SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 10/05/2009 Time: 10:00:00 AM Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Kathleen Sandoval

Bailiff/Court Attendant:
ERM:

Case Init. Date: 09/29/2006

Case No: GIC873193 Case Title: POSADAS-ROMESBERG vs 24 HOUR FITNESS USA INC

Case Category: Civil - Unlimited Case Type: Misc Complaints - Other

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Event Type: Motion Hearing to Certify/Decertify Class Action
Moving Party: AMARAPOSADAS-ROMESBERG, GLORIAALBARAN
Causal Document & Date Filed:Motion - Other, 08/07/2009

Appearances:

The Court, having taken the above-entitled matter under submission on 10/02/2009 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on plaintiffs Amara Posadas-Romesberg ("Posadas-Romesberg") and Marcus Escow-Fulton's ("Escow-Fulton") (sometimes collectively "Plaintiffs") motion for class certification as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

Defendant 24 Hour Fitness USA, Inc.'s ("Defendant") Evidentiary Objections. The Court rules as follows:

Trush Declaration. The objections to paragraphs 15 (Exhs. M, O), 16 (Exh. S), 17 (Exhibit T), 21, 23-24 are overruled.

Posadas-Romesberg Declaration. The objections to paragraphs 4-5 are overruled.

Plaintiffs' Evidentiary Objections. The objection to paragraph 2, lines 7-8 and Exh. A, p. 2 are overruled.

Pursuant to Code of Civil Procedure section 382, a party seeking class certification must establish the existence of an ascertainable class and a well-defined community of interest among the class members.

As to the issue of ascertainability, Defendant did not address it in its opposition. Therefore, the Court assumes that it has conceded this point. The issue of numerosity is encompassed within this element.

Well-Defined Community of Interest.
Commonality. The test of predominance is whether the common issues would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance, [so] that if a class suit were not permitted, a multiplicity of legal actions dealing with identical basic issues would be required in order to permit recovery by each [absent class member]." (Vasquez v. Super. Ct. (1971) 4

Cal.3d 800, 810.) "[C]ourts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question." (Lewis v. Robinson Ford Sales, Inc. (2007) 156 Cal.App.4th 359, 367.)

Plaintiffs allege the following questions of law and fact common to the entire class: (1) whether Defendant's "session rate," under which it compensated all class members satisfies the requirements of California law for a piece-rate basis of compensation, (2) whether class member should have been compensated for their required attendance at Xpedition courses, third party certification courses, and CPR certification courses, (3) whether business expenses should have been reimbursed by Defendant, and (4) whether Defendant's wage statements satisfied the legal requirements of the Labor Code.

Defendant contends that the proposed class cannot be certified since individualized inquiries would need to be made as to each of the above noted issues.

As to the first issue, Plaintiffs correctly noted in their reply that the relevant inquiry is whether the legal issue may be determined based on predominant questions of law and fact and not whether Defendant's session rate was legal. Plaintiffs presented evidence (i.e., Defendant's PMK testimony, manuals, compensation plans, and position descriptions) to show that common classwide evidence exists. (Trush Dec., Exhs. K-O.) Furthermore, Plaintiffs note that Defendant's written policy materials, which were provided to all GXIs, did not properly define the piece (i.e., the particular tasks to which the session rate applies). Thus, whether Defendant communicated the definition of the piece to the GXIs can be determined on a classwide basis.

As to the second issue, "[a]ttendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met; [para.] (a) attendance is outside of the employee's regular working hours; [para.] (b) attendance is in fact voluntary; [para.] (c) the course, lecture, or meeting is not directly related to the employee's job; and [para.] (d) the employee does not perform any productive work during such attendance." (29 C.F.R. § 785.27; Wilson v. County of Santa Clara (1977) 68 Cal.App.3d 78, 87.) Plaintiffs presented evidence that Defendant maintains records of attendees and at Xpedition, national certifications, and CPR certifications. (Trush Dec., Exh. C (Pilney Depo.) 143:16-144:4, 644:4-7.)

With respect to the first criteria, as noted above, objective common evidence exists to show that some of the GXIs attended Xpedition during regular working hours. This element of the four part test can be determined by comparing the Xpedition schedules with the GXIs schedules.

