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[California Court of Appeal Affirms Denial Of Class Certification In Important Decision Holding That Employers Must Only Provide Rest and Meal Periods and Need Not Ensure That They Are Taken](#)

In a decision recently certified for publication, *Hernandez v. Chipotle Mexican Grill, Inc.*, (October 28, 2010) __ Cal.App.4th __, 2010 WL 4244583, the Second Appellate District of the California Court of Appeal affirmed the trial court's order granting Chipotle's motion to deny class certification and denying the Plaintiff's motion for class certification. Chipotle is represented by Sheppard Mullin Richter & Hampton in the litigation. The *Chipotle* decision is significant for several reasons. First, the Court of Appeal affirmed the trial court's holding that an employer need only *provide* (i.e., authorize and permit) rest and meal periods, but need not *ensure* that employees actually take them. This issue is currently pending before the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court*, but the Court of Appeal agreed with the trial court's analysis that the correct legal standard for rest and meal periods is whether the employer *provided* them to employees. It noted that requiring enforcement of meal breaks would place an undue burden on employers and create perverse incentives that would encourage employees to violate a company's meal policy to receive extra compensation under California's wage and hour laws.

The *Chipotle* case is also important because of the Court's analysis on the issue of whether class certification was appropriate. The Court of Appeal affirmed the trial court's denial of class certification on the grounds that individual issues predominated over common issues and that class treatment was not superior to individual actions because even if an employee's time records reflected that a break was missed, that in and of itself did not establish that Chipotle failed to provide, authorize, or permit the employee to take a meal or rest break.

Significantly, the Court of Appeal found that the trial court did not abuse its discretion in finding a conflict of interest among potential class members which would defeat the purpose of class certification. The Court upheld Chipotle's arguments that because employees moved in and out of supervisory roles (without a change in title or other indicia of managerial status) and had responsibility to provide meal and rest breaks for themselves and other employees on the shift, putative class members would likely accuse other putative class members of violating their meal and rest period rights. Having class members testify against each other created an inherent conflict that made class certification inappropriate. The success of this argument before the Court in a published opinion will be helpful to other litigants who may have cases with similar conflicts of interest among putative class members in arguing that class certification is improper.

The *Chipotle* ruling is also helpful because it recognizes that certification of a class is not required simply because an employer's time records evidencing meal and rest periods are not 100% accurate, particularly where as in this case, there was no evidence that the employer falsified records or purposely failed to keep accurate records. The Court recognized that there may be reasons why employees may not accurately record their rest and meal periods, such as in this case when employees were paid for meal and rest periods and had little incentive to actually clock in and out for their breaks. Inquiring into the specific reasons why a particular employee's records did not reflect compliance with the meal period requirements would necessitate an individualized inquiry and numerous "mini trials" that made class certification inappropriate.

Furthermore, the Court of Appeal found that the use of an expert to perform sampling and statistical analysis is

of no value where it is premised on the erroneous legal standard that an employer must ensure meal periods are taken and fails to consider why the time records may not reflect that a break was taken (i.e., the employee failed to record his or her time accurately or voluntarily chose to return to work early or forego a break). To be of value, the expert's report would have needed to demonstrate some pattern or practice of missed breaks by showing that the missed breaks occurred more frequently at certain times, shifts, or locations. Because the Plaintiff's expert report did not do that, the Court of Appeal affirmed the trial court's finding that individual issues predominated making class certification inappropriate.

While employers and the legal community await the California Supreme Court's decision in *Brinker* on these issues, the *Chipotle* case is a helpful ruling for employers looking to defeat class certification.