SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 1

BC594022 May 31, 2019
CRAIG CLARK VS QUEST DIAGNOSTICS CLINICAL LABORATORIES INC 3:00 PM

Judge: Honorable Daniel J. Buckley CSR: None
Judicial Assistant: Stephanie Chung ERM: None
Courtroom Assistant: E. Munoz Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter re Motion for Class Certification

The Court, having taken the matter under submission on 03/29/2019, now rules as follows:

The Court took Plaintiffs' Motion for Class Certification under submission.

Plaintiffs Craig Clark and Henry Nelson's motion for class certification is GRANTED in part, and DENIED in part. Having considered all moving, opposing, reply, and supplemental papers, as well as the oral argument of counsel, the Court finds:

(1) It is impracticable to bring all members of the class before the Court;

(2) The class is ascertainable and is sufficiently numerous to warrant class treatment;

(3) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members with respect to Plaintiffs' claims for (i) failure to pay minimum wages, (ii) failure to pay wages at the agreed rate, (iii) failure to properly calculate and pay overtime wages, (iv) failure to provide accurate itemized wage statements, (v) failure to pay all wages upon termination, and (vi) unfair business practices;

(4) The questions of law or fact common to the class are not substantially similar and do not predominate over the questions affecting the individual members with respect to Plaintiffs' claims for (i) failure to provide meal periods, and (ii) failure to provide rest periods;

(5) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class;

(6) The representative plaintiffs and their counsel will fairly and adequately protect the interests

of the class; and,

(7) A class action is the superior means for adjudicating the claims in the litigation.

I. Defendant's Objections to Plaintiffs' Evidence

Defendants' Objections Nos. 1-22 are OVERRULED. See Anthony v. General Motors Corp., 33 Cal. App. 3d 699, 707 (1973) ("It is not material that those facts may not appear in the record in a [form], or with the foundation, which would make such findings and statements as now presented, admissible in evidence at a trial. It is enough that it appears that evidence in support of plaintiffs' theory may be available when the case goes to trial.")

II. Motion to Seal

Plaintiffs motion to seal Exhibit Nos. 4-9 and 12 to the Declaration of Cody R. Kennedy ISO Plaintiffs' Motion for Class Certification is GRANTED.

The Court finds that: (1) there exists an overriding interest that overcomes the right of public access to those documents; (2) the overriding interest supports sealing those documents; (3) a substantial probability exists that the overriding interest will be prejudiced if those documents are not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.

III. Motion for Class Certification

Plaintiffs seek to recover for: (1) failure to pay minimum wages; (2) failure to pay wages at the agreed rate; (3) failure to pay overtime compensation; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to pay timely wages upon termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices. Pls.' Consolidated Complaint at 1.

A. Ascertainability and Numerosity

A proposed class must be sufficiently ascertainable and numerous to be certified. Civ. Proc. Code § 382; Daar v. Yellow Cab Co., 67 Cal. 2d 695, 704 (1967). First, "[a]scertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." Hicks v. Kaufman and Broad Home Corp., 89 Cal. App. 4th 908, 914

(2001). "Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." Reyes v. San Diego County Bd. Of Supervisors, 196 Cal. App. 3d 1263, 1271 (1987). The plaintiff bears the burden to establish the existence of an ascertainable class. Sav-on Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004). Second, the identified class must be so numerous as to make joinder of all parties impractical. Hendershot v. Ready to Roll Transportation, Inc. 228 Cal. App. 4th 1213, 1222 (2014). "No set number is required as a matter of law for the maintenance of a class action." Id. (internal quotations omitted).

Plaintiff's move to certify a class of "[a]ll of Defendants' California-based Route Service Representatives (and/or similarly titled employees) who worked for Defendants during the Relevant Time Period," as well as a subclass of "[a]ll class members who are no longer employed by Defendants." Pls.' Prop. Order 3:7-11; Pls.' Mot. 10:22-2.

