

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CRUZ, and JOHN D. HANSEN,) Case Nos. 07-2050 SC
individually and on behalf of all) 07-4012 SC
others similarly situated,)

Plaintiffs,)

v.)

DOLLAR TREE STORES, INC.,)

Defendant.)

ORDER GRANTING
AMENDED MOTION FOR
CLASS CERTIFICATION

ROBERT RUNNINGS, individually, and)
on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

DOLLAR TREE STORES, INC.,)

Defendant.)

19 **I. INTRODUCTION**

20 This matter comes before the Court on the Amended Motion for
21 Class Certification ("Motion") file by Plaintiffs Robert Runnings,
22 Miguel Cruz, and John Hansen (collectively "Plaintiffs"). Docket
23 No. 124.¹ Defendant Dollar Tree ("Defendant" or "Dollar Tree")
24 filed an Opposition, and Plaintiffs filed a Reply. Docket Nos.
25 151, 162. For the following reasons, the Motion is GRANTED.

26
27 _____
28 ¹ Unless otherwise noted, all docket numbers refer to entries
in Case No. 07-4012.

1 **II. BACKGROUND**

2 **A. Procedural Background**

3 Miguel Cruz ("Cruz") and John Hansen ("Hansen"), on behalf of
4 themselves and all others similarly situated, filed a class action
5 against Dollar Tree, alleging that they were improperly classified
6 as exempt managers and denied wages for overtime. First Am.
7 Compl., Cruz Docket No. 1.² Robert Runnings ("Runnings") filed a
8 substantially similar class action in California Superior Court,
9 which Dollar Tree removed to this Court. Notice of Removal,
10 Docket No. 1. On August 30, 2007, the Court signed a Related Case
11 Order after finding that the two cases were similar. Cruz Docket
12 No. 34; Docket No. 21. On November 20, 2007, the Court signed a
13 Joint Stipulation and Proposed Order for Consolidation of Actions
14 signed by counsel for Cruz, Hansen, Dollar Tree, and Runnings.
15 Cruz Docket No. 45; Docket No. 33.

16 Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs
17 move for an order certifying the following class: "All persons who
18 were employed by Dollar Tree Stores, Inc. as California retail
19 Store Managers at any time on or after December 12, 2004." Mot.
20 at 13 (*italics omitted*). Starting the class period from December
21 12, 2004, ensures that any eventual awards to Dollar Tree Store
22 Managers ("SMs") in this case will not overlap with the awards

23
24 _____
25 ² As well as state law causes of action, the Amended Complaint
26 filed by Cruz and Hansen also claims that Dollar Tree's failure to
27 pay overtime wages violated the Fair Labor Standards Act ("FLSA"),
28 29 U.S.C. § 207. First Am Compl. ¶¶ 96-104. This motion does not
concern the FLSA claim, which requires individual consent, and
cannot be litigated pursuant to Rule 23. See Wang v. Chinese Daily
News, Inc., 231 F.R.D. 602, 605 (C.D. Cal. 2005).

1 that resulted from a previous settlement. See McDearmon Decl. ¶
2 3; Ex. A ("Settlement Agreement").³ Plaintiffs allege the class
3 consists of at least 655 members. Mot. at 14 n.56. Defendant
4 contends that the number is likely to be less, and that there are
5 currently 273 SMs in California. Opp'n at 1 n.5.

6 **B. Factual Background**

7 Dollar Tree operates discount variety stores offering
8 merchandise at the fixed price of \$1.00. Cole Decl. Ex. A
9 ("Dollar Tree Annual Report") at 6.⁴ Dollar Tree operates
10 approximately 3411 stores nationwide. Id. at 13. Dollar Tree
11 currently has 273 stores in California. McDearmon Decl. ¶ 10.
12 Dollar Tree's goal is for each store to have one SM. Id. Ex. B
13 ("Hensley Dep.") at 18:22-19:4; McDearmon Decl. ¶ 10. At the
14 lowest level of Dollar Tree's employment hierarchy are Sales
15 Associates, often employed on a part-time basis, who engage in
16 cashiering, freight receipt, stocking, cleaning, and restoring
17 merchandise to shelves. Cole Decl. Ex. C. ("Balderas Dep.") at
18 57:1-58:25;⁵ McDearmon Decl. ¶ 10. The next store position is
19 that of an Assistant Manager, who tends to specialize in freight,
20 merchandising, front end work, and operations. McDearmon Decl. ¶

21 _____
22 ³ David McDearmon, Dollar Tree's Director of Human Resources,
23 Field Operations, filed a declaration in support of Dollar Tree's
24 Opposition. Docket No. 144.

25 ⁴ Scott Edward Cole, an attorney and Principal of Scott Cole &
26 Associates, filed a declaration in support of the Motion. Docket
27 No. 126.

28 ⁵ Reed Balderas is Dollar Tree's Regional Human Resources
29 Manager for Southern California and Las Vegas. Balderas Dep. at
30 6:4-11.

