UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:18-cv-02890-RGK-GJS	Date	August 23, 2018
Title	***Jensen v. Secorp Industries***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Plaintiff's Motion for Class Certification (DE 28)**

I. INTRODUCTION

Plaintiff Kyle Jensen ("Plaintiff") alleges that his employer, defendant SECORP Industries ("SECORP"), has violated California wage-and-hour laws over the course of his employment as an offshore paramedic on oil platforms along the Outer Continental Shelf. Plaintiff asserts six causes of action under California law on behalf of himself and others similarly situated: (1) failure to pay overtime and double-time premium wages; (2) failure to provide lawful meal and rest periods; (3) failure to reimburse business related expenses; (4) unfair competition; (5) pay stub violations; and (6) civil penalties under the Private Attorney's General Act of 2004.

Plaintiff now moves to certify a class of SECORP employees under Federal Rule of Civil Procedure ("Rule") 23. For the following reasons, the Court **GRANTS** Plaintiff's Motion for Class Certification (DE 28).

II. FACTUAL BACKGROUND

Plaintiff Kyle Jensen is an offshore paramedic and H2S Gas Tech who for the last four years has worked for SECORP on offshore oil platforms in the Santa Barbara Channel. The drilling platforms where he works are located several miles off the coast along the Outer Continental Shelf ("OCS"). Plaintiff works multi-day shifts, known in the industry as "hitches," that are typically seven days in length. During a hitch, Plaintiff performs his job duties for about 12 hours a day, from 6:00am to 6:00pm. Outside of those hours, Plaintiff is free to pursue leisure activities but remains aboard the platform and must be "on call" to respond to certain issues that may arise.

To compensate Plaintiff for his services, SECORP pays him an hourly wage for 13 hours a day: 12 hours for performing his job duties, and an additional 1 hour for time spent performing preparation activities like putting on and taking off safety equipment. SECORP does not pay Plaintiff, however, for

the other 11 hours per day that he is aboard the platform and "on call", unless Plaintiff is called to duty. Similarly, SECORP also does not pay its other offshore workers for these on call hours. Contending that California law requires SECORP to pay him and the other workers for the 11 hours they are on call each day, Plaintiff brings the present wage-and-hour suit on behalf of himself and others similarly situated. He now seeks to certify the following class under Rule 23(b)(3): "All hourly and otherwise non-exempt employees of Defendants, who, at any time within four year from the date of filing of this lawsuit, worked on oil platforms off of the California coast for periods of 24 hours or more." (*See* Second Am. Compl. ¶ 25, ECF No. 25.)

III. JUDICIAL STANDARD

Under Federal Rule of Civil Procedure 23(a), a case can proceed as a class action only if four requirements are met:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Besides the four Rule 23(a) requirements, a class must also satisfy one of three subsections under Rule 23(b). In this case, Plaintiffs seek to maintain a class under Rule 23(b)(3), which requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are commonly referred to as "predominance" and "superiority."

"Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The party seeking to maintain a class action bears the burden of affirmatively demonstrating that the requirements of Rule 23 continue to be satisfied. *See Marlo v. U.P.S.*, 639 F.3d 942, 947 (9th Cir. 2011). A district court should permit a class action to proceed only if the court "is satisfied, after a rigorous analysis," that the Rule 23 prerequisites have been met. *Dukes*, 564 U.S. at 350–51 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982)).

IV. DISCUSSION

Plaintiff's case hinges fundamentally on whether California wage-and-hour laws apply to California-based workers on the OCS. This is a question of law that the Court can resolve "in one

stroke." *Dukes*, 564 U.S. at 350. Because this is so, the Court concludes that Plaintiff has met the requirements to certify the class under Rule 23.

A. Plaintiff Has Satisfied the Rule 23(a) Prerequisites

To obtain class certification, a plaintiff must show that it can satisfy Rule 23(a)'s four requirements: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a). The Court concludes that Plaintiff has met all four of these requirements.

