class members were not subject to general supervision, but instead were subject to substantial scrutiny and day-to-day management. As such, the Court finds that York did not exert only "general" supervision over the class members.

///

[40] TR 10:19-11:1, 11:13-18, 11:21-28, 12:2-21, 12:23-13:1, 44:8-12, 65:10-18.

[41] TR 113:25-114:7.

[42] TR 1132:17-20, 1160:1-4, 1194:4-15, 1194:26-1195:20.

[43] TR 414:15-26, 576:11-23, 506:7-10, 624:26-625:5.

[44] TR 22:22-24:7, 25:5-26:19, 27:7-25, 27:28-29:3, 420:9-12, 421:1-422:16, 1135:11-1136:1, 1164:16-1165:13, 1166:13-26.

[45] Plaintiffs' Exhibit 23.

2. Class members' specialized training, experience or knowledge in performing job duties

York was tasked with establishing that either the class members perform special assignments and tasks, or that the class members perform work "along specialized or technical lines requiring special training, experience, or knowledge."

The Court finds that York did not establish that the class members perform special assignments and tasks. Further the Court finds that York did not require any specialized or technical knowledge for the class members *prior* to hire. Mr. Bentz, York's person most knowledgeable regarding the duties and qualifications of claims adjusters and examiners testified that York has no specific requirements pertaining to years of prior experience or any specialized skills necessary to be hired as a claims adjuster.[46]

However, upon hire, the evidence establishes that York did provide class members with training through the use of the QAG and through its practice of detailed, hands-on supervision. Through these avenues, class members developed experience and knowledge that enabled them to perform their job duties at York. Consequently, the Court finds that York did establish that class members ultimately acquired special training, experience, or knowledge subsequent to hire. However, in light of York's failure to establish that class members were only generally supervised as discussed above, York's showing that class members performed work "along specialized or technical lines requiring special training, experience, or knowledge" is unavailing.

D. York failed to prove that that plaintiffs and class members spend more than fifty percent of their time performing exempt tasks

The last element of the exemption concerns whether employees are "primarily" engaged in exempt tasks. There was no evidence presented at trial to indicate how much time class members spend performing such tasks.

[46] TR 396:26-397:19, 412:26-413:3, 4123:14-20.

The Court finds that the tasks York asserts the class members perform are the same tasks performed by those employees whom York classifies as non-exempt. The same licensure expectations/requirements are applied, as are the same settlement authority rules. Consequently, York itself does not differentiate the tasks assigned to what it contends are exempt adjusters versus non-exempt claims examiners. While Mr. O'Brien testified that his job duties included determining whether the class members were properly exempt or non-exempt, he was not familiar with the QAG or any other procedures or policies that class members were required to follow in performing their job duties.[47]

York failed to present any evidence of the time spent on any tasks performed by class members by any witness with personal knowledge. The Court therefore concludes that York failed to carry its burden with respect to this aspect of the administrative exemption, as it failed with regard to the other three factors, as explained above.

YORK FAILED TO COMPLY WITH LABOR CODE SECTION 226

California Labor Code section 226(a) requires an employer to furnish its employees with an accurate, itemized wage statement that shows both, (1) gross wages earned, and (2) total hours worked by the employee. Section 226(e) provides that an violation occurs under the statute when these items are not displayed on the wage statement. York, having misclassified the class members as exempt employees, failed to report this information on their wage statements.

York also failed to provide the accrued vacation and sick time of class members on their wage statements. Although section 226(a) does not explicitly require vacation and sick time to be listed on wage statements, it does require "wages earned" and the Court concludes that this includes vacation and sick time. These items are accrued, much as wages are, and are considered wages within the meaning of Labor Code section 200. (See *Suastez v. Plastic Dress-Up Co.*

[47] TR 617:19-28, 618:22-26.

(1982) 31 Cal.3d 774, 779; *Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595, 1601.) York's failure to include paid vacation time/PTO time constituted a separate violation of Labor Code section 226, as the injury occurred when the employee had to look somewhere other than the wage statement to determine the wages owed.

As established by the testimony of Dr. Steward, the Court finds that the civil penalties owed specifically for the Labor Code section 226 violations total $324,250.00.

CONCLUSION

York failed to prove that the class members qualify for the administrative exemption to the California overtime pay requirements. Consequently, the class members are non-exempt employees and are entitled to overtime pay as detailed above. Furthermore, Plaintiffs established that their wage statements did not include a summary of their accrued vacation and sick time. York is subject to civil penalties as a result of these Labor Code section 226 violations as detailed above. The class members are non-exempt and Defendant owes earned and unpaid overtime compensation and interest of $7,435,758, and $918,900 in penalties.

The parties shall meet and confer regarding who will take possession of the trial exhibits pending any appeal of this matter. The parties shall notify the Court of their agreement within 30-days of the date of this Decision and shall take possession of the exhibits within 10 days of said notification.

The Court has received and reviewed the parties' pleadings concerning the judgment and proposed distribution. The parties are ordered to meet and confer regarding the terms of the judgment and distribution (including the allocation of any "leftover" funds) in conformance with this statement of decision. After meeting and conferring, in accordance with Local Rule 1.06,

///

///

counsel for Plaintiffs is directed to prepare an order, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to counsel for Defendants for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

DATED: January 30, 2015

MICHAEL P. KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **STATEMENT OF DECISION** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

ROBIN G. WORKMAN, Esq.
AVIVA N. ROLLER, Esq.
QUALLS & WORKMAN, LLP
177 Post Street, Suite 900
San Francisco, CA 94108

CRAIG A. DIAMOND, Esq.
STEPHEN C. BAKER, Esq.
DIAMOND BAKER MITCHELL, LLP
149 Crown Point Court, Suite B
Grass Valley, CA 95945

MARK R. THIERMAN, Esq.
Thierman Law Firm
7287 Lakeside Drive
Reno, NV 89511

JUDICIAL COUNCIL OF CALIFORNIA
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3660

CLERK OF THE SUPERIOR COURT
COUNTY OF SAN FRANCISCO
Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102-4514

Superior Court of California,
County of Sacramento

Dated: January 30, 2015

By: S. LEE
Deputy Clerk