

1 above-entitled Court, Judge John Shepard Wiley, presiding. Kevin Barnes of Law Offices of Kevin T.
2 Barnes and James Trush of Trush Law Office appeared on behalf of the Plaintiffs and Andrew Paley and
3 Sheryl Skibbe of Seyfarth Shaw, LLP appeared on behalf of the Defendant.

4 After considering the papers filed in support of and in opposition to the petition, the Court
5 prepared a Tentative Ruling, a copy of which is attached as Exhibit A. After oral argument, the Court
6 adopted its Tentative Ruling and ordered Class 1 and Class 5 decertified.

7 The Court set a status conference on September 5, 2012 at 10:30 a.m.: The parties are to submit
8 a joint report on August 29, 2012. The Court also ordered the parties to meet and confer regarding the
9 use of an on-line case management and electronic service provider to communicate with the Court. The
10 parties are to agree upon a provider and provide access to the Court.

11 Counsel for Defendant was ordered to give notice.

12 DATED: July 25, 2012

SEYFARTH SHAW LLP

13
14
15 By  _____

Sheryl Skibbe

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 311**

***Williams v. Allstate Insurance Company*
BC382577**

Motion for Decertification

The motion is granted because *Wal-Mart Stores, Inc. v. Dukes* (2011) 131 S.Ct. 2541 has changed the law.

Plaintiff Christopher Williams sued Defendant Allstate Insurance Company. Williams alleges Allstate requires its field adjusters to work off the clock. On December 2, 2010, the court granted Williams's motion for class certification in part. The court certified two classes at issue in this motion: Class 1 and Class 5. Class 1 and Class 5 consist of, "Defendant's California-based hourly-paid Auto Field Adjusters from January 1, 2005 to the present, to the extent that Defendant failed to pay for off-the-clock work for the following specific tasks performed prior to the first inspection of the day; logging on and off computer systems, preparing and checking voicemail messages; checking for schedule and travel changes, obtaining directions to the first inspection if there is a travel change, and making courtesy calls." (See Order Regarding Plaintiff's Motion for Class Certification, p. 2.) The court granted certification of these classes "because Plaintiff alleges that all California Auto Field Adjusters worked off the clock by performing the aforementioned tasks prior to the first inspection of the day." (*Ibid.*)

Allstate moves for decertification of Class 1 and Class 5. Williams contends Allstate has not moved for decertification of Class 5, but Allstate states in its notice of motion that it moves to decertify the class action as to Williams's claims for "violation of Business & Professions Code section 17200," which are the claims of Class 5. In a motion for decertification, a defendant must demonstrate new evidence or changed circumstances warrant reconsideration of the class certification order. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226.)

Allstate has demonstrated the governing law has changed since the court's certification order. Under the changed law, the class action procedure is no longer appropriate for this case.

After the certification hearing, *Wal-Mart Stores, Inc. v. Dukes* (2011) 131

S.Ct. 2541 changed the law. In *Dukes*, the Court considered "the certification of a class comprising about one and a half million plaintiffs, current and former female employees of petitioner Wal-Mart who allege that the discretion exercised by their local supervisors over pay and promotion matters violates Title VII by discriminating against women." (*Id.* 2547.) The Court stated, "Wal-Mart is entitled to individualized determinations of each employee's eligibility for backpay. Title VII includes a detailed remedial scheme. If a plaintiff prevails in showing that an employer has discriminated against him in violation of the statute, the court 'may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate [. . .]. But, if the employer can show that it took an adverse employment action against an employee for any reason other than discrimination, the court cannot order the 'hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay.'" (*Id.* at 2560-2561.) The Court concluded, "a class cannot be certified on the premise that Wal-Mart will not be entitled to litigate its statutory defenses to individual claims." (*Id.* at 2561.)

After *Dukes*, Allstate is entitled to litigate its defenses to the claims of each individual class member. For example, the court must permit Allstate to attempt to prove a particular class member did not work off the clock. Williams's own characterization of the evidence demonstrates not every class member worked off the clock before every shift. For example, Williams states his evidence "shows overtime worked more than 50% of the time." (Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Decertify 22:5-6.) By offering the statistic of 58.1%, Williams implies the balance of the class did not work off the clock every shift. *Dukes* gives Allstate the right to demonstrate certain class members did not work off the clock on certain dates.

Allstate also is entitled to advance evidence that off-the-clock work by particular employees was trivial. "As a general rule, employees cannot recover for otherwise compensable time if it is *de minimis*." (*Lindow v. U.S.* (9th Cir. 1984) 738 F.2d 1057, 1062.) If, for example, a particular employee spent a few seconds or minutes checking voicemail on a handful of occasions, this time would be negligible and the employee would not be entitled to compensation. Williams cannot use the class action procedure to prevent Allstate from litigating this affirmative defense. According to Allstate, there are between 216 and 234 field adjusters at any given time. (Declaration of Gary Ray, ¶ 3.) A trial in which Allstate presents evidence

of affirmative defenses to more than 200 individuals would be unmanageable.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party
5 to the within action. My business address is Seyfarth Shaw LLP, 2029 Century Park East, Suite
3500, Los Angeles, California 90067-3021. On July 25, 2012, I served the within documents:

6 **NOTICE OF RULING ON DEFENDANT'S MOTION TO DECERTIFY
7 THE CLASS**

- 8 I sent such document from facsimile machine (310) 201-5219. I certify that said
9 transmission was completed and that all pages were received and that a report was
10 generated by facsimile machine (310) 201-5219 which confirms said transmission and
11 receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a
12 true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.
- 13 by placing the document(s) listed above in a sealed envelope with postage thereon fully
14 prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- 15 by transmitting the document(s) listed above, electronically, via e-mail at
jtrush@earthlink.net and barnes@kbarnes.com
- 16 by placing the document(s) listed above in a sealed Federal Express envelope with
17 postage paid on account and deposited with Federal Express at Los Angeles, California,
18 addressed as set forth below.

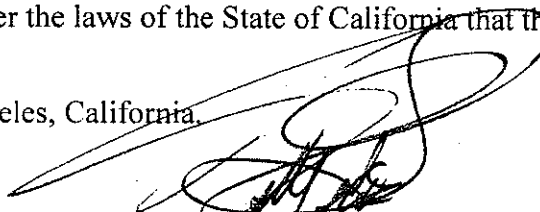
16 James M. Trush, Esq.
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23 I am readily familiar with the firm's practice of collection and processing correspondence
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than on day after the date of deposit for mailing in affidavit.

28 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed on July 25, 2012 at Los Angeles, California.



Kelley Lehr