Defendants have already identified roughly 371 such putative class members from their payroll and business records. Kennedy Decl. ¶ 15. Therefore, the Court finds that the proposed class is sufficiently ascertainable and numerous. See Bowles v. Super. Ct., 44 Cal. 2d 574 (1955) (class of 10 trust beneficiaries); Collins v. Rocha, 7 Cal. 3d 232 (1972) (class of 9 named plaintiffs on behalf of 35 others).

B. Community of Interest:

The community of interest requirement entails showing that: (1) predominant common questions of law or fact exist; (2) the class representatives have claims or defenses typical of absent class members; and (3) the class representatives and counsel can adequately represent the interests of the class. Brinker Restaurant Corp. v. Sup. Ct. 53 Cal. 4th 1004, 1021 (2012).

1. Predominance of Common Questions of Law or Fact

"As part of the community of interest requirement, the party seeking certification must show that issues of law or fact common to the class predominate." Duran v. U.S. Bank National Assn., 59 Cal. 4th 1, 28 (2014) (citing Richmond v. Dart Industries, Inc., 29 Cal. 3d 462, 470 (1981)). The "ultimate question" in predominance analysis is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." Collins v. Rocha, 7 Cal. 3d 232, 238 (1972). That answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely

to prove amenable to class treatment." Sav-On Drug Stores, Inc. v. Sup. Ct., 34 Cal. 4th 319, 327 (2004). Generally, if the defendant's liability can be proved by common facts, then a class will be certified, even if its members must prove their damages individually. Duran v. U.S. Bank National Assn., 59 Cal. 4th 1, 28 (2014) (citing Brinker Restaurant Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021-22 (2012)). Nevertheless, class certification is inappropriate "if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the 'class judgment'" on common issues. City of San Jose v. Sup. Ct., 12 Cal. 3d 447, 459 (1974); see Arenas v. El Torito Restaurants, Inc., 183 Cal. App. 4th 723, 732 (2010) ("If the class action 'will splinter into individual trials, common questions do not predominate and litigation of the action in the class format is inappropriate.'").

a. Failure to Pay Minimum Wages and Designated Rates.

First, Plaintiffs' theory of recovery with respect to its unpaid wages claims is "that Defendants routinely failed to pay RSRs for off-the-clock work including time spent 'on-call' during meal periods, time in which they were 'interrupted' during meal periods by dispatch, and time spent scanning specimens and performing other required daily duties with Defendants' knowledge while clocked out." Pls.' Mot. 16:12-15. Plaintiffs seek to prove this through Defendants' off-the-clock work policies, time records, pay records, and internal records of work performed by RSRs. Id. at 15:16-18. Plaintiffs contend that Defendants records indicate that employees regularly performed work when they were clocked-out, and Defendants can therefore be charged with constructive knowledge of permitting their employees to working off-the-clock. Plaintiffs also argue that Defendants had no express policy informing employees of their right to be paid for work performed off-the-clock.

Defendants primarily counter by arguing that: (1) they have a policy urging employees to report their supervisors to HR if asked to work off-the-clock; (2) they require employees to amend their timesheets whenever off-the-clock work is performed; and (3) pursuant to Brinker, 53 Cal. 4th at 1051, such claims are not amenable to class treatment, because "[t]he only formal [Quest] off-the-clock policy submitted disavows such work, consistent with state law." Defendants also argue that they had no duty to review their time and payroll records for inconsistencies, and that they therefore cannot be charged with constructive knowledge of off-the-clock work.

Plaintiffs here also present common-proof in the form of cross-referencing employee time and payroll records with scanner and dispatch logs to determine whether off-the-clock work was performed. Pl.'s Mot. 17:22-18:9. Second, whether Defendants are ultimately correct with regards to their duty to affirmatively review records is largely irrelevant to this motion. Rather,

as Plaintiffs' note, the issue of constructive knowledge is one that can be resolved—either for or against them—based on common-proof, thereby adjudicating the claims of the class in one fell swoop. See Williams v. Super. Ct., 221 Cal. App. 4th 1353, 1336 (2013)

Therefore, the Court finds that common issues predominate individual ones with respect to Plaintiffs' unpaid wages claims for off-the-clock work.

b. Failure to Properly Calculate Overtime Compensation.

