Superior Court of California

County of Los Angeles

Department 36

THOMPSON,

Plaintiff(s),

v.

TARGET CORPORATION,

Defendant(s).

Case No.: BC474522

Hearing Date: 11/13/15

RULING RE:

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION.

The motion is granted, as to all subclasses set forth in the notice, including for reasons set forth in the motion and reply, and herein.

The Court overrules the following evidentiary objections filed by Plaintiff on 11/9/15: 1, 3 – 5. Those objections otherwise are sustained.

The Court sustains the following evidentiary objections filed by Defendant on 10/30/15: 5 – 7, 11, 16 – 17, 22, 24, 29, 36, 40, 42, 47, 49, 55, 58, 59, 69, 71, 75, 76, 80, 85, 95, 112. Those objections otherwise are overruled.

All defense evidentiary objections filed 11/12/15 to the expert declaration of Dr. Conrad are overruled regarding analyzing defendant's employee surveys.

Judges have broad discretion in ruling on objections regarding experts, and substantial information is in there about qualifications, and interpreting surveys, without purporting to opine on any employee's actual state of mind.

"A trial court enjoys broad discretion in ruling on foundational matters on which expert testimony is to be based." Maatuk v. Guttman (2009) 173 Cal. App. 4th 1191, 1197.

After reviewing and weighing evidence, and inferences, in dispute, the Court's findings include that, although Defendant filed extensive paperwork about written policies requiring breaks, Plaintiff sufficiently filed several employee declarations, substantially evidencing an unwritten, uniform practice, where the employer's managerial staff frequently did not follow the written policies requiring employees to take breaks or be disciplined, by common directions or circumstances, causing employees to keep working during breaks, for business reasons, such as stores being busy with customers, and wrote up employees for their purported break violations, so that superiors themselves would avoid facing discipline.

Also, proof calling into question the credibility or reliability of some employees' statements filed in opposition, includes some employee declarations filed with the moving and reply papers, regarding employees' perception of pressure to complete the statements so as to indicate policy compliance, in light of comments regarding break policies heard from defense counsel, and fear of discipline.

Further, Plaintiff filed supportive expert declarations, analyzing various statistics from discovery responses provided by Defendant, and surveys, indicating that often many employees have not been taking breaks, for reasons serving employer needs, and not for their own personal reasons, and that Defendant has a common practice of not paying Section 226.7 wages.

Additionally, substantial evidence supports the finding that Plaintiff is a suitable representative without a conflict of interest, including lacking any responsibility for breaks, and has in common with class members an alleged goal to have break-related laws fully enforced.

Also, Plaintiff's workable trial plans are acceptably reflected in the motion and reply papers (e.g., reply, 15:10-19).

"The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. .... The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class...." Sav-on Drug Stores, Inc. v. Sup. Ct. (2004) 34 Cal.4th 319, 326.

"California courts routinely consider 'pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards similarly situated plaintiffs makes class certification appropriate.' " Alberts v. Aurora Behavioral Health Care (2015) 241 Cal. App. 4th 388, 410. In deciding class certification, courts do not resolve conflicts among the experts, but consider all of the moving and opposing evidence, to determine if the plaintiffs' evidence establishes a predominance of common issues on the merits, and aggregate damages sufficiently generalized in nature. Dept. Fish and Game v. Sup. Ct. (2011) 197 Cal.App.4th 1323, 1350.

At the certification stage, plaintiffs need not demonstrate a universal practice to deny employees the benefit of written break policies, but instead the proper question is "whether plaintiffs had articulated a theory susceptible to common resolution." Alberts, *supra*, at 407. "[T]he fact that some employees may have taken some breaks is an issue that goes to damages. It is not a proper basis on which to deny certification." *Ibid.* at 408. "[T]he mere existence of a lawful break policy will not defeat class certification in the face of actual contravening policies and practices that, as a practical matter, undermine the written policy and do not permit breaks." *Ibid.* at 406.

