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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**DOUGLAS TROESTER, on behalf of
himself, and all others similarly situated,**

Plaintiff,

v.

**STARBUCKS CORPORATION, and
Does 1-50,**

Defendants.

Case No.: CV 12-07677-CJC(PJWx)

**ORDER GRANTING DEFENDANT’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT [Dkt. 85] AND DENYING
PLAINTIFF’S MOTION FOR CLASS
CERTIFICATION [Dkt. 88]**

I. INTRODUCTION

Plaintiff Douglas Troester brings this putative class action against Defendant Starbucks Corporation (“Starbucks”), alleging claims for (1) failure to pay minimum and overtime wages, (2) failure to provide accurate written wage statements, (3) failure to timely pay all final wages, and (4) unfair competition. (Dkt. 1-1 [Complaint, hereinafter “Compl.”].) Plaintiff’s claims, theories, and available relief have been narrowed after appeal to the Ninth Circuit of a previous summary judgment order, related certification to

1 the California Supreme Court, and additional summary judgment motions. The relevant
2 allegations now are that Starbucks required employees to perform four tasks after
3 clocking out—uploading data to Starbucks’ computer system, programming the alarm,
4 locking doors, and walking coworkers to their cars—but did not compensate employees
5 for these tasks. Before the Court are Starbucks’ Motion for Partial Summary Judgment
6 (Dkt. 85 [hereinafter “MSJ”]) on Plaintiff’s wage statement claim and his unpaid wages
7 claim to the extent it seeks liquidated damages, and Plaintiff’s Motion for Class
8 Certification (Dkt. 88 [hereinafter “MCC”]). For the following reasons, Starbucks’
9 Motion for Partial Summary Judgment is **GRANTED** and Plaintiff’s Motion for Class
10 Certification is **DENIED**.

11 12 **II. BACKGROUND**

13
14 In February 2008, Starbucks hired Plaintiff to work as a barista in one of its coffee
15 shops. (Dkt. 92-1 [Defendant’s Reply Separate Statement of Undisputed Facts,
16 hereinafter “UF”] ¶¶ 1–2.) Starbucks promoted him to shift supervisor in June 2008. (*Id.*
17 ¶ 2.) In January 2011, Plaintiff stopped working for Starbucks. (UF ¶ 1.)

18
19 Plaintiff recorded his work time for Starbucks and clocked in and out using
20 Starbucks’s point-of-sale (“POS”) system. (Dkt. 64-4 ¶ 5.) Plaintiff admits Starbucks
21 always paid him for all the time he recorded in the POS system. (*Id.* ¶ 6.) Instead, at
22 issue in this case is time Plaintiff allegedly worked off the clock while he was a shift
23 supervisor on shifts at the end of the business day (“closing” shifts). (UF ¶ 3.) Based on
24 the software Starbucks used, Plaintiff alleges he had to clock out before using the store
25 computer to send sales data to Starbucks headquarters. (*Id.* ¶¶ 4, 6.) Plaintiff then set the
26 store alarm, exited, locked the front door, and walked coworkers to their cars. (*Id.* ¶¶ 8–
27 10.) In total, Plaintiff contends he spent about four to ten minutes performing these tasks
28 every shift, and that he was not compensated for this time.

1 **III. STARBUCKS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

2
3 Three claims remain in this case: unpaid wages, failure to provide accurate wage
4 statements, and violation of California’s Unfair Competition Law. Starbucks seeks
5 summary judgment on Plaintiff’s wage statement claim, and on his unpaid wages claim to
6 the extent it seeks liquidated damages. For the following reasons, Starbucks’ motion is
7 **GRANTED.**

8
9 **A. Legal Standard**

10
11 The Court may grant summary judgment on “each claim or defense—or the part of
12 each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a).
13 Summary judgment is proper where the pleadings, the discovery and disclosure materials
14 on file, and any affidavits show that “there is no genuine dispute as to any material fact
15 and the movant is entitled to judgment as a matter of law.” *Id.*; *see also Celotex Corp. v.*
16 *Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial
17 burden of demonstrating the absence of a genuine issue of material fact. *Celotex*, 477
18 U.S. at 325. A factual issue is “genuine” when there is sufficient evidence such that a
19 reasonable trier of fact could resolve the issue in the nonmovant’s favor. *Anderson v.*
20 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” when its resolution
21 might affect the outcome of the suit under the governing law, and is determined by
22 looking to the substantive law. *Id.* “Factual disputes that are irrelevant or unnecessary
23 will not be counted.” *Id.* at 249.