Second, Plaintiffs advance two independent theories of recovery with respect to their unpaid overtime wages claims. First, Plaintiffs contend that "Defendants failed to properly include non-discretionary bonuses into the overtime rate calculations, resulting in class-wide overtime wage underpayments." Pl.'s Mot. 18:25-26. Second, Plaintiffs contend that "Defendants' failures to pay minimum wages (off-the-clock work & rounding punches discussed above) resulted in derivative class-wide underpayments of overtime wages." Id. at 18:26-28. The Court finds that common-questions predominate these claims, and that both of these theories are therefore amenable to class treatment, since each RSR is paid under the same uniform policies and procedures.

Defendants' arguments with respect to Plaintiffs' overtime pay claims are unpersuasive. The case cited by Defendants resolved the issues of proper overtime rate pay calculation on a motion for summary judgment. Vazquez v. TWC Admin. LLC, 254 F. Supp. 3d 1220, 1221 (C.D. Cal. 2015) (summary judgment). The Court cannot make a similar determination on this motion, without abusing its discretion. Carabini v. Super. Ct., 26 Cal. App. 4th 239, 245 (1994) ("A motion to certify a class action is not a trial on the merits, nor does it function as a motion for summary judgment."); Brinker, 53 Cal. 4th at 1023 ("A class certification motion is not a license for a free-floating inquiry into the validity of the complaint's allegations"). The Court declines Defendants invitation to commit error.

c. Failure to Provide Proper Meal and Rest Breaks.

Plaintiffs' theory of recovery with respect to its meal and rest period claims is that "Defendants retain the right to interrupt RSR meal [and rest] periods at any time they wish and fail to relieve them from all work duties and control. Specifically, RSRs are regularly interrupted during meal periods by Defendants' dispatch system, which provides RSRs with work instructions throughout their shift." Pls.' Mot. 21:25-26. Plaintiffs' seek to prove their "on-call" and interruption claims through: (1) posted job requirements for putative class members requiring them to regularly

communicate with dispatch and allow for non-scheduled pick-ups, Kennedy Decl. ¶ 6, Ex. 4; and (2) Defendants' dispatch logs and time records that supposedly demonstrate actual interruptions during meal and rest periods, Id. at ¶ 9, Ex. 7; Chasworth Decl. ¶ 8.

The Court agrees with Defendant that Plaintiffs "have no common proof documenting any purported interruptions leading to a failure to provide a timely, duty-free break. Def's Mot. 1:6-7.

As discussed in the Opposition, pp 4-6, the three different categories of drivers, RSRs, have job responsibilities and experiences which vary widely. Some, like Plaintiff Clark, drive one route that services a certain geographic area; others float between a number of routes on an as-needed basis; and some respond to urgent, unscheduled pickups. Each category of RSRs have different types of breaks and regulation of those breaks.

Unfortunately for Plaintiffs, the dispatch records do not demonstrate "off-the-clock" work. They do not provide any real evidence of when breaks start or end, let alone common evidence of such for the class. Some dispatch sheets only apply to some drivers and not others. Most critical, dispatch sheets only show when an RSR accepted a call from dispatch – not when it was received.

Plaintiffs cannot provide common proof that each missed meal or rest period resulted from the denial of an opportunity to take such a break or that the driver was not relieved of all work-related duties. Further, Plaintiffs have not provided sufficient – and common – proof that an RSR missed a break, or was interrupted during a break, due to the operation of the written policies. The Court concludes that the necessary evidence to resolve this dispute would rely on individual testimony.