First, the proposed class is sufficiently numerous that joinder of all members would be impracticable. While there is no fixed number that satisfies the numerosity requirement, "[t]he Ninth Circuit has required at least fifteen members to certify a class, and classes of at least forty members are usually found to have satisfied the numerosity requirement." *Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228, 232 (C.D. Cal. 2018) (citing *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042, 1051 (9th Cir. 2003)). Here, Plaintiff seeks to certify a class of SECORP workers that contains at least 31 members. Defendant argues that because Plaintiff's proposed class of about 31 members is less than forty, Plaintiff has failed to show that joinder would be impractical here. Citing to attached declarations from 9 of the 31 class members, Defendant argues that these 9 as well as the other 22 absent class members could easily join this action individually if they want to. But "impracticable" does not mean "impossible"; it refers only to the "difficulty or inconvenience of joining all members of the class." *Gonzalez*, 2018 WL 2688569, at *3 (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964)). Joining 31 plaintiffs would not be impossible, but it would be difficult and inconvenient to manage a case with so many plaintiffs, especially since, as discussed below, the primary legal issue facing all putative class members is the same. As such, the numerosity requirement is met.

Second, there are questions of law and fact common to the class such that class treatment is appropriate. "All questions of fact and law need not be common to satisfy" Rule 23(a)(2). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Rather, "for purposes of Rule 23(a)(2), even a single common question will do." *Dukes*, 564 U.S. at 359. Here, there is a single question of law common to all of the putative class members' claims: whether California law applies to the workers on the OCS. If it does apply, the parties seem to agree that SECORP is likely liable for the time that class members spend aboard the platform while unpaid but on call. *See Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833, 840–49 (Cal. 2015). If California law does not apply, Plaintiff's California wage law claims will necessarily fail. Because this question of law is the main issue in this case and applies to all members of the class, the commonality requirement is met here.

Third, Plaintiff's claims and defenses are typical of those of the proposed class. Plaintiff has worked aboard offshore oil platforms for multi-day periods, like the other workers in the class. He is paid for some on-duty time, like the other workers in the class, but is not paid for his on call hours, also like the other workers in the class. Under Rule 23(a), "representative claims are 'typical' if they are

reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. Here, Plaintiff's claims are essentially the same as those of other class members. The typicality requirement of Rule 23(a)(3) is therefore met.

Finally, Plaintiff and his counsel can fairly and adequately represent the interests of the class. The adequacy of representation inquiry centers on whether "the named plaintiffs and their counsel have any conflicts of interests with other class members," and whether the named plaintiffs and their counsel will "prosecute the action vigorously on behalf of the class." *Id.* Here, SECORP does not appear to argue that plaintiff Jensen has conflicts of interest with other class members. As his claims are similar to those of other class members, Plaintiff has incentive to litigate robustly on their behalf. Further, Plaintiff's counsel is well qualified to represent absent class members. Accordingly, the adequacy of representation requirement of Rule 23(a)(4) is also met.

Plaintiff thus satisfies the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a).

B. Common Questions Predominate Over Individual Questions Under Rule 23(b)(3)

After meeting the requirements of Rule 23(a), a plaintiff seeking class certification must also show that it can maintain the action under Rule 23(b). Here, Plaintiff seeks certification under Rule 23(b)(3). Rule 23(b)(3) requires that the "questions of law or fact common to the members of the class predominate over any questions affecting only individual members," and that class resolution would be "superior to other available methods" for resolving the case. Fed. R. Civ. P. 23(b)(3). The Court first addresses predominance, and then addresses the superiority of class treatment.

1. Predominance of Common Issues

First, common issues predominate in this case because resolving the key legal question—whether California law applies to California-based workers on the OCS—will resolve the main issues in this case.

