SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 07/10/2009 Time: 02:00:00 PM Dept: C-62

Judicial Officer Presiding: Judge Ronald L. Styn
Clerk: Lee Ryan,Pat Woods

Bailiff/Court Attendant: M. Chadwell/A. Quidilla
ERM:
Reporter: Sue Holthaus CSR#6959

Case Init. Date: 09/10/2007

Case No: 37-2007-00074518-CU-OE-CTL Case Title: LABASTIDA vs. MCNEIL TECHNOLOGIES INC

Case Category: Civil - Unlimited Case Type: Other employment

Event Type: Motion Hearing to Certify/Decertify Class Action
Moving Party: MARIANALABASTIDA, AbrahamCecena
Causal Document & Date Filed:Motion - Other, 06/10/2009

Appearances:

See the attached sign-in sheet for appearances.

The Court hears oral argument and confirms the tentative ruling as follows:

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Plaintiffs' motion for class certification is granted in part and denied in part.

"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." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.

Ascertainable Class

"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* (2003) 113 Cal.App.4th 836, 849 citing *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.

- *Class Definition*

"[T]o determine the identity of potential class members, the court will look to whether there are any objective criteria to describe them and whether they can be found without unreasonable expense or effort through business or official records." *Lewis v. Robinson Ford Sales, Inc.* (2008) 156 Cal.App.4th 359, 370.

In attempting to define an ascertainable class, the goal is to use terminology that will convey "sufficient meaning to enable persons hearing it to determine whether they are members of the class plaintiffs wish to represent." (*In re Copper Antitrust Litigation* (2000) 196 F.R.D. 348, 359.) "Ascertainability is not a problem limited to the determination of damages so that it could be solved by decertifying the class after the questions of liability have been resolved. Rather, it goes to the heart of the question of class certification, which requires a class definition that is 'precise, objective and presently ascertainable.'

[Citation.] Otherwise, it is not possible to give adequate notice to class members or to determine after the litigation has concluded who is barred from relitigating." (*Ibid.*)

Global Minerals & Metals Corporation v. Superior Court (2003) 113 Cal.App.4th 836, 858.

Plaintiffs propose the following class:

All current and former California-based employees having a title of Linguist and/or other similarly designated titles, who have worked for McNeil within the last four years from the filing of this complaint up to and including the time of trial in this matter.

Plaintiffs also propose the following subclass:

All persons employed by McNeil in California as Linguists at any time within the last four years from the filing of the complaint up to and including the time of trial in this matter, who signed a Release/Waiver purporting to have class members waive claims alleged in this lawsuit.

The court finds both the Class and Subclass definitions sufficiently "precise, objective and presently ascertainable." The definitions identify both specific employees and a specific time period.

- *Size of the Class/Numerosity*

The court finds the Class and Subclass sufficiently numerous. There are identified approximately 149 putative Class members of whom approximately 49 are also putative Subclass members.

- *Means Available for Identifying Class Members*

The court finds there are sufficient means available for identifying both the Class and Subclass members. All of the putative Class and Subclass members are former employees of McNeil. The members of the Subclass signed written releases. McNeil presumably has access to information sufficient to identify the names of all putative Class and Subclass members.

Community of Interest
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. The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." A trial court ruling on a certification motion determines "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." [Citations omitted.]

Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326.

- *Predominant common questions of law or fact*

"In order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." *Hicks v. Kaufman & Broad Home Corp.* (2001), 89 Cal.App.4th 908, 916, citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 810-811. The complaint sets forth class causes of action for failure to pay overtime, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay wages of terminated or resigned employees, violation of unfair competition law and a cause of action under the private attorney generals act of 2004. The class causes of action all arise out of McNeil's alleged failure to comply with California labor law regarding overtime, meal breaks and rest breaks. The predominate issue in dispute is whether California wage and hour laws apply to McNeil's operations in California and whether McNeil's policies and practices were in violation of those laws.