1 10. The Assistant Managers report to the SM. Id. SMs report to
2 a District Manager, who generally oversees eight to fifteen
3 stores. Id. District Managers report to a Regional Director, who
4 has responsibility for six to nine districts. Id. Regional
5 Directors report to a Zone Vice-President. Id. California
6 consists of thirty districts, and four regions. Id. The Zone
7 Vice-President for California has responsibilities for a zone that
8 extends beyond California. Id.

9 In early 2005, Dollar Tree settled pending lawsuits that
10 alleged it improperly classified SMs, Assistant Store Managers,
11 and Managers in Training as exempt from overtime compensation.
12 McDearmon Decl. ¶ 3; Settlement Agreement. The settlement was
13 anticipated to provide \$125 per workweek to SMs during the period
14 for January 1, 1999, through December 11, 2004. Settlement
15 Agreement at 4. After the settlement, Dollar Tree reclassified
16 Assistant Store Managers and Managers in Training as nonexempt
17 positions. McDearmon Decl. ¶ 4. Dollar Tree revised the SM job
18 description. Id. SMs in California are now required to spend the
19 majority of their actual work time performing the following duties
20 and responsibilities:

- 21 1. Supervision of associates.
- 22 2. Oversee daily store activities, including opening
and closing store.
- 23 3. Ensure customer and associate safety.
- 24 4. Protect all company assets, including store cash,
merchandise and equipment.
- 25 5. Maintain proper sales, banking, inventory,
accounting, productivity, payroll and time records.
- 26 6. Responsible for adequate staffing of store.
Recruit, interview, hire, employ, and train sales
27 associates. Train associates to properly use all
equipment and technology as well as provide
thorough merchandise display training.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Schedule and assign work to store personnel. Evaluate, motivate, counsel, develop, discipline and discharge sales associates appropriately. Maintain production reports to evaluate job performance of sales associates.
8. Provide leadership and direction to store personnel.
9. Communicate company policies to sales associates. Ensure associates comply with company policies and procedures, including safety guidelines and human resources policies.
10. Analyze sales, expenses, and profit, review reports, analyze competition, determine customer preferences, manage sales forecasting, meet sales and profit objectives and goals, determine product mix, determine most effective placement of product and ensure standards for merchandise presentation, displays and signage to maximize sales. Assist in developing promotions and advertisements as appropriate.
11. Control inventory. Supervise ordering, receiving, stocking and pricing of goods. Ensure goods are properly marked and mark downs are properly recorded.
12. Responsible for overall cleanliness and appearance of store.
13. Ensure highest level of customer service. Handle customer complaints and problems.
14. Ensure accident reports and damage reports are completed in timely and accurate manner.
15. Complete management reports in a timely and accurate manner.
16. Ensure compliance with applicable laws and regulations.
17. Communicate professionally and effectively with customers, subordinates and supervisors.

Id. Ex. B ("SM Job Description"); Ex. C ("Payroll Certification"). The certification states that SMS "may not spend more than a total of 35% of his/her actual work time each week receiving product, distributing and storing product, stocking product and cashiering." Payroll Certification.

Around the middle of 2005, Dollar Tree began to require all SMS to certify on a weekly basis that they were spending a majority of their time on the tasks described above. McDearmon

1 Decl. ¶ 5. Dollar Tree management held meetings in California to
2 explain the certification process to its SMS. Id. Beginning in
3 2007, Dollar Tree has engaged in follow-up contact with SMS who
4 responded "no" on the certification forms. Id. ¶¶ 6-8.

5
6 **III. EVIDENTIARY ISSUES**

7 **A. Request for Judicial Notice**

8 Dollar Tree filed a Request for Judicial Notice ("RJN") in
9 support of its Opposition. Docket No. 150. The Court may take
10 judicial notice of a fact that is "not subject to reasonable
11 dispute in that it is . . . capable of accurate and ready
12 determination by resort to sources whose accuracy cannot
13 reasonably be questioned." Fed. R. Evid. 201(b)(2). The Court
14 may take notice of other court proceedings that have a direct
15 relation to matters at issue. United States ex rel. Robinson
16 Racheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th
17 Cir. 1992). The Court therefore GRANTS Dollar Tree's request with
18 respect to Exhibits A to P, which consist of documents filed
19 earlier in these consolidated cases, or in other court
20 proceedings. The Court GRANTS Dollar Tree's request with respect
21 to Exhibit Q, the State Bar of California's attorney web page for
22 Scott Cole.

23 **B. Dollar Tree's Evidentiary Objections**

24 Dollar Tree filed Evidentiary Objections in support of its
25 Opposition. Docket No. 149 ("Dollar Tree Objections"). Most of
26 Dollar Tree's objections focus on Plaintiffs' characterization of
27 evidence, rather than its admissibility. The Court relies on the
28

1 evidence itself, rather than Plaintiffs' characterization of the
2 evidence, and therefore the Court does not need to reach Dollar
3 Tree Objections Nos. 1 to 7, and Objections 10 to 29. See Inamed
4 Corp. v. Kuzmak, 275 F. Supp. 2d 1100, 1115 n.57 (C.D. Cal. 2002).
5 The Court OVERRULES Dollar Tree Objections Nos. 8 and 9, and the
6 objection to the Declaration of Scott Cole, because the statements
7 objected to do not consist of inadmissible hearsay.

