

1 JOHN M. TRUE, III, ESQ. (State Bar No. 67846)  
2 BETH A. ROSS, Esq. (State Bar No. 141337)  
3 STEPHANIE PROCTOR MILLER, Esq. (State Bar No. 191220)  
4 LEONARD, CARDER, NATHAN, ZUCKERMAN,  
5 ROSS, CHIN & REMAR, LLP  
6 Suite 1450, 1330 Broadway  
7 Oakland, California 94612  
8 Telephone: (510) 272 0169  
9 Facsimile: (510) 272 0174

10 JULES SANDFORD, ESQ. (State Bar No. 31088)  
11 LORRAINE GRINDSTAFF, ESQ. (State Bar No. 112346)  
12 PATTEN, FAITH & SANDFORD  
13 635 West Foothill Boulevard  
14 Monrovia, California 91016  
15 Telephone: (626) 359-9335  
16 Facsimile: (626) 303-2391

17 *Attorneys for Plaintiffs and Plaintiff Class*

**FILED**  
LOS ANGELES SUPERIOR COURT

AUG 02 2001

JOHN A. CLARKE, CLERK  
BY C. WASHINGTON, DEPUTY

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

15 ANTHONY ESTRADA, JEFFREY  
16 MORGAN, and HARVEY ROBERTS,

Case No. BC 210130

17 Plaintiffs,

**CLASS ACTION**

18 vs.

(Assigned to the Hon. Bruce Mitchell,  
Department 59)

19 RPS, Inc.,

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION AND RE: CLASS  
NOTICE PROCEDURES**

20 Defendant.  
21 \_\_\_\_\_ /

22  
23 This matter is before the Court pursuant to plaintiffs' Motion for Class Certification. The  
24 parties have filed extensive briefs and lodged extensive evidence in support of and opposition to  
25 plaintiffs' motion. In addition, at the Court's direction, the parties have filed a Joint Statement of  
26 Objections to certain of the evidence presented by each party. Counsel have appeared before the  
27 Court for oral argument on November 6, 2000, May 21, 2001, May 30, 2001, June 13, 2001,  
28 July 26 2001, and August 1, 2001. Plaintiffs have been represented by John M. True, III of

1 Leonard, Carder, Nathan, Zuckerman, Ross, Chin & Remar, LLP as well as Jules Sandford and  
2 Lorraine grindstaff of Patten, Faith & Sandford. Defendant RPS, Inc. has been represented by  
3 James Nelson and Jeffrey Galvin of Downey, Brand, Seymour & Rowher, LLP.

4 The Court, having considered the parties' evidentiary objections, having reviewed the  
5 admissible evidence submitted by each party, and having carefully considered the written and oral  
6 arguments of counsel, makes the following rulings, findings and orders:

7 **1. Evidentiary Rulings**

8 Plaintiffs' evidentiary objections Nos. 1, 5 (as to selling price only), 6, 8, 10 (as to  
9 "circumstances . . . are different" only), 13, 14, 15, 16, 19, and 21 are GRANTED.<sup>1</sup>

10 Plaintiffs' evidentiary objections Nos. 2, 3, 4, 7, 9, 11, 12, 17, 18, 20, 22, 23, 24 and 25 are  
11 OVERRULED.

12 Defendant's evidentiary objections Nos. 1, 2 and 3 are GRANTED.

13 Defendant's evidentiary objections Nos. 4, 5, 6, 7, 8, 9, 10, 11 and 12 are OVERRULED.

14 **2. Class Certification Order**

15 Plaintiffs' motion to certify the first cause of action in the First Amended Complaint for  
16 alleged violations of California Labor Code § 2802 is GRANTED..

17 **3. Class Certification Definition and Exclusions**

18 The certified class is defined as follows:

19 Each Pick Up and Delivery Contractor who at any time between May 11, 1996 and  
20 July 26, 2001 performed services for RPS, Inc. and/or its successors in the State of  
21 California as a Pick-up and Delivery Contractor driving full-time (meaning  
22 exclusive of time off for vacation and/or illnesses) in a single service area  
23 dispatched from a California-based terminal pursuant to the terms of the Pick Up  
24 and Delivery Contractor Operating Agreement.