- *Class*

Plaintiffs submit evidence McNeil applied the same overtime policy, the same meal break policy and the same rest break policy to all of its employees. With respect to overtime, Plaintiffs submit evidence Linguists were not properly compensated for hours worked over 8 hours in one day. With respect to meal and rest breaks, Plaintiffs submit evidence Linguists were not allowed an uninterrupted meal or rest break – because Linguists were always responsible for their assigned wires/lines and always "on-duty" during their breaks. The evidence McNeil submits is not to the contrary. The Supreme Courts has recognized that, in the certification context, common issues may be present when a defendant's tortious acts, "allegedly are the same with regard to each plaintiff." *Sav-On*, 34 Cal.4th at 331 citing *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107; *Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355, 362. Similar to the alleged misclassification of employees as exempt in *Sav-On*, resolution of the issues of whether California labor law applies and whether McNeil's policies and practices were in violation of those laws are "likely to predominate in a class proceeding over any individualized calculations" of actual overtime hours and lost meal and rest breaks that might ultimately "prove necessary." *Sav-On*, 34 Cal.4th at 331. The defenses asserted by McNeil ("federal enclave" "sovereign immunity" and "Government Contractor") all present issues common to the class. Similarly, the issues of whether Linguists were "law enforcement officers" whose overtime compensation is governed by Government Code §19844 and whether McNeil "provided" (as opposed to "ensured") meal periods and rest breaks are common to the class.

There are individualized issues of fact as to whether an individual class member worked overtime, the amount of overtime worked, compensation previously received for overtime worked and the amount of meal breaks and rest breaks lost. However, even allowing for these individualized damage determinations, to the extent Plaintiffs are able to demonstrate that failure to provide overtime, meal breaks and rest brakes was the rule rather than the exception the court finds "a class action would be the most efficient means of resolving" the class claims. *Sav-On*, 34 Cal.4th at 330.

The court is not persuaded the variance in individual employees practices with respect to overtime, meal breaks and rest breaks preclude class certification. These practices relate to an individual class members' claim eligibility and the issue of damages. As recognized repeatedly in *Sav-On*, "a class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages." *Sav-On*, 34 Cal.4th at 333 citing *Employment Development Department v. Superior Court* (1981) 30 Cal.3d 256, 266.

We long ago recognized "that each class member might be required ultimately to justify an individual claim does not necessarily preclude maintenance of a class action." (*Collins v. Rocha*, *supra*, 7 Cal.3d at p. 238.) Predominance is a comparative concept, and "the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." (*Reyes v. Board of Supervisors*, *supra*, 196 Cal. App. 3d at p. 1278; see *Lockheed*, *supra*, 29 Cal.4th at p. 1105; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 707–710 [63 Cal. Rptr. 724, 433 P.2d 732].) Individual issues do not render class certification inappropriate so long as such issues may effectively be managed. (*Richmond v. Dart Industries, Inc.*, *supra*, 29 Cal.3d at p. 473; see also *Occidental Land, Inc.*, *supra*, 18 Cal.3d at pp. 363–364; *Washington Mutual*, *supra*, 24 Cal.4th at p. 922.)

Nor is it a bar to certification that individual class members may ultimately need to itemize their damages. We have recognized that the need for individualized proof of damages is not per se an obstacle to class treatment (*Occidental Land, Inc.*, *supra*, 18 Cal.3d at p. 363 [134 Cal.Rptr. 388, 556 P.2d 750] [home buyers' class action against developer]) and "that each member of the class must prove his 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" (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809 [94 Cal. Rptr. 796, 484 P.2d 964] (*Vasquez*) [consumers' class action against finance companies]).

. . . .

"It may be, of course, that the trial court will determine in subsequent proceedings that some of the matters bearing on the right to recovery require separate proof by each class member. If this should occur, the applicable rule ... is that the maintenance of the suit as a class action is not precluded so long as the issues which may be jointly tried, when compared to those requiring separate adjudication, justify the maintenance of the suit as a class action." (*Vasquez*, *supra*, 4 Cal.3d at p. 815; see *Lockheed*, *supra*, 29 Cal.4th at p. 1105.) And if unanticipated or unmanageable individual issues do arise, the trial

court retains the option of decertification. (*Lazar v. Hertz Corp.* (1983) 143 Cal. App. 3d 128, 144 [191 Cal. Rptr. 849]; see, e.g., *O'Connor v. Boeing North American, Inc.* (C.D.Cal. 2000) 197 F.R.D. 404.)

