

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian D. Hefelfinger (SBN 253054) PALAY HEFELFINGER APC 1484 E. Main Street, Suite 105B Ventura, California 93001 TELEPHONE NO.: (805) 628-8220 FAX NO. (Optional) (805) 765-8600 E-MAIL ADDRESS (Optional): bdh@calemploymentcounsel.com ATTORNEY FOR (Name): Plaintiffs and the Certified Class	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division	
PLAINTIFF/PETITIONER: Louis Newell DEFENDANT/RESPONDENT: Ensign United States Drilling (California) Inc.	
<p style="text-align: center;">NOTICE OF ENTRY OF JUDGMENT OR ORDER</p> <p>(Check one): <input checked="" type="checkbox"/> UNLIMITED CASE <input type="checkbox"/> LIMITED CASE (Amount demanded exceeded \$25,000) (Amount demanded was \$25,000 or less)</p>	CASE NUMBER: <p style="text-align: center;">BCV-15-100367</p>

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): June 15, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: June 28, 2018

Brian D. Hefelfinger

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)



(SIGNATURE)

PLAINTIFF/PETITIONER: Louis Newell	CASE NUMBER: BCV-15-100367
DEFENDANT/RESPONDENT: Ensign United States Drilling (California) Inc.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*): 1484 E. Main Street, Suite 105B, Ventura, CA 93001

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
 - a. deposited the sealed envelope with the United States Postal Service.
 - b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (*date*): 06/28/2018
 - b. from (*city and state*): Ventura, California

4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: Vanessa Franco Chavez, KLEIN DENATALE, ET AL. Street address: 4550 California Ave., 2nd Fl. City: Bakersfield State and zip code: California, 93309 	<ol style="list-style-type: none"> c. Name of person served: David Cooper, KLEIN DENATALE, ET AL. Street address: 4550 California Ave., 2nd Fl. City: Bakersfield State and zip code: California, 93309
<ol style="list-style-type: none"> b. Name of person served: Michael A. Strauss, STRAUSS & STRAUSS Street address: 121 N. Fir Street, Suite F City: Ventura State and zip code: CA 93001 	<ol style="list-style-type: none"> d. Name of person served: Street address: City: State and zip code:

Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

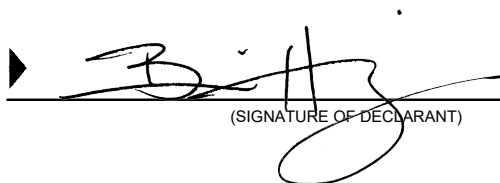
5. Number of pages attached 5.

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

Date: June 28, 2018

Brian D. Hefelfinger

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

Attachment:

**Order Denying Defendant's
Motion for Summary Adjudication**

6/13/2018

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Attorneys for Plaintiff and the MSA Class

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN
JUN 15 2018
TERRY MONAGALLY, CLERK
BY _____, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION**

LOUIS NEWELL, an individual, for himself and
those similarly situated,

Plaintiff,

v.

ENSIGN UNITED STATES DRILLING
(CALIFORNIA) INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. BCV-15-100367

[PROPOSED]

**ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY
ADJUDICATION**

Assigned to: Hon. Thomas S. Clark
Dept.: 17
Complaint Filed: 6/22/15
Trial Date: None Set

Hearing Date: June 5, 2018
Time: 8:30 a.m.
Dept.: 17

The Motion for Summary Adjudication (the "MSA") pursuant to *Code of Civil Procedure*, section 437(t), filed by ENSIGN UNITED STATES DRILLING (CALIFORNIA), INC., ("Defendant") came on for continued hearing in Department 17 of this Court at 8:30 a.m. on June 5, 2018.

1 Previously, the MSA came on for hearing and was argued on March 9, 2018, then
2 continued to May 8, 2018, and then finally continued to June 5, 2018. Counsel Brian D.
3 Hefelfinger appeared for plaintiff and class representative LOUIS NEWELL (“Plaintiff”) and the
4 Certified MSA Class at each hearing. Counsel Vanessa Franco Chavez appeared for Defendant.