24
25 In considering a motion for summary judgment, the court must examine all the
26 evidence in the light most favorable to the nonmoving party, and draw all justifiable
27 inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W.*
28 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir. 1987).

1 The court does not make credibility determinations, nor does it weigh conflicting
2 evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).
3 But conclusory and speculative testimony in affidavits and moving papers is insufficient
4 to raise triable issues of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE*
5 *Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

6 7 **B. Wage Statement Claim**

8
9 Plaintiff alleges that Starbucks failed to provide accurate written wage statements
10 by giving him pay statements that did not reflect his actual hours worked—that is,
11 statements that did not include the time Plaintiff spent working after he clocked out.
12 California Labor Code Section 226 requires employers to give employees “accurate
13 itemized statement[s]” every pay period showing, among other things, the employee’s
14 total hours worked and gross wages. “An employee suffering injury as a result of a
15 knowing and intentional failure by an employer” to provide such statements is entitled to
16 the greater of (1) actual damages, or (2) penalties of \$50 for the initial pay period in
17 which a violation occurs and \$100 per employee for each violation in a subsequent pay
18 period, not to exceed an aggregate penalty of \$4,000. Cal. Lab. Code § 226(e)(1). An
19 employee may also bring an action for injunctive relief to ensure compliance with
20 California wage statement law. *Id.* § 226(h).

21
22 In his complaint, Plaintiff sought both an injunction and the greater of actual
23 damages or statutory penalties. The Court has previously granted summary judgment in
24 Starbucks’ favor on the wage statement claim as to injunctive relief, finding that Plaintiff
25 lacks standing to seek injunctive relief because he no longer works at Starbucks. (Dkt. 65
26 at 17–18.) In another summary judgment order, the Court found that Plaintiff also cannot
27 seek penalties on his wage statement claim because he failed to bring the claim within the
28 one-year statute of limitations. (Dkt. 76 at 4–5.)

1 Starbucks now argues the Court should grant summary judgment in its favor on the
2 last remaining category of damages, actual damages, because Plaintiff cannot show he
3 suffered actual damages from the fact that his wage statements did not accurately list his
4 hours. (MSJ at 5.) In support, Starbucks points to Plaintiff’s deposition testimony. (*Id.*;
5 UF 11.) At his deposition, Plaintiff was asked, “Do you contend that you’ve been injured
6 in any way as a result of inaccuracies in the pay statements?” (Dkt. 85-3 at 193.)
7 Plaintiff’s counsel objected that this question called for a legal conclusion.¹ (*Id.*)
8 Plaintiff answered that he had been injured because he did not get paid for time he spent
9 working. (*Id.*) He could not think of any other way he had been harmed by the allegedly
10 inaccurate wage statements. (*Id.* at 193–94.) Based on this testimony, Starbucks argues
11 that Plaintiff does not have any evidence that he suffered actual damages based on any
12 wage statement violations. The Court agrees.

13
14 As explained, an employee suffering “injury” as a result wage statement violation
15 may recover, among other types of damages, actual damages. Cal. Lab. Code
16 § 226(e)(1). To prove such “injury,” Plaintiff must submit evidence showing that he
17 suffered some sort of “concrete” or “tangible loss as a result of the allegedly deficient
18 information on [his] wage statements.” *Hoffman v. Constr. Protective Servs., Inc.*, 2006
19 WL 6105636, at *2 (C.D. Cal. Feb. 27, 2006). Such loss may include “the possibility of
20 not being paid overtime, employee confusion over whether they received all wages owed
21 them, difficulty and expense involved in reconstructing pay records, [] forcing employees

22
23 ¹ Plaintiff reiterates this objection on summary judgment. (See UF ¶ 11 [responding to Starbucks’
24 statement that it is undisputed that Plaintiff was not harmed as a result of any wage statement violations,
25 Plaintiff responds that it is “[u]ndisputed that this is how a lay witness testified in response to a legal
26 contention question”].) This objection is **OVERRULED**. Asking a witness how he has been harmed
27 from an alleged legal violation is a proper question for a lay witness. *See* Fed. R. Evid. 704 Adv.
28 Comm. Note (explaining that “opinions phrased in terms of inadequately explored legal criteria” are not
permissible, and “[t]hus the question, ‘Did T have capacity to make a will?’ would be excluded, while
the question, ‘Did T have sufficient mental capacity to know the nature and extent of his property and
the natural objects of his bounty and to formulate a rational scheme of distribution?’ would be
allowed”).

