

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

F I L E D

Date: 01/29/2010

Time: 10:30:00 AM

Dept: C-60 the Superior Court

Judicial Officer Presiding: Judge Yuri Hofmann
Clerk: Patricia Ashworth

JAN 29 2010

Bailliff/Court Attendant: A. Quidilla

By: P. ASHWORTH, Deputy

ERM:

Reporter: Michael S. Gallivan, CSR #5169

Case Init. Date: 08/07/2006

Case No: GIC870429

Case Title: PUCHALSKI vs TACO BELL CORP

Case Category: Civil - Unlimited

Case Type: Other employment

Event Type: Motion Hearing (Civil)

Moving Party: MARINAPUCHALSKI

Causal Document & Date Filed: Motion - Other, 08/01/2008

Appearances:

The Court hears oral argument and takes this matter under submission.

The Court, having taken this matter under submission on 1/29/2010 and having fully considered the arguments of all parties, both written and oral, as well as evidence presented, now rules as follows:

The Court grants the parties' respective judicial notice requests with one exception. The Court disregards Exhibit 2 in plaintiffs' judicial notice request filed on December 11, 2009. Exhibit 2 is a declaration (Miles Locker declaration) submitted in a separate action, and as such, the statements therein are inadmissible hearsay. Nonetheless, the Court takes judicial notice of the existence of this declaration.

The Court declines to rule further on specific objections as to evidence that the Court did not rely upon in rendering its decision. Any evidence cited in support of the Court's ruling herein, is deemed admissible and any objection made to that evidence is considered overruled. The Court disregards all evidence which is found to be incompetent or inadmissible.

The Court overrules defendant Taco Bell Corp.'s ("Taco Bell") evidentiary objections in their entirety (lack of personal knowledge, no foundation, speculation, hearsay, conclusory, and relevance) to the following declarations attached to the attorney Charles A. Jones ("Jones") supporting declaration filed on December 11, 2009: (1) Ken Orr declaration, Exhibit C; (2) Cecilia Monroy declaration, Exhibit D; (3) Raymond Gallegos declaration, Exhibit E; (4) Baljinder Chahal declaration, Exhibit F; (5) Jacob Dittburner declaration, Exhibit I; (6) Teresa Randel declaration, Exhibit J; (7) Melissa Allison declaration, Exhibit K; (8) Michelle Delk declaration, Exhibit L; (9) Issa Haddad declaration, Exhibit M; (10) Stan Ware declaration, Exhibit N; (11) Madeline MacLaren declaration, Exhibit O; (12) Michelle Kafity declaration - Exhibit P; and (13) Sean McGough declaration, Exhibit X. Plaintiffs' ten-page response filed on December 24, 2009 to Taco Bell's evidentiary objections adequately demonstrates that Taco Bell's

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evidentiary objections to these declarations should be overruled.

The Court overrules Taco Bell's evidentiary objection (relevance) to the entire Richard Drogin, Ph.D. declaration (Exhibit MM to attorney Jones supporting declaration filed on December 11, 2009) plus overrules Taco Bell's evidentiary objection to ¶ 16c in the same declaration. Plaintiffs' ten-page response filed on December 24, 2009 to Taco Bell's evidentiary objections adequately demonstrates that Taco Bell's evidentiary objections to this declaration should be overruled.

The Court overrules Taco-Bell's objections (lay opinion and legal conclusion) to the entire attorney Kevin McInerney reply declaration filed on January 8, 2010 and to the entire attorney J.E.B. Pickett reply declaration filed on January 8, 2010. The declarants relate the requisite basis for their opinions and conclusions in these declarations.

The Court grants plaintiffs' motion for class certification.

The Court certifies the class and two subclasses identified in plaintiffs' notice of motion filed on December 11, 2009.

The certified class is "[a]ll persons employed by Taco Bell Corp. in California as salaried restaurant employees at any time between August 2, 2002 and the date Taco Bell reclassified them as non-exempt employees."

The first certified subclass is "[a]. All persons employed by Taco Bell Corp. in California as salaried Restaurant General Managers (RGMs) at any time between August 2, 2002 and the date Taco Bell reclassified them as non-exempt employees."

The second certified subclass is "[b]. All persons employed by Taco Bell Corp. in California as salaried Market Training Managers (MTMs) at any time between August 2, 2002 and the date Taco Bell reclassified them as non-exempt employees."

Plaintiffs Marina Puchalski and Rajeev Chhibber are designated as the class representatives. Plaintiffs' attorneys are designated as the class counsel, McInerney & Jones, Wynne Law Firm, Righetti Law Firm, and pro hac vice Stewart Estes & Donnell. Taco Bell does not contest these designations.

