

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 04/16/2010

Time: 09:00:00 AM

Dept: C-73

Judicial Officer Presiding: Judge Steven R. Denton
Clerk: Sandra Weaver

Bailiff/Court Attendant:
ERM: Not reported

Case Init. Date: 05/22/2008

Case No: 37-2008-00084289-CU-OE-CTL Case Title: Pfizenmeier vs. Citifinancial Management Corporation

Case Category: Civil - Unlimited Case Type: Other employment

Event Type: Motion Hearing to Certify/Decertify Class Action

Causal Document & Date Filed:

Appearances:

The Court, having taken the above-entitled matter under submission on 04/12/2010 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

After entertaining the arguments of counsel and taking the matter under submission the court now rules as follows:

Plaintiffs DAVID PFIZENMEIER and ROSA KAISER'S motion for class certification is granted. Plaintiffs' present attorneys of record will be class counsel. The court certifies the following class:

All California based Branch Managers who were classified as exempt from overtime and who worked at any time since May 21, 2004 to the present in a California branch owned, operated or acquired by Defendants.

Plaintiffs have the burden of establishing the existence of an ascertainable class, and a well defined community of interest among the class members. 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. *Global Minerals & Metals Corp. v. Superior Court* 113 Cal. App. 4th 836, 849, (2003). There is a means available to identify class members via the records maintained by defendants. Also, the class size is sufficiently numerous such that class action treatment is the preferred method of adjudication.

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. C.C.P. § 382; *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435-436, (2000). The requisite community of interest exists only where the issues which may be jointly tried, when compared with those requiring separate adjudication, are sufficiently numerous and substantial to make a class action advantageous. *Hamwi v. Citinational-Buckeye Inv. Co.*, 72 Cal. App. 3d 462, 471, (1977). If a class action will splinter into individual trials, common questions do not predominate and litigation of the action in the class format is inappropriate. *Id.* In making the evaluation

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of whether to certify a class, the court should accept the allegations in the complaint as true. *La Sala v. American Savings & Loan Association*, 5 Cal. 3d 864, 869 (1971). The question of certification is essentially a procedural issue that generally does not ask whether an action is legally or factually meritorious. *Linder v. Thrifty Oil Co.*, supra, at 437-443. Predominance is a comparative concept, and the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate. *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 334 (2004). The need for individualized proof of damages is not per se an obstacle to class treatment, and that each member of the class must prove his or her separate claim to a portion of any recovery by the class is only one factor to be considered in determining whether a class action is proper. *Id.* at 334-335.

As with the class comprised of operating and assistant managers in the *Sav-On* case, the court finds that common issues predominate. Task classification (i.e., whether to classify the various duties performed by branch managers as either exempt or non-exempt) is a mixed question of law and fact appropriate for a court to address separately from calculating the amount of time specific employees actually spend on given tasks. *Id.* at 330. Common issues predominate in such a determination where the tasks comprise a reasonably definite and finite list. *Id.* at 330-331. California courts have, in a wide variety of contexts, considered 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. *Id.* at 333. The use of statistical sampling in an overtime class action does not dispense with proof of damages, but rather offers a different method of proof. *Id.* Even if some individualized proof ultimately is required to parse class members' claims, it does not necessarily follow that such issues will predominate. *Id.* at 334. Neither variation in the mix of actual work activities undertaken during the class period, nor differences in the total unpaid overtime compensation owed each class member bars class certification as a matter of law. *Id.* at 335. The court finds that this action is more analogous to *Sav-On*, as opposed to the facts presented in *Keller v. Tuesday Morning, Inc.*, 179 Cal. App. 4th 1389 (2009).

The primary topic of concern is whether it can be determined, as a common issue, that branch managers spend at least fifty-one percent of their time on exempt tasks. Plaintiffs have satisfied their initial burden of demonstrating that tasks performed at each branch are sufficiently standardized. The time study, the declarations and depositions of the various branch managers, and the deposition testimony of other employees of defendants support this finding. The staffing levels at each branch also appear to be fairly standard. More precisely, the purported understaffing of lower level positions compelling branch managers to spend significant time completing work normally associated with lower level employees (e.g., answering telephones, collections work, etc.) appears to be standardized.

Satisfaction of this initial burden leads to the more difficult decision: Whether the percentage of time spent on exempt versus non-exempt standardized tasks is also sufficiently common among the putative class members. To some extent these percentages differ based on the circumstances of each branch, including geographic location, clientele and whether the branch handles primarily home loans. However, these differences do not negate the common issues. As a result, it is possible to determine whether the branch manager position is exempt based on, among other evidence, statistical sampling. The determinative issue is whether branch managers perform tasks rendering them exempt more than fifty percent of the time. A more precise calculation is not necessary such that small deviations become less important. The court finds that plaintiffs have made a sufficient showing that a well executed statistical sampling will return valid data on which to make this determination. To some extent the earlier time study can be used to verify the validity of the sampling performed for this action. Therefore, plaintiffs will be permitted the opportunity to collect this statistical evidence. As admitted by plaintiffs' expert, it is possible that the results will be non-determinative or demonstrate the inability to craft a valid data set transferable to all branches within the state. The remedy for this is to narrow or decertify the class. It is inappropriate to refuse certification initially based on a mere possibility.

It is elementary that the named plaintiff in a class action must be a member of the class he or she purports to represent. *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.*, 48 Cal. App. 3d 134, 146 (1975). Plaintiff must be a person who will fairly and adequately protect the interests of the class and whose claims or defenses are typical of the claims or defenses of the class. *Id.* It is the fact that the class plaintiff's claims are typical and his or her representation of the class adequate which gives legitimacy to permitting the plaintiff to bind class members who have notice of the action. *Id.* Defendants contend plaintiffs are not adequate class members for a variety of reasons. The court is not persuaded. Plaintiffs are typical of the class they purport to represent: They worked as branch managers during the

applicable class period.

The objections to evidence submitted by the parties are overruled.

IT IS SO ORDERED.



Steven R. Denton