1 to make mathematical computations to analyze whether the wages paid in fact
2 compensated them for all hours worked,” “lost time from other employment, [or being]
3 denied a loan.” *Id.*; *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1135 (C.D. Cal.
4 2011) (granting summary judgment for lack of injury where the plaintiffs’ only alleged
5 injury was “mathematical injury” because the “missing information on their wage
6 statements [did not require] them to do any more than ‘simple math’ to determine
7 whether they were compensated at the proper hourly rate”).

8
9 However, a claim that Plaintiff was not paid the amount he was owed is not
10 sufficiently “linked to a knowing and intentional failure on the part of Defendant to
11 provide an accurate wage statement” to constitute actual damages on a wage statement
12 claim. *See Hoffman*, 2006 WL 6105636, at *2 (granting judgment as a matter of law in
13 the defendant’s favor because evidence that the plaintiff’s bank returned a check for
14 insufficient funds and penalized him for a late payment on an automobile loan, and that
15 plaintiff once lacked [the] funds to fulfill a promise to his daughter” was insufficient
16 evidence of injury); *see also Pytelewski v. Costco*, 2010 WL 11442902, at *9 (S.D. Cal.
17 Nov. 3, 2010) (granting summary judgment for failure to present evidence of injury).

18
19 Plaintiff’s only response to Starbucks’ argument is that, according to Plaintiff, the
20 Court has already ruled that Plaintiff “had a claim for actual damages.” (Opp. at 3 [citing
21 Dkt. 76 at 5].) But the Court has not so ruled. In a motion for clarification regarding a
22 previous summary judgment order, Starbucks asked the Court to decide that Plaintiff did
23 not have evidence of actual damages. (*See* Dkt. 76.) The Court explicitly stated that it
24 was not deciding whether Plaintiff had proof of actual damages because the issue “was
25 not properly raised in Starbucks’ motion.” (*Id.* at 3.) Rather, the Court only ruled that
26 Plaintiff filed his complaint for actual damages within the applicable limitations period.
27 (Dkt. 76 at 5.)

1 Plaintiff has failed to identify evidence of injury sufficient to raise a genuine
2 dispute of material fact on his wage statement claim. Accordingly, Starbucks' motion is
3 **GRANTED** on Plaintiff's wage statement claim.

4
5 **C. Claim for Liquidated Damages for Unpaid Wage Violations**

6
7 One of the categories of damages that Plaintiff seeks on his unpaid wages claim is
8 liquidated damages. (Dkt. 1-1 ¶¶ 23, 43.) Under California Labor Code § 1194.2,
9 employees may recover liquidated damages "in an amount equal to the wages unlawfully
10 unpaid and interest thereon." Starbucks argues that summary judgment should be granted
11 on this claim because it is barred by (1) the statute of limitations and (2) the Court's
12 previous finding that Starbucks acted reasonably in asserting that it did not owe Plaintiff
13 any wages. The Court agrees.

14
15 **1. Statute of Limitations**

16
17 In 2014, the California legislature added the following language to California
18 Labor Code § 1194.2: "A suit may be filed for liquidated damages at any time before the
19 expiration of the statute of limitations on an action for wages from which the liquidated
20 damages arise." The statute of limitations on a liquidated damages claim is therefore
21 now three years. However, this case was filed in 2012, before the amendment. The
22 parties disagree over what statute of limitations applied to liquidated damages claims
23 before the 2014 amendment. Starbucks argues that before 2014, the statute of limitations
24 was one year, because liquidated damages were considered a penalty, and the amendment
25 changed the law. Plaintiff argues that the amendment was only a "*clarification* of the
26 law," and that a three-year statute of limitations was in effect all along. The distinction is
27 important because Plaintiff filed this case after the one-year statute of limitations passed,
28 but before the three-year statute of limitations passed. (*See* Dkt. No. 76 at 4–5.)