The Court certifies the first cause of action in plaintiffs' operative first amended complaint for violation of California Labor Code for failure to pay overtime wages. The Court also certifies the third cause of action in plaintiffs' first amended complaint for violation of California Bus. and Prof. Code § 17200 to the extent the cause of action is based on the failure to pay overtime wages.

The court declines to certify plaintiffs' missed meal break claim pled in plaintiffs' first amended complaint. The issue of whether or not meal break claims are suitable for class treatment is presently before the California Supreme Court in Brinker Restaurant Corporation v. Superior Court (2008) 165 Cal.App.4th 25, review granted on October 22, 2008. In addition, plaintiffs' motion fails to make a meaningful showing on plaintiffs' missed meal break claim.

Class certification is appropriate on plaintiffs' failure to pay overtime wages claim. Taco Bell fails to dispute many of the elements needed for class certification: numerous, ascertainability, typicality, and adequacy of representation by the named plaintiffs and their attorneys. As for the remaining elements needed for class certification, plaintiffs adequately establish that common issues predominate over individual issues and that the trial would be manageable.

The common issues that predominate over individual issues, thus warranting class certification on plaintiffs' failure to pay overtime wages claim, include: (1) whether Taco Bell properly classified its salaried managers (RGMs and MTMs) as exempt during the class period without regard to variations such as work experience, store size, and store staffing; (2) classification of tasks; (3) Taco Bell's expectations; (4) realistic requirements of the salaried managers (RGMs and MTMs) jobs; (4) whether the salaried managers' (RGMs and MTMs) lacked the authority to make independent decisions or exercise independent judgment; and (5) finite number of tasks.

These common issues are found in the declarations of the former Taco Bell Managers (RGMs or MTMs)

who worked during the class period at several different Taco Bells that are attached to the attorney Charles A. Jones supporting declaration filed on December 11, 2009: (1) Ken Orr declaration, Exhibit C; (2) Cecilia Monroy declaration, Exhibit D; (3) Raymond Gallegos declaration, Exhibit E; (4) Baljinder Chahal declaration, Exhibit F; (5) Jacob Dittburner declaration, Exhibit I; (6) Teresa Randel declaration, Exhibit J; (7) Melissa Allison declaration, Exhibit K; (8) Michelle Delk declaration, Exhibit L; (9) Issa Haddad declaration, Exhibit M; (10) Stan Ware declaration, Exhibit N; (11) Madeline MacLaren declaration, Exhibit O; and (12) Michelle Kafity declaration, Exhibit P.

These declarations provide for instance: (1) the declarants were paid a set salary during the class period regardless of hours worked; (2) the declarants worked in excess of 50-65 hours per week but were not paid overtime due to Taco Bell's policy of understaffing their restaurants with hourly workers thus forcing the declarants to spend the majority of their time performing non-exempt tasks at the Taco Bells where they worked such as, cashiering, working the drive-through window, cooking and preparing food, cleaning, and serving guests; (3) after the (June 2006) conversion to hourly employees, their duties remained the same for the tasks they performed except Taco Bell began paying for overtime in excess of 8 hours per day and 40 hours per week; and (4) after the (June 2006) conversion to hourly employees, the declarants clocked in and out each day, whereas prior to the conversion, the declarants were not required to clock in and out during the work day.

These common issues are also supported by the declaration of Sean McGough ("McGough"), Exhibit X to the attorney Jones supporting declaration filed on December 11, 2009. In this declaration, McGough declares that from 2000 through 2006, McGough was an Area Coach in the San Diego area and supervised about 21 different Taco Bells and supervised about 80 different RGMs and MTMs. In this same declaration, McGough declares that the salaried managers (RGMs and MTMs) in the San Diego area spent the majority of their time performing similar work tasks (predominately non-exempt tasks) at each restaurant location where they worked due to Taco Bell's standardized operations and chronic under-staffing.

These common issue are further supported by the deposition of Taco Bell's Vice President of Operations Michael J. Harkins ("Harkins") who testified that salaried managers (RGMs and MTMs) do not have the discretion to change the food items that are offered for sale in the Taco Bell restaurant, to alter the ingredients that are used in the food items, to change the employees' uniforms, to change the price of the food items, or to change the music that is played in the Taco Bell restaurants. (Harkins deposition, 130:21-134:14 Exhibit A to attorney Jones supporting declaration filed on December 11, 2009; also Area Coach Delores Dove deposition, 193:23-195:3, Exhibit Q to same declaration, in accord.)

The Court disregards the Harkins opposition declaration filed on December 18, 2009 wherein Harkins declares that the tasks performed by the salaried managers (RGMs and MTMs) and the amount of time spent on the tasks varied among the managers. (Harkins opposition declaration, e.g., ¶¶ 22-25, 36; *Ericson v Federal Express Corporation* (2008) 162 Cal.App.4th 1291, 1309.)

