

E-Served: Jun 15 2018 9:38AM PDT Via Case Anywhere
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/15/18

DEPT. SSC12

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
M. MIRO, C.A.

DEPUTY CLERK

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

BC637677

Plaintiff

Counsel

ALBINO LUGO-RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

MY WORLD ENTERPRISES INC ET AL

Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER OF JUNE 13, 2018;

The Court, having taken the Motion for Plaintiffs, Albino Lugo-Rodriguez and Elizabeth Villanueva, for Class Certification under submission on June 13, 2018, now issues the following ruling:

MOTION FOR CLASS CERTIFICATION

COURT'S RULING:

Plaintiff's Motion is granted in part.

The court certifies a class consisting of: "All current and former California hourly non-exempt employees who work or worked for Defendant in the State of California from and after December 16, 2014 through the date of judgment." The class is certified for the purpose of litigating the asserted Labor Code violations with respect to (1) failure to pay business expenses of employees with respect to the "hot schedules" application and with respect to uniforms; and (2) derivative Labor Code claims (failure to provide accurate itemized wage statements and pay all wages upon termination).

The Motion is denied in all other respects.

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NATURE OF PROCEEDINGS:

A. Class Period

A class action settlement that included both named plaintiffs in this case released wage and hour claims against Defendant up to and including December 15, 2014. Therefore, the named class representatives have no claims typical of the class prior to that date. The class period therefore begins December 16, 2014.

B. Failure to pay business expenses

There are substantial questions as to whether Plaintiffs can prevail on the merits as to whether the uniform policy of Defendant was lawful. The black pants and the non-slip shoes that Defendant required employees to wear may not be the sort of uniform for which an employer is required to reimburse employees under the applicable Wage Order. However, the evidence tends to show that the employer treated all employees in a similar manner with respect to the uniform items provided, payment for the required uniform and maintenance thereof. The potential outcome of a claim is not a reason for a court to refuse to certify the class. A class certification motion does not call on the court to make a merits determination.

Similarly, in ruling on class certification the court is not called upon to consider how the

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Defendant's policy with respect to access to the "hot schedules" program should be interpreted or to determine whether employees were required to purchase the application, as opposed to accessing the program on a computer in the workplace. If the application was required to be purchased it is an expense that was imposed on all employees, and common issues predominate as to the determination of whether reimbursement of that expense was required.

The claims of the named plaintiffs are typical of those of the class with respect to alleged failure to pay business expenses as to uniforms and the "hot schedules" application. The class is numerous and ascertainable. It appears to this court that the named plaintiffs and their counsel will adequately represent the class. Because of the apparently small amounts of money involved for each employee as an individual, a class action is a superior remedy for pursuit of the claims for failure to pay business expenses.

C. Failure to pay wages for off-clock work time employees spent being checked for uniform compliance and establishing a "bank" before clocking in.

It appears from the evidence presented that there are sufficiently common issues of fact and law as to whether employees were required to wait at their

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workplace in order to be checked to determine whether they were in proper uniform before being allowed to clock in and to begin being paid. Defendants' written policy says as much. With respect to front-of-house employees, there is evidence that all such workers were required to establish a "bank" from which to make change before clocking in.

However, with respect to these claims, during the class period the named plaintiffs are not similarly situated to the rest of the members of the proposed class because the named plaintiffs were working as non-exempt managers and were required to perform the uniform check for other employees. Villanueva was required to ensure that front-of-house employees established their "bank." Although the named class representatives were subject to the uniform compliance check before they were managers, they do not have claims for themselves during the class period with respect to having to wait for a uniform check or to establish a "bank." Named class members must have claims that are typical of the class they seek to represent. The typicality requirement is absent with respect to the off-the-clock uniform compliance check claim (referred to as doffing and donning) and the off-the-clock time spent to create a "bank." Class certification therefore is denied as to these claims.

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D. Late Meal and Rest Breaks

Plaintiffs contend that the company policy on meal breaks is incorrect or at least is ambiguous or conflicting as to when an employee is due a first meal break. Plaintiffs contend that the company policy can be read to deny a meal break until the employee has worked a complete period of five hours. Plaintiffs contend that the company uniformly enforced a company policy of refusing a meal break until a full five hours were worked. However, the evidence offered does not support a conclusion that the company in practice uniformly denied employees the benefit of a meal break until the employees worked a completed period of five hours.

To the contrary, the time records proffered for Plaintiffs Villanueva and Lugo-Rodriguez show that they did received meal breaks before they had worked a completed period of five hours. Exhibit 3 to the Perez Declaration, containing Villanueva's timesheets, shows that she took a half hour break within three hours from the start of her shift; within four hours of the start of her shift; and before the end of the fifth hour from starting her shift. Plaintiff Lugo-Rodriguez's timesheets, Exhibit 12 to the Perez Declaration, show that he took a meal break within three hours of the start of his shift on two occasions; on the other occasions he appears to have opted for a paid meal break.

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Plaintiffs assert that Defendant requires employees to sign on-duty meal period waiver agreements which require employees to waive their meal period regardless of the length of their shifts. The evidence submitted does not support this assertion.

Plaintiffs also offer the declarations of five employees who state that they "typically" received late or interrupted meal and rest breaks. However, all of these employees worked at the Long Beach location and stated that the failure to receive timely meal and rest breaks resulted from insufficient staffing, rather than from a company-wide policy. Plaintiffs seek to represent a class of workers from five restaurants. Evidence from five employees at one restaurant is not sufficient to show a general policy affecting all class members with respect to failure to provide timely and uninterrupted meal and rest breaks. Plaintiffs' meal and rest break claims lack sufficient commonality to support litigation in a class setting.

E. Travel Time and Time Spend Responding to Emails

Plaintiffs complain that they were required to respond to emails outside of work hours without being paid and that they were required to spend time traveling between locations to pick up supplies. The

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only evidence of these responsibilities is from the named plaintiffs, who had these responsibilities because they were managers. There is not evidence that these claims are common to the class. To the extent that Plaintiffs are asking for gas and mileage for employees who are asked to cover shifts at locations other than their primary locations that require additional travel time, Plaintiffs have provided no evidence that any employees have worked at locations other than their primary locations that required additional travel time.

Counsel for the Plaintiffs shall provide a draft class notice to Defendants within 14 days.

A Further Status Conference is set for July 19, 2018, at 10:30 a.m. in Department 12, Spring Street Courthouse. The parties shall file a joint status report five days prior to that date that should address any disputes as to the content of the proposed class notice.

The Clerk shall give notice by posting of this Minute Order on www.CaseAnywhere.com.

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

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NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the 06/15/18 Minute Order entered herein, on 06/15/18, upon each party or counsel of record in the above entitled action, by electronically serving the document on Case Anywhere at www.CaseAnywhere.com on 06/15/18 from my place of business, Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012 in accordance with standard court practices.

Dated: June 15, 2018

Sherri R. Carter, Executive Officer/Clerk

By: _____, Deputy Clerk

J. Manrique

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