Therefore, the Court finds that these claims are not amenable to class treatment.

d. Failure to Provide Accurate Itemized Wage Statements.

Plaintiff's theory of recovery for inaccurate wage statements is that "Defendants have committed standalone violations of Section 226 because their wage statements regularly fail to include the applicable hourly rates in effect during the pay period (e.g. incorrect overtime rates) and the name of the legal entity that is the employer." Pls.' Mot. 24:2-4. An inaccurate wage statement is one where an employee cannot "promptly and easily determine" specific figures and other information. Labor Code § (e)(2)(B)(i)-(iv). "'[P]romptly and easily determine' means a reasonable person would be able to readily ascertain the information without reference to other

documents or information." Id. at (e)(2)(C). Defendants' insinuation that resolution of this claim would require individualized inquiries into each employee is without merit. The Labor Code's use of a "reasonable person" standard precludes the necessity of a subjective, individualized inquiry into each employee. Therefore, the Court finds that this claim is amenable to class treatment.

e. Plaintiffs' Derivative Claims for Failure to Pay All Wages Upon Termination and Unfair Business Practices.

Because some of Plaintiffs' underlying claims are amenable to class treatment, the Court finds that Plaintiffs' derivative claims are similarly suited for certification for the claims of (i) failure to pay minimum wages, (ii) failure to pay wages at the agreed rate, (iii) failure to properly calculate and pay overtime wages, (iv) failure to provide accurate itemized wage statements, and (v) failure to pay all wages upon termination.

2. Typicality

Similar to adequacy of representation discussed below, the typicality requirement exists to ensure that the interests of the named representatives align with the interests of the class. Johnson v. GlaxoSmithKline, Inc., 166 Cal.App.4th 1497, 1509 (2008). "Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Id. (internal quotations and citations omitted). Thus, the crux of the typicality inquiry relies on "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Id.

Here, the proposed class representatives engaged in similar job duties to the putative class members, and they allege to have suffered similar injuries as a result of the same generally applicable policies and practices implemented by Defendants. Clark Decl. ¶¶ 2-12; Nelson Decl. ¶¶ 2-12. Therefore, the Court finds that Plaintiffs' claims are typical.

3. Adequacy of Representation

Adequacy of representation must be shown as to both the class representatives and the putative class's counsel. Richmond v. Dart Industries, Inc., 29 Cal. 3d 462 (1981). Adequacy ordinarily turns on whether there is a conflict as to the litigation itself. See Capitol People First v. State Dept. of Developmental Servs., 155 Cal. App. 4th 676, 696-97 (2007). When resolving adequacy

questions, the Court evaluates "the seriousness and extent of conflicts involved compared to the importance of issues uniting the class; the alternatives to class representation available; the procedures available to limit and prevent unfairness; and any other facts bearing on the fairness with which the absent class member is represented." Id. at 697 (internal quotations omitted).

Serious "[c]redibility problems can [also] be an appropriate ground to reject the adequacy of a class representative." Payton v. CSI Electrical Contractors, Inc., 27 Cal. App. 5th 832, 843 (2018). With respect to class antagonism, only widespread class member opposition that concerns the subject matter of the litigation itself (i.e. not a general dislike of the proposed class representative personally) can successfully challenge a representative's adequacy of representation. Richmond v. Dart Industries, Inc., 29 Cal. 3d 462, 470-72 (1981); compare Fanucchi v. Coberly-West Co., 151 Cal. App. 2d 72 (1957) (one-third of putative class members opposing suit insufficient to defeat certification); and Hebbard v. Colgrove, 28 Cal. App. 3d 1017 (1972) (several putative members out of a class of fifty insufficient to defeat certification); with Schy v. Susquehanna Corp., 419 F.2d 1112, 1116-17 (7th Cir. 1970) (over 80% class antagonism defeats certification).