1 **a. Whether Liquidated Damages are a Penalty or Compensation**

2
3 Determining whether liquidated damages are a penalty requires the Court to
4 construe California Labor Code Section 1194.2. In interpreting California statutes,
5 federal courts follow California’s principles of statutory construction. *See In re First*
6 *T.D. & Inv., Inc.*, 253 F.3d 520, 527 (9th Cir. 2001). Courts first turn to the plain
7 language of the statute, “giv[ing] the language of the statute ‘its usual, ordinary import.’”
8 *Id.* If the statute’s language is ambiguous, courts “may consider extrinsic evidence of
9 the legislature’s intent,” including the statute’s scheme and history, background, and
10 purpose. *Id.*

11
12 The plain language of Section 1194.2 shows that liquidated damages are a penalty.
13 The statute states that “an employee shall be entitled to recover liquidated damages in an
14 amount equal to the wages unlawfully unpaid and interest thereon.” Cal. Lab. Code
15 § 1194.2. This means that an employee may recover the wages the employer failed to
16 pay, *plus* that same amount in liquidated damages. *Djukich v. AutoNation, Inc.*, 2014 WL
17 12845830, at *6 (C.D. Cal. Nov. 12, 2014) (explaining that liquidated damages
18 “essentially double[] the award” for unpaid wages). “The settled rule in California is that
19 statutes which provide for recovery of damages additional to actual losses incurred, such
20 as double or treble damages, are considered penal in nature, and thus governed by the
21 one-year period of limitations stated in section 340, subdivision (1) [of the Code of Civil
22 Procedure].” *Prudential Home Mortg. Co. v. Superior Court*, 66 Cal. App. 4th 1236,
23 1242 (1998) (citation omitted). California case law from before 2014 is in accord. *See*
24 *Martinez v. Combs*, 49 Cal. 4th 35, 48 n.8 (2010), *as modified* (June 9, 2010) (explaining
25 in dictum that liquidated damages under Section 1194.2 “are in effect a penalty equal to
26 the amount of unpaid minimum wages”); *Bain v. Tax Reducers, Inc.*, 219 Cal. App. 4th
27 110, 550–51 (Cal. Ct. App. 2013) (depublished), *reh’g denied*, (Sept. 26, 2013), *review*
28 *denied and ordered depublished*, (Dec. 11, 2013) (holding that liquidated damages

1 under Section 1194.2 are penalties and therefore subject to a one-year statute of
2 limitations). Apparently conceding this point, Plaintiff does not analyze the plain
3 language of the statute, referring only to the statute’s legislative history to determine its
4 meaning. (*See Opp.* at 4–6.)
5

6 Even if Section 1194.2’s plain language were ambiguous, and reasonably
7 susceptible to interpreting liquidated damages as either compensation or a penalty, both
8 the legislative history and purpose of Section 1194.2 show that the legislature intended
9 liquidated damages to operate as a penalty used to punish and deter employers from
10 unlawfully failing to pay wages. *See Djukich*, 2014 WL 12845830, at **5–7. The bill
11 report for SB 955, which the legislature later enacted as Section 1194.2, stated that SB
12 955’s proponents “believe that the provision for liquidated damages should serve as a
13 deterrent to those employers who fail to pay minimum wages.” *Id.* at *5. The deterrence
14 purpose clearly indicates that liquidated damages operate as a penalty. *See id.* at **5–6.
15

16 The statute of limitations for actions seeking statutory penalties is one year, unless
17 the statute imposing liability gives a different time period. Cal. Civ. Proc. Code § 340(a).
18 Because Section 1194.2 as it existed in 2012 did not state a different statute of
19 limitations, the statute of limitations was one year at that time. *Djukich*, 2014 WL
20 12845830, at *6.
21

22 **b. Whether the 2014 Amendment Was a Clarification or Change**
23 **in the Law**
24

25 However, the inquiry does not end there because now, Section 1194.2 *does* give a
26 different statute of limitations. As stated, in 2014 the California Legislature amended
27 Section 1194.2 to state that a three-year statute of limitations applies to liquidated
28 damages claims. The Court now considers whether the amendment clarified the law, as

1 Plaintiff contends, or changed the law, as Starbucks contends. If the amendment clarified
2 the law, then Plaintiff’s claim is timely, because the three-year statute of limitations was
3 in effect all along. *Djukich*, 2014 WL 12845830, at *6. If the amendment changed the
4 law, the Court would need to consider whether the change operates retroactively.

