


FILED
San Francisco County Superior Court

FEB 18 2020

CLERK OF THE COURT.

BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

TANIKA TURLEY, ET AL.,

Plaintiffs,

v.

CHIPOTLE SERVICES, LLC, ET AL.,

Defendants.

Case No. CGC-15-544936

ORDER RE PROPOSED INTERVENORS
JOSH BARBER AND JOSE DELGADO'S
EX PARTE APPLICATION RE: REQUEST
TO INTERVENE

INTRODUCTION

The above entitled matter came on regularly for hearing on an ex parte basis on Tuesday, February 11, 2020. Counsel for the parties were present. No court reporter was present and the Court did not take the bench. The matter was briefed to Department 304's staff attorney. Having reviewed and considered the written submissions of all parties and being fully advised, the Court denies the request to intervene.

BACKGROUND¹

The present action is a certified class action. Plaintiff Tanika Turley secured an order granting

¹ The unopposed requests for judicial notice of various court-filed documents are granted. (Proposed Intervenor's Request for Judicial Notice, Exs. 1-10; Chipotle's Request for Judicial Notice, Ex. A.) Chipotle's "evidentiary objection" to a statement made in Proposed Intervenor's brief is disregarded, a brief is not evidence and the response thereto should be made in a brief, evidentiary objections should not be used as an opportunity to elaborate on arguments that can be made in the briefing. Chipotle's hearsay objection is sustained as to Mr. Krivis' statements. (See Chipotle Objections ¶ 2.) However, that ruling is immaterial to the resolution of this motion.

1 certification of a wage statement class. (Nov. 2, 2018 Order, 23-24.) Her motion for class certification
2 was otherwise denied. (*Id.* at 24.) Among other things, the Court ruled that Turley could not adequately
3 represent managerial employees on her meal and rest period theories because of conflicts of interest
4 between managerial and non-managerial employees. (*Id.* at 22.)

5 After certification, Turley and Chipotle pursued settlement. On January 10, 2020, the parties
6 submitted a stipulation and proposed order to permit the filing of a Second Amended Complaint. The
7 SAC was filed on January 15, 2020. Through the SAC, Susan Carrithers was added as a second plaintiff.
8 On January 31, 2020, Plaintiffs filed a motion for preliminary approval of a class action settlement that
9 extended to both the certified wage statement claims, pursued on behalf of about 7,000 class members,
10 and other wage and hour claims pursued on behalf of other putative class members, of which there are
11 about 70,000. (See Alan Harris Preliminary Approval Decl., Ex. 1 at 3-4.)

12 The Proposed Intervenors, Josh Barber and Jose Delgado, are plaintiffs in a putative wage and
13 hour class action filed on behalf of Chipotle's managerial employees in Orange County Superior Court.
14 (See Proposed Intervenors' Request for Judicial Notice, Exs. 3-4.) Delgado was compelled to arbitrate his
15 claim and the case is stayed pending completion of the arbitration. (Chipotle's Request for Judicial
16 Notice, Ex. A.)

17 Turley petitioned for coordination of her action and the *Barber* action. (See *id.* at Ex. 7.) That
18 petition was denied on November 21, 2017. (See *ibid.*) In denying the petition, the Coordination Motion
19 Judge was concerned if the managerial employees in the *Barber* action were combined with the
20 employees in the *Turley* action, as Turley herself was not a manager. (*Ibid.*)

21 On February 10, 2020, Barber and Delgado filed an ex parte application to intervene in this action.
22 Plaintiffs and Chipotle filed written oppositions. The parties appeared at the hearing through counsel.

23 LEGAL STANDARD

24 California Code of Civil Procedure § 387(d) provides:

25 (d)(1) The court shall, upon timely application, permit a nonparty to intervene in the
26 action or proceeding if either of the following conditions is satisfied:

27 (A) A provision of law confers an unconditional right to intervene.

28 (B) The person seeking intervention claims an interest relating to the property or
transaction that is the subject of the action and that person is so situated that the
disposition of the action may impair or impede that person's ability to protect that

1 interest, unless that person’s interest is adequately represented by one or more of the
2 existing parties.

3 (2) The court may, upon timely application, permit a nonparty to intervene in the action
4 or proceeding if the person has an interest in the matter in litigation, or in the success
5 of either of the parties, or an interest against both.

6 (Cal. Code of Civ. Proc., § 387(d).) The petition for coordination “shall include a copy of the proposed
7 complaint in intervention or answer in intervention and set forth the grounds upon which intervention
8 rests.” (Cal. Code of Civ. Proc., § 387(c); see also *Sutter Health Uninsured Pricing Cases* (2009) 171
9 Cal.App.4th 495, 513 [trial court properly denied motion to intervene because prospective intervenor
10 failed to prepare a complaint in intervention].)