8 The Court OVERRULES Dollar Tree's objection to the
9 Declaration of Molly A. Kuehn and the attached putative class
10 member declarations. Dollar Tree bases its objection on Dunbar v.
11 Albertson's, Inc., 141 Cal. App. 4th 1422 (Ct. App. 2006). Dollar
12 Tree states that, in Dunbar, the court disregarded declarations of
13 putative class members. Dollar Tree Objection at 13. In that
14 case, it is clear that the trial court took all of the evidence
15 into account. See Dunbar, 141 Cal. App. 4th at 1433. Dunbar,
16 therefore, provides no support for Dollar Tree's attempt to strike
17 the putative class member declarations.

18 **C. Plaintiffs' Evidentiary Objections**

19 Plaintiffs filed Evidentiary Objections in support of their
20 Reply. Docket No. 166 ("Plaintiffs' Objections"). Plaintiffs
21 object to the declaration of Patricia Doss, Docket No. 142, on the
22 basis that Patricia Doss was not disclosed as a person likely to
23 have discoverable information under Federal Rule of Civil
24 Procedure 26. Plaintiffs' Objections at 2. Dollar Tree's
25 disclosures show that Patricia Doss was not previously disclosed,
26 and therefore the Court will not consider her declaration in
27 ruling on this Motion.

28

1 Plaintiffs object to the declaration of David McDearmon,
2 Docket No. 144. The Court finds that the contents of this
3 declaration are either not inadmissible hearsay or are business
4 records under Federal Rule of Evidence 803(6), and the Court
5 therefore OVERRULES Plaintiffs' objection. Plaintiffs object to
6 the declarations of Steven Pearson, Docket No. 145, Charlotta
7 Jacobson-Allen, Docket No. 137, and Pam Wolpa, Docket No. 147.
8 The Court OVERRULES Plaintiffs' objections finding that they do
9 not raise concerns regarding admissibility, and the objections are
10 without merit. Plaintiffs object to statements in Dollar Tree's
11 SM declarations, Docket No. 138. Plaintiffs' Objections at 8-20.
12 The Court OVERRULES Plaintiffs' objections. The Court has
13 considered these declarations in ruling on this Motion, but the
14 Court does not rely on any statements that are purely speculative,
15 too vague, or mere opinions.

16
17 **IV. LEGAL STANDARD**

18 Federal Rule of Civil Procedure 23 governs the certification
19 of class actions. A class action must meet the requirements of
20 Rule 23(a) and fall within one of three categories set forth in
21 Rule 23(b). Fed. R. Civ. P. 23. For a class to be certified
22 under Rule 23(a), Plaintiffs must show that the following
23 conditions are met: (1) the class is so numerous that joinder of
24 all members is impractical; (2) there are questions of law or fact
25 common to the class; (3) the claims or defenses of the
26 representative parties are typical of the claims or defenses of
27 the class; and (4) the representatives will fairly and adequately

1 represent the interests of the class. Fed. R. Civ. P. 23(a); see
2 also Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613
3 (1997)(describing requirement). In addition, a class can be
4 certified if common questions of law or fact predominate, and
5 class resolution is superior to other available methods for fair
6 and efficient adjudication of the controversy. Fed. R. Civ. P.
7 23(b); see also Amchem, 521 U.S. at 614 (describing requirement).

8 A district court may certify a class only if, after "rigorous
9 analysis," it determines that the plaintiff has established by
10 sufficient evidence that all of the requirements set forth by Rule
11 23 are satisfied. See Gen. Tel. Co. of the Southwest v. Falcon,
12 457 U.S. 147, 158-61 (1982); Valentino v. Carter-Wallace, Inc., 97
13 F.3d 1227, 1233 (9th Cir. 1996). The party seeking certification
14 bears the burden of proof with respect to these requirements.
15 Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186, as
16 amended, 273 F.3d 1266 (9th Cir. 2001). Plaintiff can meet this
17 burden by providing the court with a sufficient basis for forming
18 a reasonable judgment on each requirement. Blackie v. Barrack,
19 524 F.2d 891, 901 (9th Cir. 1975).

20 In determining whether an action warrants class treatment
21 under Rule 23, "the question is not whether the plaintiff or
22 plaintiffs have stated a cause of action or will prevail on the
23 merits, but rather whether the requirements of Rule 23 are met."
24 Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177 (citation
25 omitted); see also Staton v. Boeing Co., 327 F.3d 938, 954 (9th
26 Cir. 2003)(accord). However, the court may consider evidence
27 relating to the merits if the evidence also goes to the

1 requirements of Rule 23. Hanon v. Dataproducts Corp., 976 F.2d
2 497, 508 (9th Cir. 1992).