5 Having reviewed the motion, all related memoranda and pleadings submitted by the
6 parties, the Joint Statement of Stipulated Facts, and the evidence submitted by the parties, and
7 having heard the argument of counsel, and having ascertained that there is no triable issue as to
8 any material fact, the Court makes the following findings and orders as follows:

9 **ORDER**

10 1. The Court has considered the Joint Statement of Stipulated Facts (“JSSF”), and all
11 facts therein, stipulated to by the parties, and facts that are properly the subject of judicial notice.
12 *See Parker v. Twentieth Century-Fox Film Corp.* 3 Cal. 3d 176 (1970). Pursuant to the Joint
13 Statement of Stipulated Facts, there are no triable issues of material fact as to Defendant’s
14 Seventeenth Affirmative Defense, which asserts that: “[t]o the extent that Plaintiff or any putative
15 class member’s state wage and hour claims arise out of or relate to work performed on off-shore
16 platforms subject to the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1333,
17 Plaintiff and the putative class members’ state claims are preempted by the Fair Labor Standards
18 Act of 1938.” (First Amended Answer to FAC, p. 5¹; JSSF, ¶ 5). Accordingly, the defense may
19 properly be disposed of by summary adjudication.

20 2. The Parties stipulated to certification of the MSA Class, defined as follows:
21 “Ensign’s non-exempt employees who worked and stayed on oil platforms affixed to the Outer
22 Continental Shelf *off* the California coast in federal waters for periods of 24 consecutive hours or
23 more any time during the Claims Period and who assert state wage and hour claims arising from

24 _____
25 ¹ The state law claims Plaintiff asserted against Defendant in the FAC are: (1) minimum wage
26 violations (Lab. Code, §§ 1194, 1194.2); (2) unfair competition (Bus. & Prof. Code, § 17200 *et*
27 *seq.*); (3) failure to timely pay wages at termination (Lab. Code, §§ 201-203); (4) failure to
28 provide lawful meal periods (Lab. Code, §§ 226.7, 512, 8 Cal. Code Regs., § 11160, subd. 10);
(5) failure to pay overtime and doubletime premium wages (Lab. Code, §§ 510, 1194, 8 Cal.
Code Regs., § 11160, subd. 3(A)); (6) pay stub violations (Lab. Code, § 226); (7) civil penalties
under the Labor Code Private Attorneys General Act (“PAGA”) (Lab. Code, §§ 200-202, 204,
210, 219, 226, 226.3, 510, 512, 558, 1197, 1197.1, 2698-2699.5).

1 or relating to this fact.” (herein, the “MSA Class”) (see, Court’s October 27, 2016 Order, ¶ 4).
2 The Court found that this class met the requirements for certification, and certified the MSA
3 Class and ordered that notice be provided. (*Id.*)

4 3. The Court has received, reviewed, and considered the Parties’ joint submittal of
5 the Ninth Circuit’s opinion in *Newton v. Parker Drilling Management Services, Ltd.*, 881 F.3d
6 1078, 1099 (9th Cir. 2018), *modified on denial of reh’g*, 888 F.3d 1085 (2018) (“*Newton*”).
7 While not binding, this Court finds the reasoning and rationale expressed by the Ninth Circuit in
8 *Newton* to be persuasive to the issues determined in this MSA. See *In re Marriage of Padgett*,
9 172 Cal. App. 4th 830, 839 (2009) (“[T]he decisions of the lower federal courts, although entitled
10 to great weight, are not binding on state courts.”) (internal citations omitted).

11 4. The Parties’ Joint Requests for Judicial Notice, filed April 27, 2018 and May 4,
12 2018, concerning respectively the Ninth Circuit’s *Newton* (i) Order Denying Petition for
13 Rehearing, and (ii) Order Granting Defendant/Appellee’s Motion to Stay the Issuance of the
14 Mandate, are granted.

15 5. As a matter of law, the Court finds that the OCSLA applies to work performed by
16 the MSA Class members on Defendant’s platforms located in federal waters.

17 6. The Court further finds that the OCSLA’s choice of law provision declares:

18 To the extent that they are *applicable and not inconsistent* with this
19 subchapter or with other Federal laws and regulations of the Secretary
20 now in effect or hereafter adopted, *the civil and criminal laws of each*
21 *adjacent State, now in effect or hereafter adopted, amended, or repealed*
22 *are declared to be the law of the United States for that portion of the*
23 *subsoil and seabed of the outer Continental Shelf, and artificial islands*
24 *and fixed structures erected thereon, which would be within the area of*
the State if its boundaries were extended seaward to the outer margin of
the outer Continental Shelf, and the President shall determine and publish
in the Federal Register such projected lines extending seaward and
defining each such area.