25 Excluded from the class are the following categories of persons or entities:

- 26 (a) multiple route contractors who operate or have operated more than one service  
27 area for the period of time that they had contracts for more than one service area;

28 <sup>1</sup> The numbers refer to the objections set forth in the Joint Statement of Objections to Evidence On Class  
Certification Motion filed by the parties on July 19, 2001 at the Court's direction, after having met and conferred on all  
evidentiary objections, resolving some, withdrawing others and jointly presenting the balance to the Court for resolution.

- 1 (b) corporate entities and/or Limited Liability Companies that have executed Pick-up  
2 and Delivery Contractor Operating Agreements with RPS, Inc. and/or its  
3 successors;
- 4 (c) temporary drivers working directly for RPS, Inc. and/or its successors, as well as  
5 those provided through the temporary employee agency referred to as  
6 "Pomerantz";
- 7 (d) drivers who work or worked directly for a Pick Up and Delivery Contractor and  
8 who are have not entered into a Pick-Up and Delivery Contractor Operating  
9 Agreement with RPS, Inc. and/or its successors; and;
- 10 (e) line-haul drivers who have performed services for RPS, Inc. and/or its successors.

11 **4. Class Certification Findings**

12 The Court finds that all of the requirements for class certification pursuant to California  
13 Code of Civil Procedure Section 382 are satisfied:

14 **a. Commonality**

15 *(1) Common factual questions predominate*

16 Common questions of fact clearly predominate in this case. All members of the proposed  
17 class

18 (A) provided service to RPS as pick up and delivery drivers servicing work areas  
19 designated by RPS;

20 (B) were dispatched from California-based RPS terminals;

21 (C) performed services pursuant to the terms of substantially identical operating  
22 agreements denominated "Pick-Up and Delivery Contractor Operating Agreement" (hereinafter  
23 referred to as "the Operating Agreement");

24 (D) were classified by RPS as "independent contractors" and plaintiffs contend that  
25 they should have been classified as employees;

26 (E) were subject to the same policies and practices delineated in the Operating  
27 Agreement;

28 (F) incurred the below-listed similar expenses, delineated in the Operating Agreement

1 and certified by the Court as susceptible to proof on a class basis, as a direct consequence of  
2 performing services for RPS:

- 3 • expenses the Pickup and Delivery Contract requires which relate  
4 to purchasing or leasing a vehicle for the purpose of performing  
5 pick-up and delivery services;
- 6 • expenses the Pickup and Delivery Contract requires which relate  
7 to operating the vehicle, including fuel, oil, tires, repairs,  
8 business taxes, cleaning, insurance, registration and tolls;
- 9 • expenses the Pickup and Delivery Contract requires which relate  
10 to maintaining the vehicle in accordance with federal, state and  
11 local law;
- 12 • expenses the Pickup and Delivery Contract requires which relate  
13 to marking the vehicle with logos, colors, numbers, marks and  
14 insignia;
- 15 • expenses the Pickup and Delivery Contract requires which relate  
16 to licensing the vehicle;
- 17 • expenses the Pickup and Delivery Contract requires which relate  
18 to paying into the "Contractor Performance Escrow Account";
- 19 • expenses the Pickup and Delivery Contract requires which relate  
20 to purchasing, renting and cleaning uniforms;
- 21 • expenses the Pickup and Delivery Contract requires which relate  
22 to purchasing or otherwise securing "communications  
23 equipment" including but not limited to scanners and other  
24 required equipment;
- 25 • expenses the Pickup and Delivery Contract requires which relate  
26 to obtaining liability insurance;
- 27 • expenses the Pickup and Delivery Contract requires which relate  
28 to obtaining and keeping in force workers' compensation  
insurance for themselves.

(G) and were not reimbursed by RPS for those expenses as they would have been had  
they been characterized as employees.

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(2) *Common legal questions predominate*

Common questions of law clearly predominate in this case as well.

(A) Plaintiffs contend that individuals who performed pick-up and delivery services for RPS during the class period pursuant to the terms of the Pick Up and Delivery Contractor Operating Agreement are employees within the meaning of California law. Defendant denies this and asserts that these individuals are properly considered independent contractors.