Here, the proposed class representatives have declared that they: (1) have been actively involved in the present litigation; (2) understand their obligations to absent class members; and (3) are fully prepared to pursue this action on behalf of the class if it is certified. Clark Decl. ¶¶ 13-16; Nelson Decl. ¶¶ 13-16. Proposed class counsel have also conducted significant work on this case and have extensive experience with class action and complex litigation. Saltzman Decl. ¶¶ 3-9; Falvey Decl. ¶¶ 2-6; Boyamian Decl. ¶¶ 2-6; Campbell Decl. ¶¶ 3-19. Therefore, the Court finds that Plaintiffs and Plaintiffs' counsel are adequate representatives of the class for the allowed claims.

C. Superiority, Manageability, and Trial Plan

Courts are required to carefully weigh the respective benefits and burdens, and to allow maintenance of the class action only where substantial benefits accrue, both to litigants and the courts. Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 435 (2000). Trial courts must pay careful attention to manageability concerns "when deciding whether to certify a class action." Duran v. U.S. Bank Nat. Assn., 59 Cal. 4th 1, 29 (2014). This is especially true when a plaintiff seeks to rely on statistical and sampling evidence in place of common proof. Id. In a court's consideration of whether a class action is a superior device for resolving a controversy, "the manageability of individual issues is just as important as the existence of common questions uniting the proposed class." Id. Thus, under California law, a class action is not "superior" where there are numerous

and substantial questions affecting each class member's right to recover, following determination of liability to the class as a whole. City of San Jose v. Sup. Ct., 12 Cal. 3d 447, 459 (1974).

Defendants assert that Plaintiffs' proposed trial plan is inadequate to support certification here, because it does not adequately account for individual issues arising from Defendants' affirmative defenses. Defendants, however, have not identified their precise concerns in their moving papers. Given Plaintiffs' proposed reliance on common-proof, as opposed to statistical and sampling evidence, the Court finds that Plaintiffs' proposed trial plan is sufficient at this time for the allowed claims. Pls.' Mot. 26:15-27:12; see Duran, 59 Cal.4th at 31-32. If Plaintiffs' trial plan ultimately proves to be unmanageable as the proceedings progress, then Defendants may move to decertify at that time. The Court also finds the class mechanism to be superior here for the allowed claims.

Conclusion

Therefore, it is ORDERED that:

(1) A class action is proper as to Plaintiffs' causes of action for (i) failure to pay minimum wages, (ii) failure to pay wages at the agreed rate, (iii) failure to properly calculate and pay overtime wages, (iv) failure to provide accurate itemized wage statements, (v) failure to pay all wages upon termination, and (vi) unfair business practices.

(2) The Court certifies a class defined as: All of Defendants' California-based Route Service Representatives, or similarly titled employees, who worked for Defendants from September 9, 2011, to the time of trial in this action.

(3) The Court further certifies a subclass defined as: All class members who are no longer employed by Defendants.

(4) Marlin and Saltzman, LLP, The Law Offices of Thomas W. Falvey, Boyamian Law, Inc., and The Aegis Law Firm, PC, are appointed Class Counsel.

(5) Plaintiffs are appointed Class and Subclass representatives.

(6) Notice to the Class shall be given in a form and manner to be prescribed by the Court at a later date.

BC594022 May 31, 2019
CRAIG CLARK VS QUEST DIAGNOSTICS CLINICAL LABORATORIES INC 3:00 PM

Judge: Honorable Daniel J. Buckley CSR: None
Judicial Assistant: Stephanie Chung ERM: None
Courtroom Assistant: E. Munoz Deputy Sheriff: None

The clerk hereby gives notice.

Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 06/03/2019 Sherri R. Carter, Executive Officer / Clerk of Court By: Deputy Stephanie Chung
PLAINTIFF: Craig Clark et al	
DEFENDANT: Quest Diagnostics Clinical Laboratories, et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: BC594022

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order entered herein, on 05/31/2019, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at www.caseanywhere.com on 06/03/2019 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 06/03/2019

By: Stephanie Chung
Deputy Clerk