UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-8313-GW(Ex)	Date	May 1, 2017
Title	*Vardan Karapetyan v. ABM Indus. Inc., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Katie Thibodeaux	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Michael B. Adreani Marina N. Vitek	Bradley J. Hamburger Theane Evangelis

PROCEEDINGS: **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [63]**

Court and counsel confer. The Tentative circulated and attached hereto, is adopted as the Court's Final Ruling. Plaintiff's Motion is DENIED WITHOUT PREJUDICE. The Court sets a hearing on amended motion for June 5, 2017 at 8:30 a.m. All final documents will be filed by noon on May 23, 2017.

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Initials of Preparer JG

Karapetyan v. ABM Indus. Inc., et al., Case No. CV-15-8313 GW (Ex)
Tentative Ruling on Motion for Preliminary Approval of Settlement

Vardan Karapetyan ("Plaintiff") moves for certification of a class for settlement purposes only and preliminary approval of a class action settlement he has reached with defendants ABM Industries Incorporated, ABM Security Services, Inc., ABM Onsite Services – West, Inc., and ABM Onsite Services, Inc. (collectively "Defendants") in this action filed on October 23, 2015. The case involves alleged violations of California's Labor Code and Business and Professions Code involving the failure to pay wages (including overtime wages), the failure to provide meal and rest breaks, the failure to timely pay wages at termination, and the failure to provide accurate wage statements. *See* First Amended Class Action Complaint ("FAC"), Docket No. 27. Jurisdiction over this case is founded on diversity pursuant to the Class Action Fairness Act.

Plaintiff has not yet obtained class certification in this case. Because the Court does not believe, at this time, that Plaintiff has demonstrated a sufficient basis for concluding that a class can be certified, the Court will not now reach the question of whether the settlement is sufficiently "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2), to warrant preliminary approval.

Plaintiff seeks certification, for settlement purposes, under Fed. R. Civ. P. 23(a) and 23(b)(3). The Court has no qualms with respect to Plaintiff's showing as to numerosity (there are apparently over 7,000 class members, *see* Adreani Decl. (Docket No. 63-2) ¶ 14), *see* Fed. R. Civ. P. 23(a)(1), commonality (certainly there are at least *some* common questions of fact and law[1]), *see* Fed. R. Civ. P. 23(a)(2), adequacy (there is no apparent reason to question the effort and conflict-free status of Plaintiff or his counsel, *see* Adreani Decl. ¶¶ 18, 20-21), *see* Fed. R. Civ. P. 23(a)(4), and that class treatment would be "superior" to other methods of adjudicating the controversy because any class member wishing to prosecute his or her own action could opt out, there is no information suggesting that class members have already brought other individual actions

[1] For instance, the question of *whether* Defendants had a company-wide policy or practice that violated the various provisions of the Labor Code is a common question of both fact and law. *See also* Adreani Decl. ¶ 15.

in connection with the conduct alleged against Defendants for the time period in question (other than a small overlap with *Augustus v. ABM Security Services, Inc.*, No. S224853, see Adreani Decl. ¶¶ 2, 5, 17), and there is no information suggesting that it would be for some reason undesirable to concentrate this litigation in this forum, *see* Fed. R. Civ. P. 23(b)(3).

Plaintiff asserts typicality (*see* Fed. R. Civ. P. 23(a)(3)) is present because all of the class members allege the same claims which arise from the same course of conduct. However, even the typicality-related authority he relies upon in his supporting brief indicates that this requirement is satisfied "when each class member's claim arises from the same course of events," and that it may be established if similar injuries "result from the same injurious course of conduct." Docket No. 63-1, at 14:16-23 (quoting *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011), and *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001)). As noted further below, Plaintiff has not made that showing here.

Plaintiff also argues that common questions of law and fact predominate (*see* Fed. R. Civ. P. 23(b)(3)) because his (and the putative class's) claims can be determined by company-wide policies and procedures. But Plaintiff admits that Defendants have taken the position that their policies are compliant with the law, and any violations of meal and rest break requirements are *not* the result of a company-wide policy or practice. *See* Adreani Decl. ¶¶ 6-7. While "Plaintiff's Counsel believes that the extensive discovery specific to this action actually supports class certification," *id.* ¶ 7, and Plaintiff's counsel states in his declaration that "[u]nderlying the[] basic common questions [at issue in this case] is a common nucleus of operative facts pertaining to [Defendants'] company-wide policies and procedures constituting a standard course of conduct which is common to all class members," *id.* ¶ 15, Plaintiff does not explain what *evidence* supports these assertions. Plaintiff might be able to survive a *motion to dismiss* with the *assertion* that such common practices occurred, but we are now at the stage where we are tasked, in part, with assessing whether he can *actually satisfy* the requirements of Federal Rules 23(a)(3) and (b)(3).

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast Corp. v. Behrend*, 133

S.Ct. 1426, 1432 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). "To come within the exception, a party seeking to maintain a class action 'must affirmatively demonstrate his compliance' with Rule 23." *Id.* (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)); *see also Kurihara v. Best Buy Co., Inc.*, No. C 06-01884 MHP, 2007 WL 2501698, *10 (N.D. Cal. 2007) ("[A] mere allegation of a company-wide policy does not compel class certification."). Unless and until Plaintiff can better substantiate how the typicality and predominance requirements would be satisfied here by way of evidence supporting that conclusion or case law supporting the alternative conclusion that he need *not* provide such evidence for purposes of a settlement-only certification, the Court must deny the current motion without prejudice.[2]

[2] In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court ruled that, in connection with a request for a settlement-only class certification, "a district court need not inquire whether the case, if tried, would present intractable management problems,…[b]ut other specifications of the Rule – those designed to protect absentees by blocking unwarranted or overbroad class definitions – demand undiluted, even heightened, attention in the settlement context." *Id.* at 620; *see also id.* at 621 ("Subdivisions (a) and (b) [of Rule 23] focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives. That dominant concern persists when settlement, rather than trial, is proposed.").