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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANICE WOOD ET. AL.,
Plaintiff,
v.
**MARATHON REFINING LOGISTICS
SERVICE LLC,**
Defendant.

Case No. 4:19-cv-04287-YGR

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION TO STRIKE AND
ADDRESSING JOINT STIPULATION**

Dkt. No. 112, 113

United States District Court
Northern District of California

Before the Court are defendant’s motion to strike or dismiss the Fifth Amended Complaint and a stipulation by the parties regarding several issues including whether plaintiffs have shown numerosity for the Maintenance Worker Class and the subclasses. (Dkt. Nos. 112-113.) Having carefully considered the papers and exhibits submitted in connection with the motion and stipulation, the pleadings in this action, and upon further consideration after oral argument, which occurred on August 23, 2022, the Court orders as follows for the reasons explained at the hearing and more fully below:

The motion to strike references to California Labor Code Sections 226.7, 1198, and 98.3 is **GRANTED**. These references are in paragraphs 27, 57, and 75.

The motion is **DENIED** regarding section 1194. As explained at the hearing, the Court finds the Ninth Circuit’s decision in *Herrera* confirms plaintiffs’ ability to bring their reporting time pay claim under section 1194. *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1075 n.6 (9th Cir. 2020) (“Employees have a private right of action to recover any unpaid wages, Cal. Labor Code § 1194, including reporting time pay”). As defendant argued at the hearing, some district courts interpreted the California Supreme Court case *Murphy* to preclude reporting time pay claims under section 1194. *See, e.g., Raziano v. Albertsons LLC*, No. LACV1904373JAKASX, 2019 WL

1 9464279, at *4 (C.D. Cal. Dec. 13, 2019). The Court notes that *Murphy* did not directly address
2 this question and is not in conflict with *Herrera*. *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th
3 1094, 1120 (2007). Moreover, those cases were decided prior to *Herrera* and are not persuasive.

4 Regarding the joint stipulation, the Court **GRANTS** appointment of Leonard Carder as class
5 counsel and **GRANTS** removal of Warren Kostenuk as class representative and **GRANTS**
6 appointment of Aaron Dietrich as class representative.

7 Additionally, the Court finds numerosity is met for the Maintenance Worker Class, the
8 Maintenance Worker Subclass, and the Operator Subclass and **GRANTS** certification of those
9 classes. This order is without prejudice to the filing of a motion to decertify if facts prove
10 otherwise.

11 Defendant shall file an answer to the Fifth Amended Complaint as modified by this Order
12 within fourteen (14) days.

13 This terminates docket number 112.

14 **IT IS SO ORDERED.**

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16 Dated: August 25, 2022

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18 YVONNE GONZALEZ ROGERS
19 UNITED STATES DISTRICT JUDGE

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United States District Court
Northern District of California