SECORP argues that common questions do not predominate because class members have different situations that require individualized inquiries. Specifically, SECORP argues that class members perform different duties, take meal and rest breaks at different times, work on platforms owned by different companies, and have to respond to alarms at different frequencies during on call hours. For instance, SECORP argues that plaintiff Jensen does not have to respond to alarms during on call hours as much as other workers do because he has not worked on a platform while drilling was occurring. Consequently, SECORP asserts that litigating this case will necessarily entail individualized inquiries: into how often and whether each class member takes meal and rest breaks; into how often each class

member has to perform work-related duties during on call hours; and even into how long it takes each class member to perform shift preparation and completion activities.

But SECORP misses the point. It does not matter that putative class members have different job duties because the conditions of employment that give rise to SECORP's liability are the same for all class members. All class members are aboard drilling platforms during their off-hours, all are required to be on call during those hours, and all are not paid for the hours they spend on call. Plaintiff argues that SECORP is required under California law to pay class members for these on call hours; SECORP argues that it is not required to do so because California law does not apply. This dispute is therefore a question of law the Court can answer "in one stroke," without assessing individual job duties at all. *Dukes*, 564 U.S. at 350. If the Court determines that SECORP is liable for this time, the Court can then calculate damages for each member of the class. True, damages will differ for different class members depending on individualized wage-and-hour data like how often the worker had to perform job duties during on call hours. But the need to conduct individualized damages determinations is "rarely determinative under Rule 23(b)(3)," especially where, as here, damages can be calculated according to easily applied mathematical methods. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 484 (C.D. Cal. 2006).

In sum, the common question here—whether California law applies to workers on the OCS—has the capacity to generate a common answer "apt to drive the resolution of the litigation." *True Health Chiropractic, Inc. v. McKesson Corp.*, No. 16-17123, 2018 WL 3431723, at *6 (9th Cir. 2018) (citing *Dukes*, 564 U.S. at 350). Once the Court answers this question, the Court can likely resolve the issue of liability expediently.[1] *See Mendiola*, 60 Cal. 4th at 840–49. If there is liability, calculating damages will be a mathematical matter of determining the number of unpaid hours for each class member. Thus, common issues predominate over individual ones in this litigation.

2. Superiority of Class Treatment

Rule 23(b)(3) also requires the Court to assess whether class adjudication is superior to other methods of adjudication. This issue has four subfactors: (1) the interest of each member in "individually controlling the prosecution or defense of separate actions", (2) the "extent and nature of any litigation already begun", (3) the "desirability or undesirability of concentrating the litigation of the claims" here, and (4) the "likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A–D).

The Court concludes that all four factors are met here. First, each class member would likely have little individual interest in controlling the litigation. Because each class member's claim would arise from SECORP's failure to pay for on call hours and would be based on the same legal argument,

[1] SECORP argues that individual issues predominate under the FLSA. But Plaintiff does not allege claims under the FLSA; Plaintiff alleges claims only under California law. So if the FLSA applies instead of California law, then Plaintiff simply will fail to state a claim under state law. Conducting an inquiry as to SECORP's FLSA liability would be unnecessary.

there would be little need to independently litigate a substantially similar case 31 times over. To be sure, some putative class members' individual recoveries may be high enough to justify an individual lawsuit, but an individual lawsuit would still be unnecessarily duplicative and time-consuming given the commonalities here. Second, the Court is not aware of any litigation already begun against SECORP related to this issue. Third, the proposed class is comprised of workers based off the coast of the Central District of California, and the case turns on the application of California state labor law, so it is desirable to concentrate litigation of the claims here. And fourth, the likely difficulties in managing the class do not outweigh the benefits. As the Court has explained, it can resolve the issue of liability "in one stroke." *Dukes*, 564 U.S. at 350. While it may be necessary to make individual damages determinations, the Court can base such determinations on straightforward mechanical calculations. Such an approach would be simpler than managing 31 substantially similar lawsuits.

The Court therefore concludes that a class action is the superior method of managing this case.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Class Certification (DE 28).

IT IS SO ORDERED.

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