Sav-On, 34 Cal.4th at 334-335.

As in *Sav-On*, the evidence before the court establishes that "common issues of law and fact will predominate over individual issues" if Plaintiffs' claims are tried as a class action. *Save-On*, 34 Cal.4th at 329.

McNeil fails to establish how Plaintiff Labastida, a multiple-year employee who worked overtime, cannot adequately represent class members who worked for less than a year, or who never worked longer than an 8-hour shift, or who never worked more than a 40-hour week. The policies and procedures at issue apply to all class members, whether they worked for McNeil for one day or for the entire class period, or whether or not they worked longer than an 8-hour shift or less than a 40-hour work week. Individual issues of hours worked affect eligibility for recovery and/or the amount of damages, and, under the authorities cited above, do not preclude a finding of commonality. Rather, as Plaintiffs' evidence establishes, damages calculations for class members are ascertainable through payroll records. The records provide the number of hours each linguist worked per day and the amount of overtime paid pursuant to federal law. A simple formula can be utilized to calculate overtime wages owed pursuant to California law.

The remaining causes of action (wage statement, waiting time penalties, unfair competition, and PAGA) involve common issues to the extent each of these claims arise out of McNeil's alleged failure to pay overtime and failure to provide meal breaks and rest breaks.

As to the wage statement claim, the court finds the facts presented distinguishable from those in the case cited by McNeil, *Blackwell v. Skywest Airlines, Inc.* (S.D. Cal. 2007) 245 F.R.D. 453. In *Blackwell*, there was evidence of a wide variety of meal period policies and practices. In this case, Plaintiffs' present evidence McNeil's applied the same meal period policies and procedures to all employees. Given the uniform policies and procedures, the determination of whether class members received incorrect wage statements should be relatively easily accomplished by reference to the wage statements themselves.

- *Subclass*

As discussed above, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." *Hicks v. Kaufman & Broad Home Corp.* (2001), 89 Cal.App.4th 908, 916, citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 810-811. The complaint does not identify a Subclass. There are no allegations in the complaint relating to the proposed Subclass and no allegations regarding the releases. No cause of action is stated regarding the releases. Absent a pleading framing the issues, Plaintiffs' fail to establish common issues predominate as to the Subclass. Plaintiffs' motion for certification of the Subclass is denied, without prejudice.

- *Class representatives with claims or defenses typical of the class*

"[I]t has never been the law in California that the class representative must have *identical* interests with the class members. The only requirements are that common questions of law and fact *predominate* and that the class representative be *similarly* situated. [Citation.]" *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 citing *Classen* v. *Weller* (1983) 145 Cal.App.3d 27, 46.

"In order to be deemed an adequate class representative, the class action proponent must show it has claims or defenses that are typical of the class, and it can adequately represent the class. This is part of the community of interest requirement. (*Lockheed Martin, supra*, 29 Cal.4th at p. 1104.) Where there is a conflict that goes to the " 'very subject matter of the litigation,' " it will defeat a party's claim of class representative status. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [174 Cal. Rptr. 515, 629 P.2d 23].) Thus, a finding of adequate representation will not be appropriate if the proposed class representative's interests are antagonistic to the remainder of the class. (*In re Seagate Tech. II Securities Litigation* (N.D. Cal 1994) 843 F. Supp. 1341, 1346–1347.) "The adequacy inquiry ... serves to

uncover conflicts of interest between named parties and the class they seek to represent." (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625 [138 L. Ed. 2d 689, 117 S. Ct. 2231].) " '[A] class representative must be part of the class and "possess the same interest and suffer the same injury" as the class members.' [Citations.] To assure 'adequate' representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]" (*In re Beer Distribution Antitrust Litigation* (1998) 188 F.R.D. 549, 554.)

J.P. Morgan & Co., Inc. v. Superior Court (2003) 113 Cal.App.4th 195, 212.