3
4 **V. DISCUSSION**

5 **A. Numerosity**

6 Rule 23(a)(1) provides that a class action may be maintained
7 only if "the class is so numerous that joinder of all parties is
8 impracticable." Fed. R. Civ. P. 23(a)(1). However,
9 "impracticable" does not mean impossible; it refers only to the
10 difficulty or inconvenience of joining all members of the class.
11 Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-14
12 (9th Cir. 1964). In determining whether joinder would be
13 impracticable, a court should consider not only the number of
14 class members, but also "the nature of the action, the size of the
15 individual claims, [and] the inconvenience of trying individual
16 suits" Wang, 231 F.R.D. at 606 (citing Jordan v. County
17 of Los Angeles, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on
18 other grounds, 459 U.S. 810 (1982)).

19 Here, Plaintiffs allege the class contains at least 655
20 members. Mot. at 14 n.56. Defendant responds that there are
21 currently 273 SMS in California. Opp'n at 1 n.5. Defendants do
22 not dispute that this first prerequisite is satisfied. See Opp'n
23 at 5. The Court finds that the class is so numerous that joinder
24 of all parties is impracticable.

25 **B. Commonality**

26 Rule 23(a)(2) requires that there be "questions of law or
27 fact common to the class." Fed. R. Civ. P. 23(a)(2). The

1 commonality requirement is less rigorous than the related
2 requirement in Rule 23(b)(3) that common questions of law or fact
3 predominate. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th
4 Cir. 1998). The commonality requirement must be "construed
5 permissively." Id. "All questions of fact and law need not be
6 common to satisfy the rule. The existence of shared legal issues
7 with divergent factual predicates is sufficient, as is a common
8 core of salient facts coupled with disparate legal remedies within
9 the class." Id.; see also Perry v. U.S. Bank, No. 00-1799, 2001
10 WL 34920473, at *7 (N.D. Cal. Oct. 17, 2001) (finding Rule
11 23(a)(2) was satisfied but Rule 23(b)(3) was not).

12 Plaintiffs identify the common questions of fact as "*what*
13 tasks SMs do, the resources they use to do it, the environment
14 within which they do it, and the directives from Dollar Tree's
15 corporate office." Mot. at 18 n.61 (emphasis in original).
16 Plaintiffs suggest that questions concerning Dollar Tree's
17 certification process, and whether SMs perform the tasks described
18 in the SM Job Description, are common factual issues. Mot. at 18-
19 20; Reply at 2, 7. Plaintiffs further contend that the legal
20 issues in this case, such as whether it is proper for Dollar Tree
21 to classify its SMs as exempt, whether SMs are entitled to meal
22 and rest breaks, and the adequacy of Dollar Tree's record-keeping,
23 are common to all putative class members. Mot. at 17-18.

24 Dollar Tree responds by pointing to variations in how SMs
25 perform their jobs. Opp'n at 21. The Court does not deny the
26 work experience of particular SMs varies considerably, but these
27 variations do not undercut Plaintiffs' contention that all of the
28

1 legal issues and many of the factual questions are the same for
2 all putative class members. "The existence of shared legal issues
3 with divergent factual predicates is sufficient" to satisfy the
4 commonality requirement. Hanlon, 150 F.3d at 1019. The Court
5 finds that there are questions of law and fact common to the
6 proposed class.

7 **C. Typicality**

8 Rule 23(a)(3) requires that the representative parties'
9 claims be "typical of the claims . . . of the class." Fed. R.
10 Civ. P. 23(a)(3). "Under the rule's permissive standards,
11 representative claims are 'typical' if they are reasonably
12 co-extensive with those of absent class members; they need not be
13 substantially identical." Hanlon, 150 F.3d at 1020. Rule 23
14 "does not require the named plaintiffs to be identically situated
15 with all other class members. It is enough if their situations
16 share a common issue of law or fact and are sufficiently parallel
17 to insure a vigorous and full presentation of all claims for
18 relief." Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.,
19 917 F.2d 1171, 1175 (9th Cir. 1990). "Typicality refers to the
20 nature of the claim or defense of the class representative, and
21 not to the specific facts from which it arose The test of
22 typicality is whether other members have the same or similar
23 injury, whether the action is based on conduct which is not unique
24 to the named plaintiffs, and whether other class members have been
25 injured by the same course of conduct." Hanon, 976 F.2d at 508
26 (citation and internal quotation marks omitted). In practice,
27 "[t]he commonality and typicality requirements of Rule 23(a) tend
28

1 to merge." Gen. Tel. Co. of the Southwest, 457 U.S. at 157 n.13.

2 Here, Plaintiffs contend that the typicality requirement is
3 met because the proposed class representatives possess the same
4 interests as other SMS, and allege violations impacting other SMS.
5 Mot. at 15. Dollar Tree responds that the variations in the work
6 experience of SMS shows that the requirement is not satisfied.
7 Opp'n at 21. The Court is not persuaded by Dollar Tree's
8 response. The typicality requirement does not require that
9 Hansen, Cruz, and Runnings be identically situated to all other
10 SMS. Because the alleged injury is based on an alleged improper
11 classification of SMS, and Plaintiffs Hansen, Cruz, and Runnings
12 were employed as SMS, they have suffered the same alleged injury,
13 and therefore have the same claims as other SMS. The Court finds
14 that Plaintiffs' claims are typical of the claims of the proposed
15 class.

