

1 **MATTHEW RIGHETTI, ESQ.** {121012}
2 **JOHN GLUGOSKI, ESQ.** {191551}
3 **RIGHETTI LAW FIRM, P.C.**
4 456 Montgomery Street, Suite 1400
5 San Francisco, CA 94104
6 Telephone: (415) 983-0900
7 Facsimile: (415) 397-9005

8 Attorneys for Plaintiffs

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 16 2010 ✓

ALAN CARLSON, Clerk of the Court

A. Knox
BY A. KNOX

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 **Coordination Proceeding**
13 **Special Title (Rule 1550(b))**

14 **ANNA'S LINEN OVERTIME CASES**

15 Included actions

16 Hernandez v. Anna's Linen Co.
17 Coe v. Anna's Linen Co.

18 **Judicial Council Coordination**
19 **Proceeding No. 4437**

20 CLASS ACTION

21 **ORDER GRANTING MOTION FOR**
22 **CLASS CERTIFICATION**

23 OCSC 04CC00660
24 SDSC GIC 840 481

25 Date: February 19, 2010
26 Time: 1:30 p.m.
27 Dept.: CX 105

28 Honorable Nancy Wieben Stock

29 Plaintiffs' Motion For Class Certification, came on for hearing February 19, 2010 before
30 the Honorable Nancy Wieben Stock. All parties were represented by counsel and the Court
31 made the following orders.

32 ///

1 **EVIDENCE AND OBJECTIONS**

2 1. Plaintiffs' Request for Judicial Notice filed September 4, 2009:

- 3 a. Locker Declaration: Request for judicial notice granted but only as to its
4 existence and not for the facts stated therein under California Evidence Code
5 Section 452(d).
6
7 b. IWC Wage Order 7-2001: Request for judicial notice granted under
8 California Evidence Code Section 452(b).
9
10 c. Three opinion letters: Request for judicial notice granted but only as to
11 their existence.
12
13 d. Federal regulations: Request for judicial notice granted under California
14 Evidence Code Section 452(b).
15
16 e. District court opinion: Request for judicial notice granted but only as to its
17 existence.

18 2. McInroe Declaration:

- 19 a. Objection 1: Overruled. If the contract or settlement agreement
20 precluded the execution of the declaration, the remedy is to sue for breach of
21 contract, not to exclude the declaration.
22
23 b. Objections 2-6: Overruled. Defendant has countered the statement with
24 contrary evidence. This is a matter of weight, not admissibility.
25
26 c. Objection 7: Overruled.
27
28 d. Objection 8: Overruled.

3. Plaintiffs' Supplemental Request for Judicial Notice filed February 8, 2010. Granted
as to the Opinion letter, yet as to existence only. An opinion letter issued by the
Division of Labor Standards Enforcement has no binding effect

1 upon the Court under the *Conley* case.

2 4. Woolridge Declaration:

3 a. Objections 1-5: Overruled with the general comment that impeachment is
4 not an objection. It is matter of weight, not admissibility.
5

6 5. Brown Declaration:

7 a. Objections 1-2: Overruled with the general comment that impeachment is
8 not an objection. It is matter of weight, not admissibility.

9 6. Defendant's Supplemental Opposition filed February 16, 2010: Coming as
10 late as it did, and there being no basis for the Court receiving such a supplemental
11 opposition, the Court would sustain the objection and grant the motion to strike in
12 part. First, to the extent that it brings the Court's attention to the *Tuesday Morning*
13 case published last December, the Court is aware of it and would not use the
14 opposition for that purpose. However, the Court will consider Section C of the
15 Supplemental Opposition (contained at pages 4-9) as it responds to new matter.
16

17 7. Plaintiffs' Motion to Strike Employee Declarations: The Court does not disagree
18 with the general premise of the motion, but will consider the information as it relates
19 to the weight to be given.
20

21 **MOTION FOR CLASS CERTIFICATION**

22 The standard for class certification is found at CCP Section 382, which provides, in
23 essence, that the class action may be brought when the question is one of a common or general
24 interest of many persons or when the parties are numerous and it is impracticable to bring them
25 all before the Court. Under 382 of the Code of Civil Procedure, there are two prerequisites to a
26 proper class action: One, there must be an ascertainable class; two, there must be a well-defined
27
28

1 community of interest in the questions of law and fact involved affecting the parties to be
2 represented. *Brown v. Regents of University of California*, 151 Cal.App.3d, 982, 988. The two
3 requirements are substantially intertwined. The existence of an ascertainable class depends in
4 turn upon a demonstrated community of interest among the purported class members and
5 common questions of law or fact. In order to establish a class action, it is not necessary to have
6 a common recovery nor does the fact that separate transactions are involved preclude such an
7 action. *Brown v. Regents of University of California*, 151 Cal.App.3d, 982, 988. The
8 certification question is essentially a procedural one that does not ask whether an action is
9 legally or factually meritorious. *Linder v. Thrifty Oil*, 23 Cal.4th at 439 and *Sav-On Drugstores,*
10 *Inc. v. Superior Court*, (2004) 34 Cal.4th 319 at 326.