5
6 As another court in this district has thoroughly explained, the 2014 amendment
7 changed the statute of limitations for liquidated damages claims, rather than clarified it.
8 *Djukich*, 2014 WL 12845830, at *6–8. The legislature added the relevant language to
9 Section 1194.2 “to respond to the disparity between claims for unpaid minimum wages,
10 to which a three-year statute of limitations applies, and claims for liquidated damages, to
11 which a one-year limitations period generally applies,” which “dilute[d] the deterrent
12 effect of liquidated damages for minimum wage violations,” thereby “send[ing] a
13 statement that there is no real penalty for such worker exploitation beyond one year.” *Id.*
14 at *8 (citing legislative history documents). Accordingly, through the amendment “the
15 legislature appears to have recognized that liquidated damages under the statute are a
16 penalty, but that a three-year limitations period should apply to ensure the statute has a
17 deterrent effect.” *Id.* This was a change in the law. *Id.*

18
19 Plaintiff points to language in the legislative history that speaks of “clarif[ying]”
20 the statute of limitations. (Opp. at 5–6.) But the court in *Djukich* addressed this isolated
21 language from the legislative history and persuasively explained that it is not dispositive
22 and does not negate the overall thrust of the legislative history discussed in the preceding
23 paragraph, which weighs strongly in favor of showing a change. 2014 WL 12845830, at
24 *8; (*see also* Reply at 6 [citing places in the legislative history where the legislature
25 suggests or even expressly uses the word “change[.]” with reference to the amendment]).

26
27 //

28 //

1 liquidated damages are awardable, the court “may, as a matter of discretion, refuse to
2 award liquidated damages . . . if the employer demonstrates to the satisfaction of the court
3 . . . that the act or omission giving rise to the action was in good faith and that the
4 employer had reasonable grounds for believing that the act or omission was not a
5 violation of any provision of the Labor Code relating to minimum wage.” Cal. Lab. Code
6 § 1194.2(b). The Court agrees.

7
8 The Court previously held that Starbucks met a similar standard in finding that it
9 did not “willfully” fail to pay wages due at termination because there was “a good faith
10 dispute that any wages [were] due.” (Dkt. 65 at 16–17.) In so holding, the Court
11 explained that “[u]ntil the California Supreme Court’s decision in this case, it was
12 reasonable for Starbucks to assert that it did not owe any wages under the de minimis
13 doctrine.” (*Id.*) A similar logic bars Plaintiff’s claim for liquidated damages.

14
15 Plaintiff urges the Court to wait to exercise its discretion until “after a trial, on a
16 fully developed record, including but not limited to evidence of the actual amount of
17 unpaid wages.” (Opp. at 4.) But Plaintiff offers no explanation on how trial evidence
18 could alter the clear history described above.

19
20 Accordingly, the Court **GRANTS** summary judgment in favor of Starbucks on
21 Plaintiff’s claim for liquidated damages on his unpaid wages claim because the claim is
22 barred by the statute of limitations or, in the alternative, because Starbucks acted in good
23 faith and had reasonable grounds for believing that the alleged act or omission was not a
24 violation of law.

25
26 //

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1 **IV. PLAINTIFF’S MOTION FOR CLASS CERTIFICATION**

2
3 After this order on Starbucks’ motion for summary judgment, the following claims
4 remain: (1) unpaid wages, by which Plaintiff may seek those wages but not liquidated
5 damages, and (2) violation of the UCL, by which Plaintiff seeks restitution of unpaid
6 wages, reasonable costs, and attorney fees. Plaintiff moves for class certification of the
7 following class:

8
9 All Starbucks employees in California from August 6, 2008
10 through December 31, 2012 who worked a closing shift in a
11 Starbucks store and performed work after clocking out.

12 Starbucks opposes, arguing that individual issues predominate. For the following
13 reasons, Plaintiff’s motion is **DENIED**.

14
15 **A. Legal Standard**

16
17 Under Federal Rule of Civil Procedure 23, district courts have broad discretion to
18 determine whether a class should be certified. *Armstrong v. Davis*, 275 F.3d 849, 871
19 n.28 (9th Cir. 2001). Rule 23 is not merely a pleading standard—a party seeking class
20 certification must affirmatively demonstrate compliance with the Rule by proving the
21 requirements in fact. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). A class
22 may be certified if: “(1) the class is so numerous that joinder of all members is
23 impracticable; (2) there are questions of law or fact common to the class; (3) the claims
24 or defenses of the representative parties are typical of the claims or defenses of the class;
25 and (4) the representative parties will fairly and adequately protect the interests of the
26 class.” Fed. R. Civ. P. 23(a).