(B) Plaintiffs contend that, if these individuals are found to be employees, RPS's non-reimbursement of their employment-related expenses would violate California Labor Code Section 2802. Defendant denies that this is so.

(C) Defendant asserts and plaintiffs deny that RPS's drivers have been paid sufficient amounts to account for reimbursement of employment-related expenses.

(3) *Defendant's Additional Contentions re: Commonality*

The court has considered defendant's contention that some class members may have incurred greater expenses than others in the course of performing services for RPS, and that each class member will ultimately have to prove the amount of such expenses to establish liability and the amount of the recovery that he or she may be entitled to should plaintiffs' prevail on the merits of their claims. The existence of these possibilities does not turn this case into one in which individual issues predominate so as to render class certification inappropriate. "[E]ach class member may establish damages independently without threatening the integrity of the class action." Rose v. City of Hayward (1981) 126 Cal. App. 3d 926, 934.

Defendant urges that, inasmuch as Labor Code Section 2802 requires reimbursement only of expenses which were "necessarily incurred" by an employee in direct consequence of his or her employment, liability cannot be established without individualized inquiries into each class member's allegedly "necessary" expenses. The Court finds, however, that plaintiffs have demonstrated that they will be able to put on common proof as to whether the categories of expenses listed above and certified herein were "necessarily incurred" within the meaning of the statute.



1 counsel with extensive experience in class actions who specialize in labor and employment matters,  
2 are experienced in wage and hour litigation and have vigorously prosecuted this case to date.  
3 Defendant has offered no evidence to question the adequacy of class counsel.

4 Defendant has not introduced any evidence sufficient to demonstrate the existence of  
5 antagonism within the class or conflicts between the named representatives and the class to  
6 prevent class certification of the labor code claim. The seminal California authority on the issue of  
7 claimed conflicts of interest is Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462. Drawing  
8 on California and federal precedent in addition to scholarly commentary, the Richmond Court  
9 sharply limited the circumstances in which a claimed conflict of interest may defeat class  
10 certification. A genuine "conflict of interest" does not exist, the court held, unless it "goes to the  
11 very subject matter of the litigation." *Id.* at 473. Differences among class members "which do not  
12 raise questions as to the very legitimacy of the class action process . . . but which merely reflect  
13 variances in view as to the proper outcome of the suit, do not provide reason for a court to refuse  
14 to hear a class suit." *Id.*, quoting *Developments -- Class Actions* (1976) 89 Harvard Law Review  
15 1318, 1490. Here, there is no indication that there are or will be genuine conflicts of interest  
16 between the named plaintiffs' and members of the class sufficient to defeat class certification.

17 **e. Superiority, Substantial Benefit**

18 The Court finds that where, as here, a numerous class asserts a common statutory  
19 violation, use of the class action device is clearly superior to adjudication of the identical issue in a  
20 multitude of proceedings.

21 Defendant argues that class treatment is unnecessary because each individual class member  
22 could seek the same relief either administratively, by filing claims before the California Department  
23 of Industrial Relations, Division of Labor Standards Enforcement (DLSE or Labor  
24 Commissioner), or judicially, by filing individual lawsuits in courts of appropriate jurisdiction.  
25 Defendant's arguments are rejected. While the Labor Commissioner or the Superior Court are  
26 certainly *available* fora in which individual employees may seek redress, neither is a *superior* one.  
27 The Court notes that the Labor Commissioner's awards are subject to *de novo* review in the  
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1 courts, creating the possibility of judicial review of the identical issue by multiple courts. Cal. Lab.  
2 Code § 98.2(a). Similarly, individual lawsuits could lead to multiple, inconsistent results.  
3 Moreover, given the costs involved, they are clearly unlikely to be brought.

4 Class certification thus provides the superior method for ensuring a fair and efficient  
5 resolution of this controversy in a single forum. See Haywood v. Barnes (E.D.N.C. 1986) 109  
6 F.R.D. 568 (rejecting an argument that availability of U.S. Department of Labor Administrative  
7 Action defeats superiority of private class action in farm workers' suit asserting statutory wage  
8 violations).

