SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 11/21/2024 TIME: 5:00 PM DEPT: C-67

JUDICIAL OFFICER: MICHAEL T. SMYTH
CLERK: Herlinda Chavarin
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00048942-CU-OE-CTL** CASE INIT.DATE: 12/07/2022
CASE TITLE: **Oconnor vs HRL Laboratories LLC [E-FILE]**
CASE CATEGORY: Civil CASE TYPE: (U)Other Employment

HEARING TYPE: Motion to Certify
MOVING PARTY:

APPEARANCES

The Court having taken this matter under submission on November 8, 2024, now rules as follows:

Plaintiffs Francesca O'Connor and Tatyana Chalik's Motion for Class Certification is **GRANTED** for the class as defined. Defendant HRL Laboratories, LLC's Motion to Deny Class Certification and/or Strike Class Allegations is **GRANTED** to the extent that any allegations related to the time periods not specified in the defined class are stricken.

Defendant's Objection Nos. 20-21, 27, 36-37 to evidence submitted with Plaintiff's motion are sustained to the limited degree that they offer legal conclusions. Defendant's Objection Nos. 2-4 to Plaintiff's evidence on reply are sustained to the degree that they offer legal conclusions and based on the best evidence rule. Defendant's Objection Nos. 4-5, 21-22, 28, 37-38 to Plaintiff's evidence in opposition to Defendant's motion are sustained to the degree that they offer legal conclusions and based on the secondary evidence rule. All other objections are overruled.

"The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021; Code Civ. Proc., § 382 ["when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."].) Importantly,

"the question of certification [i]s essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440; see also *Brinker*, *supra*, 53 Cal.4th at 1023 [same and stating that courts may go too far in resolving party disputes over elements of a claim].) Class certification proceedings are not "a license for a free-floating inquiry into the validity of the complaint's allegations; rather, resolution of disputes over the merits of a case generally must be postponed until after class certification has been decided, with the court assuming for purposes of the certification motion that any claims have merit." (*Brinker*, *supra*, 53 Cal.4th at 1023 [citations omitted].) Only where "evidence or legal issues germane to the certification question bear as well on aspects of the merits, [may] a court [] evaluate them." (*Id.* at 1023-1024.) As the Fourth District, Division One recently reiterated, "any peek a court takes into the merits at the certification stage must be limited to those aspects of the merits that affect the decisions essential to class certification." (*Imperial County Sheriff's Association v. County of Imperial* (2023) 87 Cal.App.5th 898, 918 (internal quotes omitted).)

"Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 968-969; see also *Brinker*, *supra*, 53 Cal.4th at 1022.)

A defendant is entitled to initiate the certification process through a motion to deny certification or motion to strike. (E.g., *In re BCBG Overtime Cases* (2008) 163 Cal.App.4th 1293, 1299.) While the court finds Defendant's motion largely duplicative, the court has considered Defense counsel's request from oral argument and granted the motion as to the periods of time raised in the complaint but abandoned by Plaintiffs in their class definition.

The thrust of the class allegations are that Defendant required employees to work remotely during the pandemic but did not reimburse them for remote work costs pursuant to Labor Code section 2802 which requires that employers reimburse "all necessary expenditures . . . incurred by the employee in direct consequence of . . . his or her obedience to the directions of the employer." Plaintiffs have limited the damages sought to a reasonable percentage of expenses incurred for internet and utilities.

In their motion for certification, Plaintiff defines the class as: "All employees of HRL Laboratories, LLC in California who worked remotely at any point between March 13, 2020 and February 28, 2022." While Defendant argues that this class is narrower than the one offered in the complaint, the court has broad discretion to define the class and finds no defect in Plaintiffs' omitting class members or time periods that are no longer deemed meritorious. The class, as defined, meets the requirements for certification.

1. Numerosity and Ascertainability

The party seeking class treatment must show an ascertainable and sufficiently numerous class. (*Duran v. U.S. Bank Nat'l Ass'n* (2018) 19 Cal.App.5th 630, 637.) The ascertainability requirement is satisfied if "the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying those persons who will be bound by the results of the litigation." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) A class of employees may be ascertainable even though some employees may not ultimately be

entitled to recovery. (*ABM Indus. Overtime Cases* (2017) 19 Cal.App.5th 277, 304.) "Class certification is properly denied for lack of ascertainability when the proposed definition is over broad and the plaintiff offers no means by which only those class members who have claims can be identified from those who should not be in the class." (*Miller v. Bank of America, N.A.* (2013) 213 Cal.App.4th 1, 7.) The class of approximately 700 employees is sufficiently numerous and can be discerned from Defendant's records as well as objective fact. Potential class members either worked from home during the class period or they did not. These elements are met.

2. Community of Interest

To show a community of interest supporting certification, Plaintiff must demonstrate three elements: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Brinker*, *supra*, 53 Cal.4th at 1021; see also *Sav on Drug Stores, Inc. Super. Ct.* (2004) 34 Cal.4th 319, 326.) These elements are met.

a. Predominance of Common Questions of Law or Fact

It is Plaintiff's burden to provide substantial evidence that common issues predominate. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1108.) Commonality is predicated upon whether the elements necessary to establish liability are susceptible to common proof. (*Brinker*, *supra*, 53 Cal.4th at 1021.) To assess predominance, the Court must examine the issues framed by the requested class and the law applicable to the causes of action alleged and determine "whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." (*Id*. at 1024.) The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Id*. at 1021.)

