

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LES BRADLEY et al.,

Plaintiffs and Appellants,

v.

NETWORKERS INTERNATIONAL, LLC,

Defendant and Respondent.

D052365

(Super. Ct. No. GIC862417)

ORDER DENYING PETITION FOR
REHEARING AND MODIFYING
OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

Respondent's petition for rehearing is denied.

It is ordered that the opinion filed herein on December 12, 2012, be modified as follows:

1. On page 27, in the second sentence in the second paragraph, the word "provide" is changed to the phrase "authorize and permit" so the sentence reads:

An employer also has a duty to authorize and permit rest breaks; the number of breaks depends on the length of the shift.

2. In that same paragraph on page 27, the citation to *Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th 35, 49 (*Lamps Plus*) is deleted.

3. On page 33, the citation to *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 208 Cal.App.4th 1487, 1495 in the second full paragraph is deleted.

4. The paragraph beginning on page 35 extending to page 36, beginning with the words "This case is also factually distinguishable," and ending immediately prior to subheading B, is deleted in its entirety and replaced with the following paragraph:

This case is also factually distinguishable from other post-*Brinker* decisions upholding the denial of class certification on meal/rest break claims. (See, e.g., *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077.) In *Tien*, there was "overwhelming" evidence that the employer "made meal periods available to employees," and thus the evidence of the employer's liability to each employee depended on numerous individual issues regarding the employee's particular situation. (*Id.* at pp. 1084, 1087, 1090.)⁹

5. On page 36, the following language is added as a new paragraph at the end of footnote number 9:

In a petition for rehearing, Networkers argues that the trial court erred in failing to specifically rule on each of its 227 evidentiary objections. However, by failing to raise and/or develop this contention in their appellate briefs, Networkers has waived the argument. Additionally, contrary to Networkers' assertions in its rehearing petition, nothing in this opinion is intended to expand an employer's rest break obligations beyond the standards discussed by the *Brinker* court.

There is no change in the judgment.

McCONNELL, P. J.