25 43 U.S.C. § 1333(a)(2)(A) (emphasis added). Accordingly, the OCSLA provides that the laws of
26 the adjacent state are to apply to drilling platforms fixed to the seabed of the outer Continental
27 Shelf as long as state law is “applicable and not inconsistent with . . . Federal laws.

28 ///

1 7. The Court finds in this matter that California state law applies on the OCS
2 platforms where the MSA class members have worked, because the state law claims asserted by
3 Plaintiff against Defendant are both “applicable” and “not inconsistent” with federal law. *See*
4 *Newton*, 881 F.3d at 1099 (holding “California’s minimum wage and maximum hours worked
5 provisions are ‘applicable and not inconsistent,’ 43 U.S.C. § 1333(a)(2)(A), with the FLSA.”).
6 The federal FLSA serves as a “floor” for minimum and overtime wage issues, and the statute
7 contains a “savings clause,” at 29 U.S.C. § 218(a), which expressly allows states to establish
8 higher standards on worker protections. *See, e.g., Pac. Merch. Shipping Ass’n v. Aubry*, 918 F.2d
9 1409, 1425 (9th Cir. 1990); *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 578-
10 579 (1996).

11 8. Accordingly, as to the MSA Class in this matter, California state wage and hour
12 laws are adopted as surrogate federal law on the OCS platforms. Therefore, Defendant’s MSA is
13 DENIED; Defendant’s Seventeenth Affirmative Defense (Preemption) is hereby completely
14 disposed of, and adjudicated in the Plaintiff’s and MSA Class’s favor.

15 9. The Court further declines to adopt any finding of non-retroactivity in making this
16 ruling, based on the following. The general rule of law is that decisional law is given
17 retrospective application, and there is no evidence or justification for this Court to depart from the
18 general rule of retrospective application of judicial decisions. *See, e.g., Newman v. Emerson Radio*
19 *Corp.*, 48 Cal. 3d 973, 978 (1989); *People v. Garcia*, 36 Cal.3d 539 (1984); *accord, Harper v.*
20 *Virginia Dep’t of Taxation*, 509 U.S. 86, 94–99 (1993); *James B. Beam Distilling Co. v. Georgia*, 501
21 U.S. 529, 534–544 (1991). This Court does not find that retroactive application of this ruling
22 would raise “substantial concerns about the effects of [a] new rule on the general administration
23 of justice,” nor would it “unfairly undermine the reasonable reliance of parties on the previously
24 existing state of the law.”

25 10. The Court finds that the *Newton* decision does not overrule a prior appellate
26 decision, as there had never been any determination of whether California wage-and-hour laws
27 applied to California coastal platforms affixed to the Outer Continental Shelf. More importantly
28 to this ruling, this Court’s own, independent finding that state law is adopted as surrogate federal

1 law on the OCS platforms would not overrule any prior California court decision.

2 11. The Court also finds that this ruling is not a change in the prior law, or a change in
3 the interpretation of California law. As discussed above, state and federal courts have previously
4 decided that state labor law is not preempted by federal labor law. *See Pac. Merch. Shipping*
5 *Ass'n v. Aubry, supra*, 918 F.2d at 1425; *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14
6 Cal. 4th at 578-579.


7 12. Defendant's oral request at the hearing, for inclusion of specific language in this
8 Order, pursuant to *Code of Civil Procedure* § 166.1, was denied.

9 13. Defendant's oral request at the hearing for a stay of proceedings was also denied.
10 (*See Court's May 21, 2018 order denying Defendant's motion to stay proceedings, without*
11 *prejudice*).

12 14. This ruling applies to, and is binding upon, all members of the MSA Class who did
13 not timely or validly opt-out of the class. (*See Court's October 27, 2016 Order*). Moreover, the
14 Parties have stipulated that this Court's ruling on the MSA shall not be contested as being
15 applicable in this matter on a class-wide basis.

16
17 **IT IS SO ORDERED.**

18
19 Dated: 6-15-18

20 
21 Hon. Thomas S. Clark
22 Judge of the Superior Court

23 APPROVED AS TO FORM (*Cal. Rules of Ct. 3.1312*):

24
25 _____
26 Vanessa Franco Chavez, Counsel for Defendant