1 To be certified, a class must also meet the standards of one of the subsections of
2 Rule 23(b). In this case, Plaintiff seeks certification pursuant to Rule 23(b)(3). Rule
3 23(b)(3) permits certification if the court “finds that the questions of law or fact common
4 to class members predominate over any questions affecting only individual members.”
5 Plaintiff bears the burden of satisfying the elements of Rules 23(a) and 23(b)(3). *See*
6 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

7
8 **B. Predominance**

9
10 Starbucks does not contend that Plaintiff fails to meet any of the Rule 23(a)
11 requirements. Rather, the certification dispute concerns whether “questions of law or fact
12 common to class members predominate over any questions affecting only individual
13 members” under Rule 23(b)(3). The Court finds that they do not, and therefore denies
14 Plaintiff’s motion.

15
16 “The predominance inquiry focuses on ‘the relationship between the common and
17 individual issues’ and ‘tests whether proposed classes are sufficiently cohesive to warrant
18 adjudication by representation.’” *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d
19 918, 927 (9th Cir. 2019) (quoting *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935,
20 944 (9th Cir. 2009)). In determining whether the predominance requirement is met,
21 courts have a “duty to take a close look at whether common questions predominate over
22 individual ones” to ensure that individual questions do not “overwhelm questions
23 common to the class.” *Id.* (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013)).
24 Under Rule 23(b)(3) one factor “pertinent” to predominance is “the likely difficulties in
25 managing a class action.”

26
27 Starbucks’ policy is that time worked should equal time paid—that is, employees
28 should not work off the clock. (*See* Dkt. 91-1, Ex. G [hereinafter “Pl. Depo.”] at 100;

1 Dkt. 91-1, Ex. F.) Plaintiff alleges, then, that Starbucks had a custom or practice where
2 employees performed off-the-clock work. He argues that class certification is appropriate
3 because the putative class was “subjected to the same practices in terms of
4 uncompensated closing shift work,” and that any individualized issues go to damages
5 alone and thus do not defeat predominance. (MCC at 15–16.) The Court disagrees.
6 Indeed, as the Court now explains, the evidence shows employee practices were not
7 uniform, instead varying based on the store where they worked, the manager they worked
8 for, and the time period, among other factors.

9
10 ***Store Close Procedure.*** Plaintiff alleges that he was forced to perform the store
11 close procedure off the clock. However, many Starbucks employees testified that they
12 ran the store close procedure on the clock. (*See, e.g.*, Dkt. 91-1, Ex. B [Amanda Barb
13 initially testifying she always did this on the clock and then saying she could remember
14 doing it both ways]; Ex. C [Blake Barnett testifying he performed the close store
15 procedure on the clock]; Ex. D [Cecelia Cerna testifying that if you looked at the store’s
16 surveillance videos, “it would show, on the computer, closing store, and then . . . clocking
17 out”]; Ex. 5 [Christopher Coye stating store close procedure was “always done on the
18 clock”]; Ex. 7 [Roy Dominguez stating same]; Ex. 10 [Don Jenkins stating same]; Ex. 14
19 [Eddie Necochea stating same]; Ex. 3 [Oscar Cardona testifying he was trained to do the
20 close store procedure before clocking out, and that is what he did].) This is consistent
21 with Starbucks’ policy and training that the store close procedure should be performed on
22 the clock. (*See, e.g., id.* Ex. E [Paul O’Leary explaining that Starbucks’ “training
23 materials are to run end of day and then clock out,” and that he did not know of any
24 managers who trained employees to clock out before running it].)

25
26 The differing experiences may be explained by the fact that Starbucks changed its
27 computer system sometime between August and November 2010. (Dkt. 91-1 at 113
28 [Declaration of Connie Lange, hereinafter “Lange Decl.”].) It appears that with the old

1 system, employees performed the store close procedure off the clock, and with the new
2 system, employees performed the store close procedure on the clock. *See Troester v.*
3 *Starbucks Corp.*, 2014 WL 1004098, at *1 (C.D. Cal. Mar. 7, 2014), *rev'd and*
4 *remanded*, 738 F. App'x 562 (9th Cir. 2018); (*see* Lange Decl. ¶ 5 [“After November
5 2010, because the [old] system was no longer in use in California, partners no longer ran
6 the close store procedure.”]; Dkt. 91-1, Ex. H [Celia Westby testifying that under the new
7 system, the close store procedure “doesn’t exist anymore”].)

