

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 07/06/12

DEPT. 311

HONORABLE JOHN SHEPARD WILEY JR

JUDGE

M. MATA

DEPUTY CLERK

HONORABLE  
#1

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. BIVINS, CA

Deputy Sheriff

T. MCCOY (CSR 4745)

Reporter

9:00 am

BC336416

Plaintiff

MATTHEW R. BAINER (X)

Counsel

MARINA N. VITEK (X)

JENNIFER AUGUSTUS

MICHAEL B. ADREANI (X)

VS

Defendant

DREW E. POMERANCE (X)

AMERICAN COMMERCIAL SECURITY SV

Counsel

DOMINIC J. MESSIHA (X)

170.6 ANN JONES BY PLFF

C/W CGC5444421, BC349801

KEITH A. JACOBY (X)

R/T BC345918, BC388380 (CCW/D-3

**NATURE OF PROCEEDINGS:**

TELEPHONIC APPEARANCES:

SUZY LEE (X)

SARAH McCONNELL (X)

MIRNA VILLEGAS (X)

MOTION FOR SUMMARY JUDGMENT;

MOTION FOR SANCTIONS;

MOTION FOR SUMMARY ADJUDICATION;

MOTION FOR DECERTIFICATION;

Matters are called for hearing.

Counsel have read a copy of the Court's tentative ruling.

Matters are argued. The Court's tentative ruling stands as follows:

1. The Augustus motion for summary judgment (as modified by the concessions of Bruce Deal to the critique by Michael Ward) is granted for simple interest. This ruling dictates a judgment of \$89,741,426.00, as set forth in more detail in the transcript of oral argument.

2. The Augustus motion for sanctions is denied.

<p align="center"><b>MINUTES ENTERED</b> 07/06/12 COUNTY CLERK</p>
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The second ACSS motion differs from the first. Moreover, a "notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order." (California Rules of Court, rule 3.1110.) Augustus failed to state the nature of the sanctions order sought in the notice of motion, and for this reason the motion is defective. The moving papers stated, "The actual amount of fees will be presented in reply." The opposition had no opportunity to attack the sum sought.

3. The ACSS motion for summary adjudication is denied, except as stipulated to the claims before 8-23-07. As to these claims, the motion is granted by stipulation.

4. The ACSS motion for decertification is denied.

In general, ACSS balks at the notion that the employer must relieve workers of all duties for the rest break to be legally valid. Put simply, if you are on call, you are not on break. That has been the law for many years. So ruled Judge Kuhl. (Even assuming it is proper to cite an unpublished trial court ruling -- which it is not -- Judge Illston did not propound a contrary legal ruling but merely (at \*18) accepted those parties' representations. That court opted against publication, presumably for good reason.)

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All the particulars are consistent with this simple analysis. David Swagerty testified that he did not carry a radio on certain "breaks" (Exhibit GG 22:7-9) but there is no evidence that while on "break" he was off-call or off-duty. There are many alternatives to the radio for hailing a person back to work: cell phone, pager, fetching, hailing, and so on. The reasonable inference is that Swagerty's situation conforms to the general pattern of evidence, which is that ACSS required all its workers to be on-call during their breaks, and so these on-call breaks are all legally invalid.

The evidentiary objection to the Milan J. Morgan evidence is sustained. That is the only pertinent evidentiary objection.

ACSS objects to the length of an Augustus reply brief. ACSS would be better positioned to make this objection had it not included 21 small font footnotes in the opposition. The undersized and single-spaced footnote font -- and the overlong reply -- mar the otherwise splendid briefing for this hearing.

ACSS says Judge Kuhl failed to dispose of an entire cause of action. ACSS never mentioned this to Judge Kuhl. There was no protest then, no request for reconsideration. There was a writ, but it apparently skipped this issue. When a party trumpets a protest only after the case has been

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transferred to a new trial judge, the protest will not be taken seriously. In any event, ACSS makes no claim of prejudice, and offers no evidence on that score either. As an independent and alternative ground for decision, moreover, this court today incorporates and adopts Judge Kuhl's 12-23-10 ruling.

There has been no denial of due process. Procedurally, ACSS has had a opportunity to be heard -- repeatedly, and at length. It has filed much writing, and this court has considered it all. This court is most grateful for skillful and zealous advocacy of ACSS's able counsel. ACSS cannot maintain that it has been deprived of a day in court after the court has spent days considering ACSS's views and evidence. Substantively, California's labor law gave advance notice of the penalties for depriving workers of rest breaks. Those penalties are straightforward and chastening. When the view is clear and the exposure chastening, the rational hiker steers clear of the edge of the cliff. ACSS broke the law and must pay according to that law. That is the rule of law and not a violation of due process.

Prevailing party is to submit a form of judgment by July 9, 2012.

Motion for Attorneys Fees is set for September 6, 2012 at 9:30 a.m. in this department.

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Notice is waived.