As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individual prove their damages." (*Brinker*, *supra*, 53 Cal.4th at 1022.) "Claims alleging that a uniform policy consistently applied to a group" is suitable for class treatment. (*Brinker*, *supra*, 53 Cal.4th at 1033 [employment context].) On the other hand, "class treatment is not appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the class judgment on common issues." (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28 [internal quotations omitted].)

There is substantial evidence that common issues predominate. Plaintiffs have submitted evidence of written communications from Defendant that arguably required all employees to work from home during the class period and that all employees would have incurred expenses associated with remote work. (See, e.g., ROA 111, Ex. B [Ex. 6 to PMK Depo].) Even if, as Defendant has argued, certain employees worked on-site occasionally, with or without obtaining permission, it is irrelevant for the purposes of liability if employees ***were*** expected to work from home at least some of the time without expense reimbursement.

Defendants have submitted the declarations of numerous employees stating that they do not know how much they spent on internet or utility costs in carrying out their employment. (See, e.g., ROA 121, Declarations 1-28.) The declarations do not contradict that these employees worked from home and were not reimbursed for internet or utility expenses. For the purposes of ***liability***, individualized inquiries are not required into what expenses were actually incurred or how often certain employees worked from home or on-site.

Questions as to whether any individual employee requested reimbursement is also not required where Defendant sufficiently knew or had reason to know that the employees were incurring the sorts of expenses identified by Plaintiffs. The public policy underlying Labor Code section 2802, "focuses not on whether an employee makes a request for reimbursement but rather on whether the employer either knows or has reason to know that the employee has incurred a reimbursable expense. If it does, it must exercise due diligence to ensure that each employee is reimbursed." (*Stuart v. RadioShack Corp.* (N.D. Cal. April 30, 2009) 641 F.Supp.2d 901, 903.)

While Defendant has put forth various reasons why employees were not required to work from home or why the merits of Plaintiffs' claims must fail under Labor Code section 2802, the court declines to make decisions as to the merits of the case at the certification stage. (See *Imperial County Sherriff's Assn*, *supra*, 87 Cal.App.5th at 918.) The court makes no finding regarding the merit of Plaintiffs' claims and this order should not be construed as anything more than a finding that common questions predominate for the purposes of class certification.

b. Typicality/Adequacy

The typicality element requires that a representative plaintiff have claims that are similar, although not necessarily identical, to the remainder of the class. The point is to assure that the interest of the named representative aligns with those of the class. (E.g., *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) The test is whether other members have the same or similar injury, whether the action is based on conduct that is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. (*Ibid.*)

"It is axiomatic that a putative representative cannot adequately protect the class if his interests are antagonistic to or in conflict with the objectives of those he purports to represent. But only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.) For example, in *Lampe v. Queen of the Valley Medical Center* (2018) 19 Cal.App.5th 832, 850, the Court of Appeal affirmed a trial court's finding that a class representative was not adequate where the lawsuit complained of meal break violations and the class representative was responsible for scheduling meal breaks for other employees in her unit. To resolve the adequacy question, courts evaluate the severity of the conflicts compared to the importance of the issues uniting the class; the alternatives to class representation available; the procedures available to limit and prevent unfairness; and other factors. (*Martinez*, *supra*, 231 Cal.App.4th at 375.)

The named Plaintiffs' claims are typical of the proposed class—that they were not reimbursed for internet and utility expenses necessarily incurred during required work from home. Defendant argues that the class representatives are not adequate because some of the proposed class are managers who were responsible for approving or denying work from home and reimbursement requests. But the class claims are not based on whether individual managers approved or disapproved work from home requests, but whether the CEO required employees, including managers, to work from home. The class representatives are adequate to represent the proposed class.

Defendants also point to apparent disagreement between one employee, Mr. Visher, and Plaintiffs' counsel. Mr. Visher claims that Plaintiffs' counsel lied to him and pressured him to represent him. He claims they asked him to sign a declaration with lies in it, but Plaintiffs have not submitted such a declaration with their motion papers. Mr. Visher was deposed and his testimony does not contradict that he primarily worked from home during the pandemic and was not reimbursed. Any conflict with counsel is insufficient to find them inadequate.

3. Superiority

Class actions must be superior to alternate means for a fair and efficient adjudication of the litigation. (*Sav-On Drugstores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 332.) Plaintiffs' trial plan, to bifurcate liability and damages is adequate. Plaintiffs state that for liability, their evidence will consist of evidence obtained from Defendant regarding numbers of employees who worked from home as well as survey evidence after a survey is conducted on the class members by Plaintiffs' expert. At least some of that same data may then be used in the damages phase. Nothing presented by Defendant confirms why the survey would be unusually difficult or make class treatment a less fair or efficient method of adjudication. Moreover, litigating the matter as a class is significantly more efficient than individual lawsuits.

The class is certified as defined. All claims for periods before March 13, 2020 or after February 28, 2022 and based on expenses other than internet and utilities costs are stricken.

IT IS SO ORDERED:

Michael T. Smyth

Judge Michael T. Smyth