8
9 Regardless, Plaintiff’s proposed class is simply not cohesive on this issue. The
10 evidence shows that “Starbucks employees in California from August 6, 2008 through
11 December 31, 2012 who worked a closing shift in a Starbucks store and performed work
12 after clocking out”—the proposed class definition—have experienced the close store
13 procedure in different ways. Nor is this a matter of creating subclasses, because some
14 employees testified that they performed even the old store close procedure on the clock.
15 (*See, e.g.*, Dkt. 91-1, Ex. H [Celia Westby explaining that with the old system, she did the
16 close store procedure before she clocked out].) There may be additional individualized
17 issues regarding individual managers’ practices, given Plaintiff’s testimony that his
18 manager told him, “you now have to clock out first before you [do] the store-closing
19 procedures.” (Pl. Depo at 130.)

20
21 ***Setting the Alarm and Locking the Door.*** Similarly, as to setting the alarm and
22 locking the door, Plaintiff does not point to any policy or uniform custom or practice such
23 that common issues predominate. Some employees performed these functions on the
24 clock. (*E.g.*, Dkt. 91-1, Ex. C [Blake Barnett testifying he always set the alarm on the
25 clock]; *id.* Ex. 3 [Oscar Cardona testifying that in some stores, the door locked from the
26 inside, so he could lock the door on the clock].) Other employees did them off the clock.
27 (*E.g.*, *id.*, Exs. 4–6 [employees explaining they set the alarm and locked the door off the
28 clock].) Other employees testified whether they did these activities on or off the clock

1 depended on the store they were working in. (*E.g., id.*, Exs. 3, 7 [employees testifying
2 that in some stores, the door locked by itself from the inside so they did not have to lock
3 the door after clocking out, but in others, a physical key was required so they locked the
4 door off the clock].) Still other employees performed these functions on the clock
5 sometimes, and off the clock other times. (*E.g., id.*, Ex. 6 [Stephanie Deleon explaining
6 that she sometimes set the alarm on the clock, and other times off the clock].)
7

8 ***Walking Baristas to Cars.*** Analyzing Plaintiff’s claim regarding time spent
9 walking baristas to their cars is also replete with individualized issues. Although there is
10 at least one training document stating that a shift supervisor must complete all closing
11 tasks including walking employees to their vehicles, (*see* Dkt. 65 at 14), there is
12 evidence showing that this was not always the policy, (*see* Lange Decl. ¶ 4), and
13 regardless, custom and practice varied. For example, many people testified that they
14 walked baristas to their cars not because of a Starbucks policy, but rather that they did so
15 voluntarily, without expectation of payment. (*E.g.* Dkt. 91-1, Exs. A–C, E–H, 1–9); *see*
16 *Cornn*, 2005 WL 2072091, at *2 (finding common issues did not predominate and
17 pointing to fact that some class members “ha[d] agreed that time spent changing into
18 uniforms is not compensable”). Additionally, many employees testified that they did not
19 walk others to their cars because the employees in their store did not drive to work, but
20 rather took public transportation, Uber or Lyft, walked, or biked. (Opp. at 14 [collecting
21 testimony]; *e.g.*, Dkt. 91-1 Exs. 2–3.)
22

23 The individualized experiences of class members make managing a single trial
24 extremely difficult if not impossible. *See* Fed. R. Civ. P 23(3)(D). Individualized issues
25 regarding which employees performed the relevant functions on or off the clock, and why
26 they performed those functions, predominate over common questions. And those
27 individualized issues go not just to damages, but also to liability. *See Gibbs v. TWC*
28 *Admin., LLC*, 2020 WL 42770, at *4 (S.D. Cal. Jan. 3, 2020) (declining to certify off-the-

1 clock work class where the employer had a policy prohibiting such work and the
2 plaintiffs failed to show a company-wide policy or practice because claims depended on
3 individual supervisors' behavior and individualized differences did not go only to
4 damages).