16 **D. Adequacy of Representation**

17 Rule 23(a)(4) requires a showing that "the representative
18 parties will fairly and adequately protect the interests of the
19 class." Fed. R. Civ. P. 23(a)(4). This requirement is grounded
20 in constitutional due process concerns; "absent class members must
21 be afforded adequate representation before entry of a judgment
22 which binds them." Hanlon, 150 F.3d at 1020 (citing Hansberry v.
23 Lee, 311 U.S. 32, 42-43 (1940)). The Court must resolve two
24 questions: "(1) do the named plaintiffs and their counsel have any
25 conflicts of interest with other class members and (2) will the
26 named plaintiffs and their counsel prosecute the action vigorously
27 on behalf of the class?" Id. (citing Lerwill v. Inflight Motion

1 Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978)). Both the
2 named plaintiffs and their counsel must have sufficient "zeal and
3 competence" to protect the interests of the rest of the class.
4 Fendler v. Westgate-California Corp., 527 F.2d 1168, 1170 (9th
5 Cir. 1975). This requirement again tends to merge with the
6 commonality and typicality requirements. Gen. Tel. Co. of the
7 Southwest, 457 U.S. at 157 n.13.

8 Dollar Tree contends that Cruz, Hansen, and Runnings are not
9 adequate class representatives because they are not credible or
10 trustworthy. Opp'n at 22. The credibility allegations are based
11 on the claim that Hansen, as an SM, often certified that he spent
12 a majority of his time working on the managerial tasks listed in
13 the weekly Payroll Certification, but later claimed in a
14 declaration that he spent most of his time stocking shelves and
15 cashiering. Id. at 12-13. In his deposition, Hansen testified
16 that he understood he was supposed to spend most of his time on
17 managerial functions. See Eltanal Decl. Ex. E ("Hansen Dep.") at
18 88:4-15.⁶ However, Dollar Tree presents no evidence that Hansen
19 often certified that he spent most of his time performing
20 managerial tasks. For example, Dollar Tree does not provide any
21 of Hansen's actual certifications. The inconsistency between his
22 deposition testimony and statements in a declaration is not
23 sufficient to impugn Hansen's credibility.

24 The untrustworthiness allegations are based on the

25 _____
26 ⁶ Rossana Eltanal, an associate in the firm Littler Mendelson,
27 counsel for Defendant, filed a declaration in support of
28 Defendant's Opposition. Docket No. 146.

1 circumstances surrounding Hansen's and Runnings' separations from
2 Dollar Tree. Id. at 22. Dollar Tree alleges that Hansen was
3 terminated for tampering with his employees' time records, and
4 that Runnings resigned after it was discovered he was in
5 possession of a confidential document. Id. at 22-23. The Court
6 finds that these allegations are not sufficient to show Plaintiffs
7 have conflicts of interest with other class members. Nor do these
8 allegations show that Plaintiffs will not prosecute the action
9 vigorously on behalf of the class. The Court is satisfied that
10 Plaintiffs will fairly and adequately represent the interests of the
11 class.

12 **E. Predominance and Superiority**

13 The key question in deciding this Motion is whether
14 Plaintiffs can satisfy the prerequisites of predominance and
15 superiority. Rule 23(b)(3) requires the court to find that "the
16 questions of law or fact common to class members predominate over
17 any questions affecting only individual members, and that a class
18 action is superior to other available methods for fairly and
19 efficiently adjudicating the controversy." Fed. R. Civ. P.
20 23(b)(3). These questions are interrelated because "[i]mplicit in
21 the satisfaction of the predominance test is the notion that the
22 adjudication of common issues will help achieve judicial economy."
23 Valentino, 97 F.3d at 1234.

24 1. Predominance

25 The predominance requirement is "far more demanding" than the
26 commonality requirement of Rule 23(a). Amchem, 521 U.S. at 623-
27 24. However, "[w]hen common questions present a significant
28

1 aspect of the case and they can be resolved for all members of the
2 class in a single adjudication, there is clear justification for
3 handling the dispute on a representative rather than an individual
4 basis." Hanlon, 150 F.3d at 1022. "'Because no precise test can
5 determine whether common issues predominate, the Court must
6 pragmatically assess the entire action and the issues involved.'" Tierno v. Rite Aid Corp., No. 05-2520, 2006 WL 2535056, at *5
7 (N.D. Cal. Aug. 31, 2006)(quoting Romero v. Producers Dairy Foods,
8 Inc., 235 F.R.D. 474, 489 (E.D. Cal. 2006)).

9
10 Considering all the evidence, the Court finds that Dollar
11 Tree's standardized policies and practices support Plaintiffs'
12 contention that common issues predominate. The evidence that
13 supports this contention includes Dollar Tree's certification
14 process, its common training program for SMS, and the common tools
15 SMS use to perform their jobs. See Mot. at 2-12.

