

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY**

MINUTE ORDER

DATE: 11/19/2018

TIME: 08:10:00 AM

DEPT: N-29

JUDICIAL OFFICER PRESIDING: Ronald F. Frazier

CLERK: Amy Wagoner

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **JCCP4954**

CASE INIT.DATE: 10/23/2017

CASE TITLE: **BANKERS LIFE WAGE AND HOUR CASES JCCP4954 [E-FILE]**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 11/16/18 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Plaintiffs Chi-Fu Hsueh, Sherri Goldsmith and Joe Pospichal motion for class certification is granted.

Defendants' requests for judicial notice dated October 25, 2018 and November 8, 2018 are granted.

The Court overrules defendants' evidentiary objections filed on 10/25/18 relating to the declarations of Gordon W. Renneisen, Jeffrey S. Petersen, Ph.D., Steven C. Burgess, Harry G. Lewis, Ben Frymark, Sherri Goldsmith (except as to Exhibit D as set forth below), Chi-Fu Hsueh, Joe Pospichal, Mario Reina, Scott Stern and Tom States. The Court overrules the evidentiary objections to Exhibits A and B in their entirety. The Court sustains defendants' evidentiary objection to Exhibit D attached to the declaration of Sherri Goldsmith on the grounds of the secondary evidence rule (fka best evidence rule).

The Court overrules defendants' evidentiary objections filed on 11/8/18 relating to new evidence. The Court chooses to exercise its discretion and consider the evidence submitted in the reply papers as defendants have had an opportunity to respond to the new material. *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal. App. 5th 438, 449. The Court overrules defendants' evidentiary objections to the declarations of Lewis and Renneisen.

"Code of Civil Procedure section 382 authorizes a class suit 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, . . .' To obtain class certification, a party must establish an ascertainable class and a well-defined community of interest among class members. To establish a community of interest,

there must be common questions of law or fact, and the class representative must have claims or defenses typical of the class and be able to adequately represent the class." *Kavruck v. Blue Cross of California* (2003) 108 Cal.App.4th 773, 785.

The community of interest requirement involves 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." *Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at 470. Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. See *Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 386–387.

Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. The denial of certification to an entire class is an appealable order. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435-36. In the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed "unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]." *Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at p. 470; see *Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 656 ["Any valid pertinent reason stated will be sufficient to uphold the order."].

In the context of a motion for class certification, the "focus ... is on what type of questions – common or individual – are likely to arise in the action, rather than on the merits of the case." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.

The Court has carefully considered the arguments, authorities and evidence submitted by the parties and finds that class certification is appropriate under either the ABC test (*Dynamex Operations West, Inc. v. Superior Court (Lee)* (2018) 4 Cal.5th 903) or the common law test (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522). See declarations of Goldsmith, Stern, Reina, Hsueh and depositions of Habashi, Parente and Pospichal.

The Court further finds that Pospichal, Hsueh and Goldsmith are proper and adequate representatives of the class and that attorneys Harry G. Lewis and Gordon W. Renneisen are qualified counsel. See deposition testimony of Pospichal, Goldsmith and Hsueh; see also the Goldsmith declaration and the declarations of Renneisen and Lewis.

Overall, the Court believes that the overall "efficiencies and practicalities" of this case would be best served by class certification. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.

Therefore, the Court will certify both the Class and the Subclass.

The Class period shall be July 23, 2010 through November 19, 2018. The Subclass period shall be July 23, 2011 through November 19, 2018. The Court will conduct a status conference on January 25, 2019 at 1:30 pm in Department 65 of the Hall of Justice (Central Division of the San Diego Superior Court, 330 West Broadway, San Diego, CA 92101).

The Status Conference (Civil) is scheduled for 01/25/2019 at 01:30PM in Department C-65.

IT IS SO ORDERED.



Judge Ronald F. Frazier