"In deciding whether the common questions 'predominate,' courts must do three things: 'identify the common and individual issues'; 'consider the manageability of those issues'; and 'taking into account the available management tools, weigh the common against the individual issues to determine which of them predominate.' " *Id.* at 397. "[T]he fact that individual inquiry might be necessary to determine whether individual employees were able to take breaks despite the defendant's allegedly unlawful policy (or unlawful lack of a policy) is not a proper basis for

denying certification. Rather, for purposes of certification, the proper inquiry is 'whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment.' " Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal. App. 4th 701, 726. In ruling upon class certification, a trial court errs in "focusing on the potential conflicting issues of fact or law on an individual basis, rather than evaluating 'whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment.'" Jaimez v. DAIOHS USA, Inc. (2010) 181 Cal.App.4th 1286, 1298, 1300 ("The trial court focused on the merits of the declarations, evaluating the contradictions in the parties' responses to the company's uniform policies and practices, not the policies and practices themselves."). "[W]here the theory of liability asserts the employer's uniform policy violates California's labor laws, factual distinctions concerning whether or how employees were or were not adversely impacted by the allegedly illegal policy do not preclude certification." Hall v. Rite Aid Corp. (2014) 226 Cal. App. 4th 278, 289.

"There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the court ....' " Hendershot v. Ready to Roll Transportation, Inc. (2014) 228 Cal. App. 4th 1213, 1223 (quoting CCP §382).

A trial court erred in determining that affirmative defenses disposed of class claims, as part of its numerosity analysis. *See Id.* at 1224. "The question of class certification 'does not ask whether an action is legally or factually meritorious.'" Jaimez, *supra*, at 1298. Where the merits are enmeshed with class requirements, including whether common issues would not predominate, courts properly consider them to determine whether the action is suitable for class certification. Quacchia v. DaimlerChrysler Corp. (2004) 122 Cal. App. 4th 1442, 1455 ("the court merely determined the nature of the evidence that would be admissible under applicable legal principles, and, given that evidence, ruled common issues would not predominate if the proposed class were certified.").

"[T]he party seeking class certification must explain how the procedure will effectively manage the issues in question,...." Dunbar v. Albertson's, Inc. (2006) 141 Cal. App. 4th 1422, 1432.

Courts often have certified class actions as to wage-and-hour claims, including those involving allegations of missed meal and rest breaks. *See, e.g.*, Jaimez, *supra*, at 1300, 1308 (reversing trial court denial of class certification re meal and rest periods, concluding in part that the employer's uniform policies and practices sufficiently were evidenced); Bufil v. Dollar Financial Group, Inc. (2008) 162 Cal.App.4th 1193, 1205-08 (reversing trial court's denial of class certification of case re meal and rest periods, concluding commonality, ascertainability, and superiority were all present). A trial court did not err in certifying plaintiffs' claim for class treatment, including where supportive evidence reasonably inferred that plaintiffs could establish that defendants, as a matter of practice, never paid meal-break-premium wages accrued as to a significant number of employees. *See* Safeway, Inc. v. Sup. Ct. (2015) 238 Cal. App. 4th 1138, 1159, 1163.

" 'As it is the court's duty to certify an identifiable and ascertainable class, the court is not limited ... to the class description contained in plaintiff's complaint.' " Sotelo v. MediaNews Group, Inc. (2012) 207 Cal.App.4th 639, 651.

California law controls as to questions involved in class actions, except in the absence of California authority, in which case courts may look to the Federal Rules of Civil Procedure and federal cases. In re BCBG Overtime Cases (2008) 163 Cal.App.4th 1293, 1298.

Finally, decisions as to class certification will be upheld if there is substantial evidence, unless judges have applied improper criteria or erroneous legal assumptions. *E.g.*, Pfizer Inc. v. Sup.Ct. (2010) 182 Cal.App.4th 622, 629.

GREGORY W. ALARCON

Dated: NOV 16 2015

Gregory Alarcon
Superior Court Judge