16 The Court finds that the most convincing evidence in support
17 of Plaintiffs' contention that common issues predominate is Dollar
18 Tree's certification process. Dollar Tree requires its California
19 SMS to fill out a weekly certification report. Hensley Dep. at
20 251:8-11; Ex. F ("Camp Dep.") at 134:25-135:2; Balderas Dep. at
21 163:1-6. This certification lists seventeen tasks and SMS are
22 required to certify that they spend a majority of their time
23 performing these tasks. See Payroll Certification. Dollar Tree
24 held meetings in Chino and Torrance, California, to review and
25 explain the certification process to SMS. Balderas Dep. at
26 157:11-158:25. There was also a meeting concerning the
27 certification process in Sacramento. Camp Dep. at 132:7-9.

1 Because all of Dollar Tree's California SMS are required to
2 perform a common set of tasks, Dollar Tree's reliance on Sepulveda
3 v. Wal-Mart Stores, Inc., is misplaced. 237 F.R.D. 229 (C.D. Cal.
4 2006) rev'd in part, aff'd in part, 275 Fed. Appx. 672 (9th Cir.
5 2008). In that case, the court found that individual questions
6 predominate over common issues because of the "voluminous evidence
7 that there actually was a great deal of variance in AM [Assistant
8 Manager] duties . . . AM duties varied based on the
9 characteristics of the store, its workforce, and the surrounding
10 community." Sepulveda, 237 F.R.D. at 249.⁷ Here, by contrast,
11 Dollar Tree requires its SMS to certify every week that they spend
12 most of their time performing a finite number of duties. Also,
13 the class size in this case is considerably smaller than in
14 Sepulveda, where there were approximately 2750 putative class
15 members. Id. at 242.

16 Dollar Tree presents evidence suggesting variations in how
17 SMS go about performing those tasks. Opp'n at 2-5. For example,
18 Dollar Tree submits a detailed comparison of twenty-five
19 California stores showing they vary considerably in size, number
20 of different products available for SMS to order, sales, and
21 average monthly payroll hours. Jacobson-Allen Decl. Ex. A
22 ("California Store Comparison Chart").⁸ Dollar Tree filed a

23
24 ⁷ The Ninth Circuit reversed the district court's denial of
25 class certification under Rule 23(b)(2), but affirmed the district
26 court's Rule 23(b)(3) determination.

26 ⁸ Charlotta Jacobson-Allen, a paralegal and complex litigation
27 specialist working in Dollar Tree's in-house legal department,
28 filed a declaration in support of Dollar Tree's Opposition.
Runnings Docket No. 137

1 document showing the differing roles and experiences of California
2 SMS. Id. Ex. B ("California Store Managers Have Different Work
3 Experiences"). Dollar Tree submitted twenty SM declarations to
4 show that SMS have substantially different day-to-day experiences
5 and duties. Docket No. 138 ("SM Declarations"). Dollar Tree
6 contrasts the deposition testimony of the Plaintiffs with the
7 testimony of other SMS to show they perform their jobs in
8 different ways. Opp'n at 2-5. Dollar Tree also submits
9 deposition testimony of SMS to show they have considerable
10 autonomy and discretion in fulfilling their tasks and
11 responsibilities. Opp'n at 5-11.

12 Despite this evidence of variation, Dollar Tree does not,
13 and cannot, deny that all California SMS are required to spend a
14 majority of their time performing a set of seventeen tasks. See
15 Tierno v. Rite Aid Corp., No. 05-2520, 2006 WL 2535056, at *9
16 (N.D. Cal. Aug. 31, 2006)(noting that Rite Aid's self-audits and
17 study, which were designed to show variations in how store
18 managers performed specified tasks, also counted as concession
19 "that a single set of tasks is applicable to all Store Managers").
20 For example, while one SM declares that he spent only thirty
21 minutes per week preparing employee schedules, SM Declarations Ex.
22 4 ("Declaration of Damien John Bujwid"), and another SM declares
23 he spent four hours per week preparing employee schedules, SM
24 Declarations Ex. 20 ("Declaration of Deborah Wiebe"), this
25 comparison also shows that both SMS spent time every week engaged
26 in one of the common duties on the Payroll Certification, namely,
27 "[s]chedul[ing] and assign[ing] work to store personnel." While
28

1 one SM declares that he spent five hours per week hiring new
2 employees, SM Declarations Ex. 6 ("Declaration of Kimberly
3 Castellanos"), and another SM spent only thirty minutes per week
4 on hiring, SM Declarations Ex. 12 ("Declaration of Lisa Diane
5 Fitts"), hiring is also one of the common duties on the Payroll
6 Certification. This Court can resolve the question of whether SMs
7 who spend most of their time performing these seventeen duties are
8 exempt from California's overtime laws. This question is a common
9 one for all California SMs. There is therefore a clear
10 justification for handling this dispute on a representative rather
11 than an individual basis.