With respect to the second criteria, Defendant denies that it had a corporate policy requiring GXIs to attend Xpedition and/or certification courses. Plaintiffs dispute this contention. Plaintiffs contend that they provided substantial evidence (Defendant's PMK deposition, job descriptions, and form evaluations) of the existence of a uniform corporate policy requiring third party and CPR certifications and Xpedition attendance. (Trush Dec., Exh. C (Pilney Depo.), 192:2-23, 199:2-16, 208:19-209:7, 224:18-22, Exhs. M, N, O.) Under Sav-On Drug Stores v. Superior Court (2004) 34 Cal.4th 319, 329-330, the California Supreme Court held that a reasonable trial court could conclude that a uniform policy existed even though disputed by Defendant.

With respect to the third criteria, Plaintiffs contend that taking an Xpedition class to learn the specifics of a new class or format is not training for a new job or additional skill. They also presented evidence to showing the existence of a corporate policy requiring certifications. (Trush Dec., Exh. C (Pilney Depo.), 192:2-23, 199:2-16, 200:11-203:7, 208:19-209:7, 452:10-25, 612:16-613:13; See also Trush Dec., Exhs. M-O.)

As to the third issue, Plaintiffs contend that Defendant did not reimburse its GXIs for costs expended to attend Xpedition training, obtain and maintain third party and CPR certifications, music costs for their classes (Trush Dec., Exh. C (Pilney Depo.), 394:24-395:12), or costs required to maintain E-mail or telephone (Id. at Exh. C, 366:23-367:5). They rely on the existence of common classwide evidence noted above to determine whether the costs expended for Xpedition training and third party and CPR certifications are compensable. (Lab. Code §2802(a), (b).)

As to the fourth issue, Plaintiffs contend that Defendant's wage statements do not include any description of total hours worked or the number of hours worked at each hourly rate and that all class

members received wage statements omitting identical information.

Typicality. The class representative need not be necessarily identical to the claims of other class member. It is sufficient if he or she is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (Classen v. Weller (1983) 145 Cal.App.3d 27, 45.)

Plaintiffs and the proposed class all worked for Defendant as GXIs in California during the class period. Plaintiffs contend that Defendant's compensation and reimbursement policies and procedures were implemented and enforced on a company-wide basis, and applied equally to the representative plaintiffs and each putative class member. Thus, the representative plaintiffs are typical.

Adequacy. This requirement is met by fulfilling two conditions: (1) the named plaintiff must be represented by counsel qualified to conduct the pending litigation and (2) there are no disabling conflicts of interest between the class representative and the class. (McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450.) The court may presume the adequacy of the proposed representative(s) where the plaintiffs and members of the class have a common interest in obtaining the same relief, and where the plaintiffs' interests are not otherwise antagonistic to those of the class. (See Lazar v. Hertz Corp. (1983) 143 Cal.App.3d 128, 142 and Rosack v. Volvo of America Corp. (1982) 131 Cal.App.3d 741, 763.)

Plaintiffs contend that the representative plaintiffs do not possess any interest contrary to that of the proposed class and that no actual or potential conflicts exist between them and the class. On the other hand, Defendant contends that they are inadequate representative for the same reasons that they are not typical of the class. They also question the representative plaintiffs' credibility by citing to Posadas-Romesberg's deposition responses and Escow-Fulton's termination, inaccuracies in his employment application, and description of his duties while working for Plaintiff. In response, Plaintiffs note that Posadas-Romesberg substantively answered numerous questions at her deposition. (Hill Dec., ¶¶5-6.) As to Escow-Fulton, a dispute exists as to whether Defendant's employment records properly reflect the number of classes he taught while employed by Defendant. In addition, In re Proxima Corp. Sec. Litig., No. 93-1139-IEG, 1994 WL 374306, at *17 (S.D. Cal. May 3, 1994) is factually distinguishable from Escow-Fulton's situation since the representative plaintiff admitted to fraud. (Id. at *17.) Here, Defendant's have only proffered evidence which it alleges constitutes misconduct on its part.

Superiority. In Gentry v. Superior Court (2007) 42 Cal.4th 433, 459, the California Supreme Court held that class actions are the superior mechanism for adjudicating wage and hour disputes that affect a large number or current and former employees. The cases cited by Defendant are inapposite.

Manageability. Defendant has not shown a proper basis for establishing the unmanageability of this case since Plaintiffs met their burden on the issue of commonality. On the other hand, Plaintiffs did meet their burden for establishing this element for the reasons stated above.

Based on the foregoing, the motion for class certification is granted.

IT IS SO ORDERED.