11 “[T]o establish mandatory intervention, a proposed intervenor must show (1) ‘an interest relating
12 to the property [or] transaction which is the subject of the action’ ’; (2) the party is ‘so situated that the
13 disposition of the action may as a practical matter impair or impede that person’s ability to protect that
14 interest’ ’; and (3) the party is not adequately represented by existing parties.” (*Edwards v. Heartland
15 Payment Sys., Inc.* (2018) 29 Cal.App.5th 725, 732.)

16 The trial court has discretion to permit a nonparty to intervene where the following factors are
17 met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest
18 in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the
19 intervention outweigh any opposition by the parties presently in the action. (See, e.g., *Edwards*, 29
20 Cal.App.5th at 732 n.3, 736; compare Cal. Code of Civ. Proc., § 387(b)-(d) (2019); with Cal. Code of
21 Civ. Proc., § 387(a) (2017).)

22 **DISCUSSION AND ANALYSIS**

23 **I. Mandatory Intervention**

24 Proposed Intervenors argue that the proposed settlement between Plaintiffs and Chipotle is a
25 collusive attempt to settle claims that were beyond the scope of the certified class claims, including
26 managerial claims, below their fair value. (See Application, 9-12.) Proposed Intervenors contend that the
27 settlement will, in particular, impede and impair the interests of the managerial employees the Proposed
28 Intervenors seek to represent, as well as Proposed Intervenors’ ability to represent them. (*Id.* at 9-10.)
Proposed Intervenors contend that the inadequacy of the settlement shows that they are not being fairly
represented by the parties in this case. (*Id.* at 12.)

1 As confirmed during the ex parte process, Proposed Intervenor have one goal: to challenge the
2 settlement. (*Id.* at 14:13-14.) Proposed Intervenor are not entitled to mandatory intervention on that
3 basis because Proposed Intervenor can protect their interest by opt outing or objecting to the settlement
4 and because the Court, which bears a fiduciary duty to the class, will review the proposed settlement to
5 prevent fraud, collusion, or unfairness to the class. (See *Edwards*, 29 Cal.App.5th at 733-35 [“The trial
6 court found the *Torres* plaintiffs’ ability to protect their interest would not be practically impaired or
7 impeded by the settlement in *Edwards* because they could opt out of or object to the settlement. On this
8 record, that conclusion was manifestly correct. Despite all of the *Torres* plaintiffs’ various arguments,
9 they truly only seek one goal—to challenge the adequacy of the settlement in *Edwards*. If they are
10 unhappy with the settlement, they can opt out and fully preserve their causes of action. [Citation.] If they
11 do not want to opt out, they may object to the class settlement and point out why they believe it is unfair
12 or inadequate. Indeed, as noted above, they have already filed extensive objections to the settlement both
13 before they sought to intervene and after the court denied their motion. With these available options,
14 formal intervention is unnecessary. [¶] Presuming they remain members of the class, the *Torres* plaintiffs
15 will receive additional protection from the trial court itself, which must approve any settlement in order to
16 prevent fraud, collusion or unfairness to the class. [Citation.] Ultimately, in the final analysis it is the
17 court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given
18 the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of
19 attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary
20 responsibility as guardians of the rights of the absentee class members when deciding whether to approve
21 a settlement agreement. [Citation.] In denying intervention, the trial court here recognized this fiduciary
22 duty to evaluate the fairness of the settlement in *Edwards*. ... The *Torres* plaintiffs’ failure to show their
23 own ability to protect their interests would be practically impaired or impeded by the settlement defeats
24 mandatory intervention”] [internal quotations and citations omitted].) Accordingly, mandatory
25 intervention is denied.²

26
27 ² The discussion in *Edwards* applies equally here. At oral argument, Proposed Intervenor asserted that
28 the right to object is inadequate to protect their interests because their issue is specific to the release –
Proposed Intervenor would be satisfied if the release did not extend to managerial claims – and Proposed
Intervenor do not believe they can raise this concern in an objection. The Court will evaluate the scope
of the release in the course of its fairness review and will evaluate, among other things, whether the

1 **II. Permissive Intervention**

2 Proposed Intervenor argue that: (1) Proposed Intervenor followed all proper procedures; (2)
3 Proposed Intervenor have a direct and immediate interest in this litigation; (3) Allowing Proposed
4 Intervenor will not enlarge the issues in this action;³ and (4) Proposed Intervenor's interest in opposing
5 the settlement outweighs any opposition to intervention. (Application, 13-15.) In opposition, Plaintiffs
6 and Chipotle argue that Proposed Intervenor will have ample opportunity to protect their interests in the
7 settlement approval process such that allowing a more active role is likely to serve no purpose other than
8 to delay the settlement approval proceedings. (See Plaintiffs Opposition, 13; Chipotle Opposition, 6.)
9 The Court finds that the reasons for the intervention do not outweigh any opposition by the parties
10 presently in the action.⁴ Accordingly, permissive intervention is denied.