12 The Court notes the irony of relying on Dollar Tree's
13 certification process to find that the case is suitable for class-
14 wide treatment, when Dollar Tree implemented that process after
15 its earlier settlement, and precisely in order to ensure that its
16 SMs were properly classified. See McDearmon Decl. ¶¶ 5-8. Those
17 certifications certainly support Dollar Tree's contention that it
18 is not liable for improperly classifying SMs. SMs will have to
19 explain why they consistently certified "yes" on the Payroll
20 Certifications if in fact they were spending most of their time
21 stocking shelves and cashiering. However, that liability question
22 is not presently before the Court, and a class certification
23 motion is not an occasion to "advance [to] a decision on the
24 merits." See Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480
25 (9th Cir. 1983). Here, the question is whether common issues
26 predominate, and the fact that all California SMs share the same
27 job description, which requires them to spend most of their time
28

1 performing tasks on a list consisting of seventeen duties,
2 supports the conclusion that they do.

3 Plaintiffs' evidence of Dollar Tree's standardized practices
4 and procedures provides further evidence in support of the
5 contention that common issues predominate. Dollar Tree's training
6 program for SMs is standardized throughout California. Hensley
7 Dep. at 82:19-83:7. Dollar Tree's SM training program for new
8 hires lasts eight weeks, and its SM training program for assistant
9 managers who are being promoted lasts four weeks. Id. at
10 54:13-55:14. The corporate office in Virginia develops the
11 written materials for the training program. Balderas Dep.
12 84:11-85:8. Dollar Tree does not formally retrain SMs when they
13 are transferred to other stores. Hensley Dep. at 132:11-133:5.
14 SMs are given the same training, irrespective of which store they
15 might be assigned to down the road. Cole Decl. Ex. D ("Dunaway
16 Dep.") at 128:12-18; Hensley Dep. at 190:16-19.

17 SMs use common tools in performing their duties at Dollar
18 Tree. SMs have online access to "plan-o-guides" which recommend,
19 but do not require, that a certain kind of merchandise be
20 displayed in a particular location. Hensley Dep. at 97:3-100:5;
21 Camp Dep. at 58:5-19. SMs can also access information and
22 bulletins online via "Dollar Tree Central." Hensley Dep. at
23 155:3-10; Balderas Dep. at 38:19-25, 66:8-24. Using Dollar Tree
24 Central, SMs can access newsletters, merchandising suggestions,
25 forms, policies, and information relating to benefits. Camp Dep.
26 at 57:3-7. All store managers in California use a computer
27 application called "COMPASS" to create schedules for their staff.

1 Hensley Dep. at 121:14-22; Camp Dep. at 33:23-34:8; Ex. M. Dollar
2 Tree maintains an auto replenishment system which automatically
3 generates orders for some products. Balderas Dep. at 106:6-18.
4 Store managers are also encouraged to use a playbook, which
5 provides information on ordering, scheduling, and basic general
6 information about Dollar Tree. Cole Decl. Ex. E ("Tellstrom
7 Dep.") at 59:15-60:2.

8 Dollar Tree relies on Jimenez v. Domino's Pizza, 238 F.R.D.
9 241 (C.D. Cal. 2006), but the Court finds that the case is
10 distinguishable. In Jimenez, the Court was not confronted with
11 evidence of standardized policies and practices. 238 at 251-53.
12 Where, as here, there is evidence that the duties of the job are
13 defined by standardized procedures and policies, district courts
14 have routinely certified classes of employees challenging their
15 classification as exempt, despite arguments about individualized
16 differences in job performance. See, e.g., Krzesniak v. Cendant
17 Corp., No. 05-05156, 2007 WL 1795703, at *3 (N.D. Cal. Jun. 20,
18 2007) (branch managers at car rental chain); Alba v. Papa John's
19 USA, Inc., No. 05-7487, 2007 WL 953849, at *1 (C.D. Cal. Feb. 7,
20 2007)(store managers at pizza delivery chain); Whiteway v. FedEx
21 Kinko's Office and Print Services, Inc., No. 05-2320, 2006 WL
22 2642528, at *1 (N.D. Cal. Sep. 14, 2006) (managers at shipping and
23 print services retail chain); Tierno, 2006 WL 2535056, at *5-10
24 (N.D. Cal. Aug. 31, 2006)(store managers at drug store chain).
25 The Court finds that Plaintiffs have satisfied the prerequisite of
26 predominance.

27 ///

2. Superiority

Matters pertinent to finding that a class action is superior to other available methods for the fair and efficient adjudication of the controversy include: (A) "the class members' interests in individually controlling the prosecution or defense of separate actions"; (B) "the extent and nature of any litigation concerning the controversy already begun by or against class members"; (C) "the desirability or undesirability of concentrating the litigation of the claims in the particular forum"; and (D) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

Considering these matters as a whole, the Court finds they favor class certification. The first matter "is most relevant where each class member has suffered sizeable damages or has an emotional stake in the litigation." Zinser, 253 F.3d at 1190. Likewise, "[w]here damages suffered by each putative class member are not large, this factor weighs in favor of certifying a class action." Id.; Haley v. Medtronic, Inc., 169 F.R.D. 643, 652 (C.D. Cal. 1996). Here, Plaintiffs point out that it would be far more costly and time consuming for individual class members to file multiple individual suits. Mot. at 22. The Court agrees. Furthermore, to the extent that individual SMs are entitled to any damages, they are not likely to be large enough to justify multiple independent suits. See Gentry v. Super. Ct., 42 Cal. 4th 443, 459 (2007); Sav-On Drugs Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 340 (2004).