Harkins at his earlier deposition testified that the work performed by the salaried managers (RGMs and MTMs) were similar. (Harkins deposition, 143:8-144:17, Exhibit A to attorney Jones supporting declaration filed on December 11, 2009.) In addition, Harkins at his earlier deposition testified that he did not know the amount of time that the salaried managers (RGMs and MTMs) spent performing specific work activities and that the managers themselves would be the individuals most knowledgeable on this issue. (Harkins deposition, 182:6-183:12, Exhibit A to attorney Jones declaration filed on December 11, 2009.)

The 31 opposition declarations (from current RGMs/MTMs) do not show that individual issues predominate given the declarations conclude the declarants spend a large percentage of their work on "managerial" tasks but do not reference to which specific tasks they consider to be "managerial. In this respect consider the following declarations attached to the attorney Aaron H. Cole opposition declaration filed on December 18, 2009: (1) Clemente Amezcua declaration, ¶ 10, Exhibit 5; (2) Jose Cielo declaration, ¶ 39, Exhibit 8; (3) Roque Cortez declaration, ¶ 18, Exhibit 9; (4) Eric Fike declaration, ¶ 28, Exhibit 11; (5) Diana Flores declaration, ¶ 22, Exhibit 12; (6) Robert Hackett declaration, ¶ 44, Exhibit 13; (7) Kwang Lee declaration, ¶ 5, Exhibit 17; (8) Aashish Malik declaration, ¶ 38, Exhibit 18; (9) Rosanna Pina declaration ¶ 43, Exhibit 21; (10) Richard Rangel declaration, ¶ 36, Exhibit 22; (11) Angel Rodriguez declaration, ¶ 49, Exhibit 24; (12) Reymundo Santibanes declaration, ¶ 18, Exhibit 26; (13) Anatoliy Shishkin declaration, ¶ 7, Exhibit 28; and (14) Gethun Abebe declaration, ¶ 18, Exhibit 1.

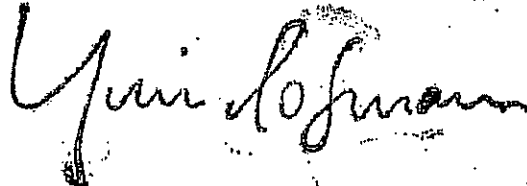
Plaintiffs adequately establish that the trial of this case as a class action would be manageable. (E.g., plaintiffs' supporting memorandum of points and authorities, pages 16:22-19:25, filed on December 11, 2009.)

The Court in granting class certification is mindful that Taco Bell in or about June 2006 (at the end of the class period) reclassified all of these salaried managers en masse as non-exempt hour employees with no change in job duties and began paying these employees overtime. (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330 – where a defendant categorically reclassifies its employees from exempt to non-exempt status, trial courts can regard the reclassification as common evidence respecting both defendant's classification policies and the managers' actual status during the relevant period.)

The Court reminds the parties that an order certifying a class action is only tentative. It may be modified any time prior to trial. (*Vasquez v. Superior Court (Karp)* (1971) 4 Cal.3d 800, 821.)

The Court sets a class certification conference for March 5, 2010, at 8:30 a.m., in Department 60. The class certification conference will involve such issues as: (1) whether class members may exclude themselves from the action; (2) the time and manner of notice; (3) the content of the notice; and (4) the parties responsible for the cost of the notice. The parties are encouraged to meet and confer on plaintiffs' proposed class notice (Exhibit PP to the attorney Jones supporting declaration filed on December 11, 2009) in the interim.

IT IS SO ORDERED.



Yvonne Lofman

Superior Court of California County of San Diego SIGN-IN SHEET	Calendar No.: 31
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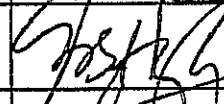

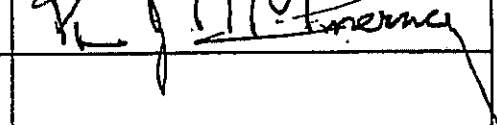
CASE: GIC870429 - PUCHALSKI vs TACO BELL CORP

EVENT TYPE: Motion Hearing (Civil)

EVENT DATE/TIME: 01/29/2010 10:30 am

DEPARTMENT: C-60

JUDGE: Yuri Hofmann

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J. GUGOSKY	(PLN)	"
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
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SHORT TITLE: PUCHALSKI vs TACO BELL CORP

CLERK'S CERTIFICATE OF SERVICE BY MAIL

**CASE NUMBER:
GIC870429**

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order on Submitted Matter was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 02/01/2010.

Clerk of the Court, by: *P. Admworth*
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