11 As noted above, this case is much like *Edwards*. In *Edwards*, the Court of Appeal affirmed the
12 denial of permissive intervention because "the trial court could have reasonably concluded that the *Torres*
13 plaintiffs' reasons for intervening in light of their right to opt out or object to the settlement did not
14 outweigh the objections by the other parties." (*Edwards*, 29 Cal.App.5th at 736.) As discussed above, the
15 Court finds that Proposed Intervenor's interests will be adequately protected in the settlement approval
16 process, including by their right to raise their concerns through an objection or to opt out of the settlement
17 to preserve their claims. The Court credits the opposition arguments that permitting Proposed Intervenor
18 to intervene in this action is likely to delay the settlement approval proceedings. In particular, in the
19 present posture, where preliminary approval has not yet been granted, there is a substantial risk that the

20
21 settlement secures fair consideration for the class' release considering, *inter alia*, the value of the claims
22 and strength of the defenses thereto. Proposed Intervenor can raise any fairness issue, including their
23 challenge to the release, in an objection asking the Court to deny settlement approval, assuming
24 preliminary approval is granted in the first place.

25 ³ During the ex parte process, Proposed Intervenor conceded that the Proposed Complaint in Intervention
26 was inconsistent with their representation that they "seek to intervene for only the limited purpose of
27 opposing [Plaintiffs'] overbroad class release[.]" explaining that the Proposed Complaint in Intervention
28 could be revised to match the argument in the briefing. (Compare Application, 14:13-14; with Proposed
Order, Ex. A.) Based on this explanation, the Court ignores the issues that would be raised if the
Proposed Complaint in Intervention were filed as drafted.

⁴ If preliminary approval is granted and Proposed Intervenor elect to object to the settlement, the Court
may entertain a narrowly tailored motion to intervene to preserve their right to appeal. (See *Hernandez v.*
Restoration Hardware, Inc. (2018) 4 Cal.5th 260, 273-74 [objector must intervene or file a motion to
vacate the judgment to perfect the right to appeal]; but see *Edwards*, 29 Cal.App.4th at 736.) However, it
is premature to express an opinion on such a motion except to note that the ruling here is without
prejudice to the filing of such a motion.

1 proceedings will be delayed and that the parties' litigation costs will be increased, without a
2 corresponding benefit, should Proposed Intervenor be permitted to intervene in this action.

3 **III. Timeliness**

4 Consistent with the foregoing discussion, the Court does not deny the request on timeliness
5 grounds.

6 **IV. Barber Stay**

7 Plaintiffs and Chipotle both argue that Proposed Intervenor violated the stay in *Barber* by
8 requesting intervention in this case. (Plaintiffs' Opposition, 9, 9 n.6; Chipotle's Opposition, 3.) Plaintiffs
9 and Chipotle cite the same language, albeit from different cases, discussing the vestigial jurisdiction a trial
10 court retains over an action after granting a petition to compel arbitration. (Plaintiffs' Opposition, 9, 9
11 n.6; Chipotle's Opposition, 3.) Here, consistent with their representations during the ex parte process,
12 Proposed Intervenor seek only to oppose the proposed settlement in this action, they do not seek to evade
13 a stay by litigating the *Barber* action in this Court. In any event, Plaintiffs and Chipotle have not
14 established that this Court has authority to enforce a stay entered by the Orange County Superior Court.
15 Accordingly, the Court does not rely on the *Barber* stay in denying the request.

16 **CONCLUSION AND ORDER**

17 The Court denies the request to intervene.⁵

18 IT IS SO ORDERED.

19
20 Dated: February 18, 2020



21 Anne-Christine Massullo
22 Judge of the Superior Court
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28 ⁵ As noted above, denial is without prejudice to a subsequent motion to intervene to perfect the right to
appeal a judgment finally approving the settlement. (See Footnote 4, *supra*.)

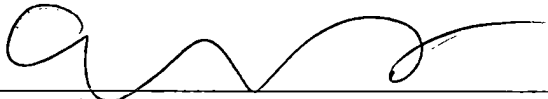
CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 18, 2020, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 18, 2020

T. Michael Yuen, Clerk

By: 

Ericka Larnauti, Deputy Clerk