With regard to the second matter, the Ninth Circuit noted

1 that "[i]f the court finds that several other actions already are
2 pending and that a clear threat of multiplicity and a risk of
3 inconsistent adjudications actually exist, a class action may not
4 be appropriate" Zinser, 253 F.3d at 1191 (quoting Charles
5 Alan Wright & Arthur R. Miller, Federal Practice and Procedure §
6 1780 at 568-70 (2d ed. 1986)). Here, the Court notes that Diana
7 Fierro, a California SM, currently has a case pending in Santa
8 Clara County Superior Court, Fierro v. Dollar Tree, No. 1-08-CV-
9 103712. McClain Decl. Ex. M ("Fierro Compl."), Ex. N ("Order re:
10 Motion for Summary Judgment").⁹ This lawsuit was filed on January
11 22, 2008, and it contains causes of action that go beyond
12 allegations that Dollar Tree violated California's labor laws.
13 See Fierro Compl. Since the complaints filed by Cruz, Hansen, and
14 Runnings were filed earlier, and since there are not several cases
15 pending in other courts, the Court will not deny certification
16 based on the fact that one other case is pending.

17 With regard to the appropriate forum for Plaintiffs' claims,
18 Dollar Tree does point out that SMs may utilize an administrative
19 forum, the Division of Labor Standards Enforcement, to resolve
20 wage disputes. Opp'n at 25. However, merely pointing to the
21 availability of another forum does not show its superiority. In
22 Bell v. Farmers Insurance Exchange, the California Court of
23 Appeals found that individualized hearings had several
24 disadvantages for the employee -- injunctive relief is not

25
26 ⁹ Maureen McClain, an attorney and shareholder in the firm
27 Littler Mendelson, counsel for Defendant, filed a declaration in
28 support of Defendant's Opposition. Docket No. 143.

1 available, employees cannot recover attorney fees if they choose
2 to retain counsel, and a losing employer has a right to a trial de
3 novo in Superior Court where the ruling of the hearing officer is
4 entitled to no deference. 115 Cal. App. 4th 715, 745-46 (Ct. App.
5 2004). Also, "courts have not hesitated to certify class actions
6 for wage and hour claims simply because California law provides
7 for administrative relief." Wang, 231 F.R.D. at 614.

8 With regard to future difficulties that may arise in managing
9 this class action, district courts have the inherent discretion to
10 review class certification decisions at any time. Armstrong v.
11 Davis, 275 F.3d 849, 872 n.28 (9th Cir. 2001). If unanticipated
12 or unmanageable individual differences arise, the Court retains
13 the option of decertification. Sav-On, 34 Cal. 4th at 335 (citing
14 Lazar v. Hertz Corp. (1983) 143 Cal. App. 3d 128, 144 (1983)).
15 The Court concludes that a class action is superior to other
16 available methods for the fair and efficient adjudication of this
17 controversy.

18 **F. Class Counsel**

19 In appointing class counsel, the court must consider: (i)
20 "the work counsel has done in identifying or investigating
21 potential claims in the action"; (ii) "counsel's experience in
22 handling class actions"; (iii) "counsel's knowledge of the
23 applicable law"; and (iv) "the resources that counsel will commit
24 to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The
25 Court finds that Plaintiffs' attorneys are experienced class
26 action litigators. See Cole Decl. Ex. Q ("Firm Resume and
27 Overview"). The Court notes that a considerable amount of
28

1 discovery has taken place in this case including depositions and
2 document review. Id. ¶ 20. The Court finds that Plaintiffs'
3 attorneys are likely to fairly and adequately represent the
4 interests of the class, as required by Federal Rule of Civil
5 Procedure 23(g)(4).

6
7 **VI. CONCLUSION**

8 For the reasons stated above, the Court GRANTS the Amended
9 Motion for Class Certification, and ORDERS as follows:

- 10 1. The class is defined as: All persons who were employed
11 by Dollar Tree Stores, Inc. as California retail Store
12 Managers at any time on or after December 12, 2004.
- 13 2. Plaintiffs Miguel Cruz, John Hansen, and Robert Runnings
14 are appointed as class representatives.
- 15 3. The firm of Scott Cole & Associates is appointed as
16 class counsel.
- 17 4. The parties shall meet and confer in good faith as soon
18 as practicable with respect to the requirements of
19 Federal Rule of Civil Procedure 23(c)(2)(B) governing
20 notice to the class. No later than twenty (20) days
21 from the date of this Order, Plaintiffs shall file a
22 Stipulation and Proposed Order explaining how the class
23 will be notified. Plaintiffs shall also submit a copy
24 of the Proposed Notice.
- 25 5. To the extent that the parties cannot reach an agreement
26 concerning notice to the class, each party may submit a
27 brief of no more than five (5) pages addressing the

1 problem and proposing a solution. The briefs will be
2 due no later than twenty (20) days from the date of this
3 Order.

4
5 IT IS SO ORDERED.

6
7 Dated: May 26, 2009



8
9 _____
10 UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States District Court
For the Northern District of California