

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-07-2498-MWF (RCx)

Date: July 16, 2012

Title: Shannon Paige v. Consumer Programs Inc. et al.

Present: The Honorable MICHAEL W. FITZGERALD

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|--------------|-------------------------|----------|
| Rita Sanchez | Not Reported | N/A |
| Deputy Clerk | Court Reporter/Recorder | Tape No. |

Attorneys Present for Plaintiffs:
Not Present

Attorneys Present for Defendants:
Not Present

Proceedings (In Chambers): ORDER GRANTING IN PART PLAINTIFFS’
AMENDED MOTION FOR CLASS
CERTIFICATION [75]

This matter is before the Court on Plaintiffs’ Amended Motion for Class Certification (Docket No. 75) and Supplemental Brief for Class Certification. (Docket No. 112). The Court held a hearing on June 13, 2012, and ordered that the parties provide supplemental briefing on the question of common proof. (Docket No. 116). For the reasons set forth in this Minute Order, the Court GRANTS IN PART Plaintiffs’ Amended Motion for Class Certification.

I. PROCEDURAL BACKGROUND

Plaintiffs Shannon Paige, Monica Nuchols, and Shamshed Reener, as individuals and on behalf of all others similarly situated (“Paige”) filed the Amended Motion for Class Certification (“Amended Motion”) on November 14, 2008. The Amended Motion sought to represent a class of similarly situated current and former employees of defendant Consumer Programs, Inc. (“CPI”) on two sets of claims, as previously categorized by the Court—off-the-clock claims and meal and rest break claims. On January 7, 2009, the Court (the Honorable Judge Florence-Marie Cooper) issued an Order Denying in Part Plaintiffs’ Amended Motion for Class Certification and Staying Action Pending California Supreme Court Ruling on Meal and Rest Break Issues (the “Stay Order”). (Docket No. 88).

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The Stay Order denied class certification of Paige’s off-the-clock claims and stayed decision on class certification of Paige’s meal and rest break claims pending the California Supreme Court’s decision in *Brinker Restaurant Group v. Superior Court* (“*Brinker*”). (*Id.*). At that time, the Court determined that Paige’s meal and rest break claims satisfied the requirements of Rule 23(a). (Stay Order at 5-6). The Court stayed the narrow question, pending *Brinker*, whether Paige’s meal and rest break claims satisfied the requirements of Rule 23(b)(1) or, in the alternative, Rule 23(b)(3). This is the issue currently before the Court, and the question on which the parties submitted supplemental briefing pursuant to the Court’s Order Lifting Stay and Setting Schedule, dated April 13, 2012. (Docket No. 108).

II. IMPACT OF *BRINKER v. SUPERIOR COURT*

The parties disagree about the meaning of *Brinker* and its impact on the Court’s assessment of the adequacy of the purported class under Rule 23(b)(1) and (3). As a result, it is important for the Court to clarify the import of the majority opinion in *Brinker* as it applies to this case. The portion of the *Brinker* decision relevant here examined whether, when assessing meal and rest break claims under California law, “individual questions or questions of common or general interest predominate.” *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1017, 139 Cal. Rptr. 3d 315 (2012). This determination is relevant to the analysis of class sufficiency. Fed. R. Civ. P. 23(b)(3) (“the questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”)

The California Supreme Court in *Brinker* allowed for the possibility that meal and rest break claims could predominately feature questions of general interest. The *Brinker* Court ultimately held that, under California law, “an employer’s obligation is to relieve its employee of all duty, with the employee thereafter at liberty to use the meal period for whatever purpose he or she desires.” *Brinker*, 53 Cal. 4th at 1017. The employer’s duty is not to ensure that no work takes place during a given period, but to provide what is a substantively meaningful break. *See generally id.* The employer satisfies this obligation to

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provide a substantive break where the employee “(1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period.” *Id.* at 1036. Additionally, the *Brinker* court observed that an “employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” *Id.* at 1040.

The *Brinker* court did not elaborate on every possible form of common proof that may satisfy a predominance assessment, but explained that, where it is alleged with support that common, uniform policies consistently applied resulted in the purported violations, class treatment is appropriate. *Id.* at 1033. Because the plaintiff in *Brinker* alleged such a uniform policy with regard to rest breaks, the *Brinker* court determined that the rest break claims could proceed on a class-wide basis. *Id.* at 1033.

Paige’s meal and rest break claims allege the existence of various uniform policies that were consistently applied to purported class members, effectively denying them the ability to take sufficient and consistent rest and meal breaks. (Amended Motion at 9-16). Each declaration submitted in support of the Amended Motion notes that CPI regularly scheduled purported class members for shifts during which they were the only employees on the premises. (Docket No. 76-2). CPI allegedly had uniform policies that customers could not be turned away and employees could not leave the business operations unattended during open hours. (*Id.*).

Taken together, these policies allegedly resulted in working conditions, consistent across CPI’s establishments, in which CPI did not “relinquish control” of purported class members such that they were “at liberty to use the meal period for whatever purpose” they desired. *Brinker*, 53 Cal. 4th at 1017, 1034. These claims may be subject to common proof whereby Paige shows the existence of the uniform policies and their consistent application. At the hearing on this Motion, the Court ordered supplemental briefing as to whether the proof of corporate-wide policies would predominate in a class trial.

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In this briefing, Paige contends that certification is appropriate because the Plaintiffs will rely on common proof of corporate policies that led to missed meals and breaks. (Docket No. 118). Paige points to a number of corporate policies that allegedly rendered meaningful meal and rest breaks a rare occurrence, and details various forms of common proof that Plaintiffs intend to rely on. This proof extends beyond employees scheduled to work alone where corporate records show break-free schedules of multiple employees working on separate photo sessions. As a result, Paige's meal and rest period claims are appropriate for class treatment under Federal Rule of Civil Procedure 23(b)(3). Questions of fact and law common to the class predominate; Paige has shown evidence of common proof to be used at trial; and class treatment is superior to individual adjudication as it will be more efficient and fairer to the parties.

The Court reviewed Defendants' Notice of New Authority in Support of Defendant's Opposition to Plaintiffs' Motion for Class Certification. (Docket No. 120). As the parties are likely aware, this Court is not bound by decisions issuing from other district courts. *See, e.g., Hart v. Massanari*, 266 F. 3d 1155, 1174 (9th Cir. 2001). Nevertheless, the Court reviewed the order and the Court's reasoning with respect to certifying the class is unchanged.

Accordingly, the Court GRANTS IN PART Plaintiffs' Amended Motion for Class Certification with respect to the meal and rest break violation claims previously stayed by the Court.

IT IS SO ORDERED.

_____: N/A
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