The court finds Plaintiffs' claims are substantially similar to those of the putative Class. Both Plaintiffs are former employees of McNeil who were employed as Linguists during the class period. Both Plaintiffs allege they were not paid overtime and were denied meal breaks and rest breaks as required under California law. Both Plaintiffs worked in the same manner and pursuant to the same policies as the other putative Class members. Both Plaintiffs and the putative Class members' claims arise out of the same overtime, meal break and rest break policies and procedures. Plaintiffs seek the same damages as other putative Class members. There is no evidence suggesting that Plaintiffs' interests are antagonistic to those of the Class. Therefore, the court finds Plaintiff's claims are typical of the class.

- *Class representatives who can adequately represent the class*

The court finds the class representatives can adequately represent the class. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." [Citations omitted.] *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. See also, *Lerwill v. Inflight Motion Pictures, Inc.* (9th Cir. 1978) 582 F.2d 507.

"In order for the representative to adequately represent the class, the representative's attorney must be qualified, experienced and generally able to conduct the proposed litigation." Miller v. Woods (1983) 148 Cal.App.3d 862, 874. Based on Plaintiffs' counsels' declarations, the court finds Plaintiffs' counsel qualified to conduct the proposed litigation.

As discussed above, Plaintiffs' interests are co-extensive with those of the Class. Plaintiffs allege injury arising out of the same policies and procedures employed by McNeil. Based on Plaintiffs' counsel's declaration, Plaintiffs have agreed to serve as representatives, have responded to written discovery, have sat for depositions and demonstrated their commitment to obtain the best possible result for the class. Therefore, the court finds Plaintiffs can adequately represent the class.

Superiority of Class Action

Class certification is superior to individual litigation when certification allows many plaintiffs' claims to be adjudicated in a single proceeding, thereby saving time, conserving judicial resources and limiting duplication of effort. *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 714-715.

The decisions of the California Supreme Court have identified at least three types of benefits that can accrue from class treatment: Class treatment can provide redress to numerous aggrieved parties who could not otherwise maintain individual actions (*Blue Chip Stamps, supra,* 18 Cal. 3d at p. 385; *Daar, supra,* 67 Cal. 2d at pp. 714-715), foster judicial economy by avoiding " 'the possibility of repetitious litigation' " (*Richmond, supra,* 29 Cal. 3d at p. 469; *Daar, supra,* 67 Cal. 2d at pp. 714-715), and avoid unjust enrichment of a wrongdoer (*Blue Chip Stamps, supra,* 18 Cal. 3d at p. 385; *Daar, supra,* 67 Cal. 2d at p. 715).

Reese v. Wal-Mart Stores, Inc. (1999) 73 Cal.App.4th 1225, 1237-1238.

Plaintiff establishes all three benefits to class certification in this case. Each putative Class members' individual claim is relatively small and, given the reduced potential for monetary recovery, individual members may not have the ability or means to obtain redress. Any Class member choosing to pursue litigation would bring the virtually identical action as other Class members arising out of the same policies and practices engaged in by McNeil. Such duplicative actions are not conducive to judicial economy and efficiency. As in *Sav-On*, considerations of public policy also support class certification.

Labor Code section 1194 confirms "a clear public policy ... that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1429–1430 [95 Cal. Rptr. 2d 57].) As defendant's own authority reminds us, California's overtime laws are remedial and are to be construed so as to promote employee protection. (*Ramirez, supra*, 20 Cal.4th at p. 794.) And, as we have recognized, "this state has a public policy which encourages the use of the class action device." (*Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at p. 473.) " 'By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.' " (*Id.* at p. 469.)

Many of the issues likely to be most vigorously contested in this dispute, as noted, are common ones. Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues." (*Boggs v. Divested Atomic Corp.* (S.D.Ohio 1991) 141 F.R.D. 58, 67.)

Sav-On, 34 Cal.3d at 340.
In light of the common issues regarding McNeil's overtime, meal break and rest break policies, the common injuries allegedly suffered, common relief sought, and the fact the potential individual monetary recovery will be relatively small, the court finds Plaintiffs establish, "by a preponderance of evidence that the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation." *Sav-On,* 34 Cal.4th at 332.

Ronald L. Styn