5
6 Indeed, Plaintiff points to no records or other evidence that would create common
7 proof on whether employees performed these functions on or off the clock, or that would
8 otherwise allow these claims to be proven for all class members collectively one way or
9 another. *See Stiller v. Costco Wholesale Corp.*, 298 F.R.D. 611, 628 (S.D. Cal. 2014),
10 *aff'd*, 673 F. App'x 783 (9th Cir. 2017), *abrogated on other grounds by Campbell v. City*
11 *of Los Angeles*, 903 F.3d 1090 (9th Cir. 2018) (finding “no class-wide method of
12 determining whether, how often, and for how long class members actually experienced
13 unpaid [off the clock, ‘OTC’] time”). This is important because without such common
14 evidence, “liability cannot be proved on a classwide basis without thwarting [Starbucks’]
15 ability to demonstrate that some class members, due to a variety of circumstances, did not
16 actually experience unpaid OTC time.” *Id.* Starbucks has the right to present at trial its
17 evidence that some class members did not work off the clock. *See id.* Doing so in a
18 single trial applicable to all class members would be simply unworkable.

19
20 For these reasons, among others, where courts have granted certification of classes
21 alleging off-the-clock work claims, those claims generally revolve around company-wide
22 policies—for example requirements that employees undergo security or bag checks, or
23 wear special gear that they must put on and take off before and after shifts. *See Negrete*
24 *v. ConAgra Foods*, 2019 WL 1960276 at *4 (C.D. Cal. 2019) (granting class certification
25 for off-the-clock claims where Defendant did not compensate Plaintiffs for “time spent
26 donning and doffing protective gear at the beginning and end of their shifts”); *Lao v.*
27 *H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 at *1–2 (N.D. Cal. 2018) (granting
28 class certification for off-the-clock claims where plaintiffs challenged a company-wide

1 policy requiring employees to undergo security checks before leaving the store for rest
2 breaks and at the end of their shifts); *Moore v. Ulta Salon Cosmetics & Fragrance Inc.*,
3 311 F.R.D. 590, 604, 612 (C.D. Cal. 2015) (granting class certification in bag checks case
4 where Ulta had a “written exit inspection policy” and “company-wide practice” and
5 individualized issues went to time spent in line for the bag check); *Scott-George v. PVH*
6 *Corporation*, 2015 WL 7353928 *9 (E.D. Cal. 2015) (bag checks); *Otsuka v. Polo Ralph*
7 *Lauren Corp.*, 251 F.R.D. 439, 448 (N.D. Cal. 2008) (loss-prevention inspections);
8 *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 572 (C.D. Cal. 2008) (bag checks).

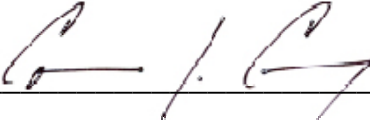
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10 In contrast, where, as here, there is no uniform practice regarding off-the-clock
11 work, courts deny certification. *See, e.g., Koike v. Starbucks Corp.*, 378 Fed.Appx. 659,
12 661 (9th Cir. 2010) (finding district court did not abuse its discretion in finding that
13 “individualized factual determinations were required to determine whether class members
14 did in fact engage in OTC work and whether Starbucks had actual or constructive
15 knowledge of the OTC work performed”); *In re AutoZone, Inc., Wage & Hour Emp’t*
16 *Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff’d*, 2019 WL 4898684 (9th Cir.
17 Oct. 4, 2019) (finding common issues did not predominate where there was no common
18 answer to the question of why off-the-clock work occurred, and pointing to putative class
19 member declarations attesting to never having performed or reported any off-the-clock
20 work); *Stiller*, 298 F.R.D. at 628 (“[T]here is no common answer as to whether each class
21 member actually performed uncompensated OTC work.”); *Cornn v. United Parcel Serv.,*
22 *Inc.*, 2005 WL 2072091, at *2 (N.D. Cal. Aug. 26, 2005) (finding common issues did not
23 predominate given individualized inquiries including whether each class member actually
24 performed compensable work before the recorded start time).

25
26 In sum, individualized issues regarding whether employees worked off the clock
27 and why they did so predominate over common questions regarding whether such work is
28 compensable. Accordingly, class certification is not appropriate.

1 **V. CONCLUSION**

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3 For the foregoing reasons, Starbucks' Motion for Partial Summary Judgment is
4 **GRANTED** and Plaintiff's Motion for Class Certification is **DENIED**.

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6 DATED: January 27, 2020

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9 CORMAC J. CARNEY
10 UNITED STATES DISTRICT JUDGE
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