9 Defendant also notes that plaintiffs challenge the same conduct under California's Unfair  
10 Practices Act, Cal. Bus. & Prof. Code Section 17200 *et seq.* The Court finds that, under the  
11 circumstances presented here, a Business and Professions Code representative action does not  
12 offer a superior method for resolving the present controversy. In the companion cases cited by  
13 defendant, Kraus v. Trinity Management Services, (2000) 23 Cal.4th 116, and Cortez v. Purolator  
14 Air Filtration Products (2000) 23 Cal.4th 163, the California Supreme Court held that a  
15 representative plaintiff may not force a defendant to disgorge allegedly illegally-gotten monies into  
16 a fluid recovery fund where the defendant would then be exposed to the possibility of further  
17 claims based on the same alleged wrongs. The remedies available to the plaintiff class for the class  
18 claim are potentially more expansive, including but not limited to an order compelling  
19 disgorgement of profits under California Code of Civil Procedure Section 384. Additionally, the  
20 Court notes that plaintiffs may seek relief on both a class and a representative basis, but to the  
21 extent plaintiffs' Labor Code Section 2802 cause of action is resolved on a class basis, both parties  
22 will obtain the repose of the *res judicata* effect of the ruling.

23 The Court finds that dealing with all of these claims in a single lawsuit, as opposed to  
24 individual adjudications, will confer substantial benefits on the Court and the parties.

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26 **5. Notice to the Class**

27 Notice of the pendency of this action and the right to be excluded from the class shall be  
28 provided to members of the certified class in the following manner:

1 a. No later than August 9, 2001, defendants shall provide to plaintiffs'  
2 counsel a proposed class list identifying all members of the certified class in a mailing label  
3 format. The list shall specify the full name, last known address, social security number and  
4 telephone number of each person who fits the class definition listed above. Defendant shall  
5 file with the Court and serve on plaintiffs' counsel a sworn statement from the person(s)  
6 who prepare the class mailing list describing the procedures followed for compiling the list,  
7 identifying the source documents used in compiling the required information, and stating  
8 where those documents are located.

9 b. No sooner than August 20, 2001, class counsel shall send a copy of the  
10 class notice ~~attached hereto as Exhibit "A"~~ <sup>approved by the court</sup> to each class member identified on the class list  
11 by first class mail. Thereafter, class counsel shall conduct a reasonable investigation to  
12 update the addresses of any class members for whom the class notice is returned as  
13 undeliverable by the post office and, as necessary, counsel shall re-send the class notice to  
14 those class members for whom they are able to locate updated address information.

15 c. To be timely, opt-out forms filed by class members must be post-marked no  
16 later than September 24, 2001. This date shall be extended to October 1, 2001 for those  
17 class members to whom the notice is re-sent to an updated address as described in  
18 paragraph 3(b) above.

19 d. No later than October 8, 2001, class counsel shall file with the Court and  
20 serve on defendant a sworn declaration certifying that the class notice procedures  
21 described herein have been complied with.

22 **6. Further Proceedings**

23 No later than October 5, 2001, the parties shall meet and confer for the purpose of  
24 reaching agreement on a final class list and procedures for further case management. No later  
25 than October 15, 2001, class counsel shall file with the Court a report regarding the Notice and  
26 opt-outs and the resulting class list and further case management procedures. Prior to this, the  
27 parties shall meet and confer. In the event the parties are unable to reach agreement on these  
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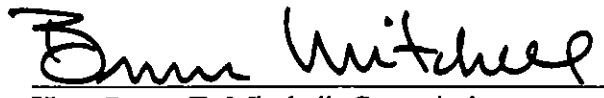
on October 15, 2001

issues, on or before October 15, 2001, the parties shall each file with the Court a status report setting forth their respective positions on these issues.

The parties shall appear before the Court for a hearing on class certification on October 22, 2001 at 10:00 a.m.

**IT IS SO ORDERED.**

Dated: August 2, 2001

  
\_\_\_\_\_  
Hon. Bruce E. Mitchell, Commissioner  
Superior Court of the State of California