11
12 The burden is on the party seeking class certification to establish both, one, an
13 ascertainable class, and two, a well-defined community of interest among the class members,
14 *Lockheed Martin Corporation v. Superior Court*, 2003, 29 Cal.4th 1096 at 1104. The trial court
15 is afforded great discretion in evaluating the efficiencies and practicalities of permitting group
16 action and the decision is reviewed for abuse of discretion. *Sav-On Drug Stores v. Superior*
17 *Court*, (2004) 34 Cal.4th 319 at 326. Accordingly a trial court ruling supported by substantial
18 evidence generally will not be disturbed unless, one, improper criteria are used or two, erroneous
19 legal assumptions are made. Any valid pertinent reasons stated and supported by substantial
20 evidence will be sufficient to uphold the order. See, *Linder v. Thrifty Oil* at 439. See also
21 *Lockheed* at 1104. See also, *Sav-On* at 326. The question then is whether or not there is an
22 ascertainable class, first question, and the Court determines, one, what is the class definition;
23 two, the size of the class; and three, the means available for identifying the class members.
24 *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.
25 Definition, the class definition must be precise, objective and presently ascertainable to allow
26
27
28

1 proper notice to the class members. *Global Minerals & Metals Corp. v. Superior Court*,
2 (2003)113 Cal.App.4th at 836. The goal is to use terminology that will convey sufficient
3 meaning to enable persons hearing it to determine whether they are members of the class
4 plaintiffs wish to represent. Weil & Brown, *Civil Procedure Before Trial*, Section 14:23, pages
5 14, 16 and 17, see also *Global Minerals & Metals Corporation*, at 849. The definition need not
6 include the claims asserted. The relationship between the class and the legal claims may be
7 explained in the certification order and notice to the class, *Hicks v. Kaufman & Broad*, (2001) 89
8 Cal.App.4th 908, 915.

10
11 **PROPOSED CLASS**

12 In this case, the proposed class is as follows:

13 All California based salaried store employees who worked at
14 any time during the four years preceding the filing of this
15 complaint up until the present at any retail store in the State of
16 California owned, operated and/or acquired by Defendants.

17 The size of the class must be numerous, but manageable for the purpose of notice
18 requirements, distribution of recovery, et cetera. *Blue Chip Stamps v. Superior Court*, 18 Cal.3d
19 381 at 386. Class certification is particularly appropriate when numerous parties suffer injuries
20 in relatively small numbers because bringing individual suits would not be economical and the
21 wrongdoer might escape liability. *Daar v. Yellow Cab*, 67 Cal.2d 695, see also, Weil & Brown,
22 *Civil Procedure Before Trial*, Section 14:22 at pages 14 and 15.

1 **PROPOSED CLAIMS**

2 The Court certifies the following class claims:

- 3 (1) Violations of Labor Code §1194 [Unpaid Overtime]
4 (2) Violation of Business & Professions Code §17200 [Unfair Competition Law]
5

6 **ANALYSIS**

7
8 **1. Class Ascertainable And Numerous**

9 The class is definable and the numbers makes the class large enough to make proceeding
10 by class action appropriate, particularly since the class is not so large as to be unmanageable.
11 The Court notes 82 locations over a multi-year period with estimates ranging from 164 to 300
12 class members. Membership is easily ascertainable from company records. In this case, it does
13 not seem to the Court that there is going to be a difficulty in notifying the class members or in
14 identifying them in either instance. The Court believes it appropriate to certify two sub-classes
15 as follows:
16

- 17 a. All California based salaried Assistant Manager store employees who worked at
18 any time from September 24, 2000 until the date that the position was re-
19 classified to an "hourly" non-exempt position, in or about March, 2002, at any
20 retail store in the State of California owned, operated and/or acquired by
21 Defendants;
22 b. All California based salaried Store Manager store employees who worked at any
23 time from September 24, 2000 until the present, at any retail store in the State of
24 California owned, operated and/or acquired by Defendants;

25 **2. Common Issues Predominate**

26 The Court finds the second prong, well-defined community of interest, to exist. It
27 includes three factors: predominant common questions of law or fact, class representatives with
28 claims or defenses typical of the class and class representatives who can adequately represent the

1 class. *Sav-On Drugs* addresses the issue regarding common questions of law or fact and it says
2 that the focus in determining a certification dispute is on the type of questions that are likely to
3 arise, common or individual, not the merits of the case, and the Court instructed there that in
4 determining whether there is substantial evidence to support a trial court certification order, the
5 Court considers whether or not the theory of recovery advanced by the proponents of
6 certification is, as an analytical matter, likely to prove amendable to class treatment. *Sav-On* at
7 327. As noted in *Sav-On*, a class action is not inappropriate simply because each member of the
8 class may at some point be required to make an individual showing as to his or her eligibility for
9 recovery or as to the amount of the damages. *Employment Development Department v. Superior*
10 *Court*, 30 Cal.3d 256 at page 266.

11
12 As the Supreme Court said in *Sav-On*, "predominance is a comparative concept and the
13 necessity for class members to individually establish eligibility and damages does not mean that
14 individual fact questions predominate. Individual issues do not render class certification
15 inappropriate, so long as such issues may be effectively managed," and in this instance, the
16 Court believes that they may and that a class proceeding is the appropriate way to accomplish
17 that management. Among the common issues would be whether the Executive exemption
18 applied to the class members as a function of task classification; how the Defendant's published
19 job descriptions and expectations compared or contrasted with the actual job duties; whether the
20 Defendant engaged in any practices designed to accurately survey and/or evaluate actual
21 management job tasks so as to monitor the appropriateness of the Executive exemption; whether
22 Defendant informed managers of factors relating to exempt status such as job expectations,
23 overtime, percentage of time to be spent on nonexempt tasks, etc.

24
25
26 **3. Class Certification Is Superior Method of Adjudication**

1 The Court grants class certification with two subclasses as set forth above, appoints the
2 proposed class representatives to represent the class and appoints the Righetti Law Firm and
3 Samuel & Samuel as class counsel in this matter.

4 ///
5
6
7

8 It is Plaintiffs' counsels' obligation to propose the notice in terms of its nature and
9 content and the mechanism for giving notice to the class members.

10
11 Dated:

4/16/10



Honorable Nancy Wieben Stock
Judge, Orange County Superior Court